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# A Left-Libertarian Theory of Rights

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## Abstract

The human rights that are defended in libertarian literature tend to be limited in scope, which entails that the duties that people can be compelled to fulfil are similarly minimal. For this reason a commitment to libertarianism tends to be seen as incompatible with support for subsistence rights, enforceable positive duties, and redistributive taxation, since each one of these issues may require the infringement of libertarian property rights. In this thesis I aim to challenge these assumptions about libertarianism and to show that if a more plausible reading of libertarianism is adopted – what has come to be known as left-libertarianism – then this will generate a more substantial range of rights and correlative duties which are not only compatible with redistributive taxation, but in fact entail it.

I show that libertarianism, despite its contention that human rights are exclusively negative, does not rule out subsistence rights provided that these are understood as negative rights, for example: a right not to be deprived of the means of subsistence, or deprived of a clean living environment. Negative rights can be violated not only by individuals or by institutions, but also by individuals *supporting* institutions. In order to respect the negative rights of others it is necessary to refrain from supporting or contributing to institutions that violate these rights. Moreover, failure to respect these rights brings about a positive duty of rectification, demonstrating the potential for positive libertarian duties even in the absence of positive rights. Since the manner in which rights can be violated is extensive, so is the scope of those individuals that owe rectification. The fundamental libertarian rights of self-ownership, which I characterise as three property rights – over the body, over the faculties (including talents, abilities and labour) and over what one can produce through exercising those faculties in conjunction with the body – demonstrate how we can come to have property rights over external objects, but self-ownership does not confer permanent private property rights over unlimited external worldly resources. In fact, a robust right of self-ownership is incompatible with the radically inegalitarian appropriation with which libertarianism is ordinarily associated. Given the equal rights of self-ownership of every individual, it is far more plausible to conceive of the world as held in some egalitarian manner, rather than as unowned and available for appropriation in such a way that would disadvantage latecomers. I propose an egalitarian understanding of world ownership which comprises common ownership of land, and joint ownership of other external worldly resources such as oil and minerals. Taking the injustice of radically inegalitarian appropriation in conjunction with a duty to rectify past injustices, there follows a libertarian argument for redistribution, but crucially this redistributive taxation is collected not on income but on natural resource use. On a left-libertarian theory of rights, then, there is no right to appropriate unlimited resources, but there *is* a right to redistribution in the event of past injustices, including the misappropriation of worldly resources.

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Special thanks go to my parents, John and Marie Millett, and to my wonderful husband David, for their unwavering support throughout.

## **Declaration**

I hereby declare that this thesis is entirely my own work and that no part of it has been submitted for any other degree or qualification.

# Introduction

The aim of this thesis is to challenge certain assumptions about libertarianism: to draw out the full extent of what is entailed by libertarian principles, and also to explore what can be achieved without threatening to undermine these principles. I will show that upholding libertarian values such as the rights of self-ownership is consistent with a commitment to a number of things to which it is usually considered to be antithetical, including subsistence rights, positive duties, and redistributive taxation.

In Part I of the thesis I shall consider the libertarian theory of justice – the rights upheld under such a conception of justice and the duties that correlate to these rights that can permissibly be enforced. On a libertarian theory of rights there is a strong distinction between negative and positive rights. This is based broadly on the idea that justice requires merely that we do no harm, but not that we actively help people. This approach has fallen out of favour in recent years, amid claims that such distinctions can no longer be drawn. Actions can bring about harms indirectly, particularly harms that come about through problems of collective action, meaning that the causal link between the actions of individuals and the harms that befall others becomes blurred. To some extent these claims are well-founded. The institutional interdependence of the modern world has complicated the relation between individual behaviour and its consequences, and actions that appear innocuous can result in devastating outcomes. Critics are therefore correct to question whether it is still sufficient to consider that a right is violated only by a direct harmful action. However, these observations in themselves are not adequate cause to deny the significance of the distinctions identified above. The questions of what negative rights there are, and what sort of actions can violate these rights, may give rise to different answers over time, but there is still an important moral distinction between an action and an omission of action, and between a negative and a positive right. The shifting boundaries brought about through recognition of an

interdependent global economic order do nothing to justify abandoning these moral distinctions. Likewise, I argue, we need not abandon a libertarian theory of rights and justice.

In chapter one I consider the nature of libertarian rights, arguing that human rights from a libertarian point of view must fulfil a number of criteria, many of which contribute to the overall assertion that human rights are exclusively negative. My aim here is merely to outline a libertarian rights framework, and provide a prima facie case for the rejection of positive rights, not to provide a comprehensive defence of the libertarian position. From this point I shall then reject the claim that all subsistence rights are necessarily positive. Rather, I shall argue that it is possible to conceive of subsistence rights in negative terms, such as a right not to be deprived of the means of subsistence, or deprived of access to a healthy environment. Having identified these negative subsistence rights as human rights I will then argue that these rights are violated when individuals are deprived of these things, whether by other individuals or by institutions. Most importantly I will argue, with reference to Thomas Pogge's institutional theory of human rights, that when institutions violate rights – whether by harming directly (such as murder, torture and so on) or by depriving people of the means of subsistence – then the individuals who actively provide support to these institutions share in the responsibility for these rights violations. Adopting this position has substantial implications for the duties people hold in respect of others' rights, and this is the topic of chapter two.

Despite a commitment to exclusively negative human rights, the assertion that individuals can violate these rights when they provide support to rights-violating institutions means that the range of behaviour prohibited by the duty to refrain from violating these rights is extensive. Not only must individuals refrain from harming others, including by depriving them of the means of subsistence, but they must also refrain from seemingly harmless acts that in fact contribute to the violation of these rights through the acts of institutions. Institutions might violate negative rights in a traditional sense, such as assaulting subversive employees, or they might violate negative subsistence rights, for example: by creating pollution through their

manufacturing process which deprives the local people of a clean living environment. On my account, an individual's negative duties include, for example, a duty to refrain from purchasing goods produced by companies who violate rights in either of these ways, since in providing financial support to these institutions they are contributing to the rights violations. Such prohibitions are not ordinarily recognised on a libertarian account.

In addition to these negative duties, libertarians can also acknowledge positive duties, even in the absence of positive human rights. I reserve the language of 'duty' for those correlative obligations that correspond to rights, but I acknowledge so-called 'duties' of charity as being compatible with a libertarian position, and I demonstrate widespread libertarian support for moral obligations which are not grounded in rights. I also mention briefly the kind of positive duty that is voluntarily incurred through entering a contract. Unlike charitable obligations, the decision to fulfil contractual duties is not optional, but individuals can decide whether or not to create these duties by entering into voluntary agreements with others. The creation of a system of legal rights (as opposed to human rights) or a welfare state represent such instances of voluntary agreement, where the decision to incur the duties is optional (at least in the original creation of these systems), though the subsequent fulfilment of them is not. Both contractual obligations and weaker charitable obligations have a voluntary element to them. There are, however, some positive duties that are non-voluntary on a libertarian theory of justice, and which can be derived even from exclusively negative human rights. These are positive duties of rectification, and these are my main focus in terms of positive libertarian duties.

A positive duty of rectification arises following the past violation of a right. Failure to refrain from violating a negative right creates a positive duty, on the part of the one who committed the violation, to compensate and to rectify the past injustice. Having demonstrated in chapter one that negative rights can be more extensive on a libertarian account than may at first be thought (on account of including negative subsistence rights) and that they can be violated even by individuals simply providing support to rights violating institutions, it follows that there are more ways

to violate negative rights than may have been thought to be the case. Accordingly, with more methods of violating the rights, there are more ways in which the positive duties of rectification can arise. I shall argue that these positive duties of rectification are held by all those involved in the violation, including individuals who provide support for rights-violating institutions. Although I do not engage in the empirical debate I concede that at least some current instances of deprivation have been actively caused by the behaviour of others, primarily by the practices of global institutions. Helping people out of deprivation in these instances therefore qualifies as an enforceable positive duty of rectification, derived from a negative subsistence right, and owed by all (and only) those who have contributed to the deprivation. I will show, then, that even if we recognise only negative human rights, the positive duties that are owed as a matter of justice are substantial and wide-reaching, and proper implementation of them would allow a considerably greater amount of interference than libertarianism is ordinarily thought to permit.

The aim of Part II of the thesis is to provide the background for one of the most important libertarian concepts: self-ownership. Before it is possible to assess the merits or otherwise of self-ownership it is necessary to identify a workable definition of the term. Though commonly attributed to John Locke, the term did not in fact start to appear until the late 19<sup>th</sup> century, and it has fallen into common use only relatively recently. Even then, there is little consensus as to what the term is really intended to convey, and so chapter three is dedicated to providing a workable definition. I begin by defining property rights, distinguishing between full private ownership and partial ownership. I use the term ‘self-ownership’ to refer to three property rights: (a) over the body, (b) over the faculties (including labour, talents and abilities), and (c) over what one can produce through exercising those faculties in conjunction with the body. These are rights of full ownership. This third right can be referred to as the ‘product of labour’ but must be distinguished from that which can only be produced through labouring on external resources. Only property rights over those products produced through labouring on personal resources – combining body and faculties – are included under the rights of self-ownership. These three property rights together comprise the rights of self-ownership, and are negative human rights on a libertarian

theory of justice. Having identified what I mean by self-ownership I shall then address concerns about its coherence and its consistency. First I address the objection that self-ownership is incoherent since it is impossible to sell one's self – to sell one's self would mean that there would be no 'self' to accept payment, rendering the transaction incoherent. I argue that this criticism is overstated and that there is no incoherence if we introduce a third party beneficiary who can accept the payment on behalf of the individual in question. Arguments denouncing the appeal of self-enslavement are countered with the assertion that however ill-advised a decision to enslave one's self would be, its prohibition can be justified only on the basis of paternalistic grounds which any theory upholding the importance of autonomy must reject. I also consider the objection sometimes known as the Paradox of Self-ownership, which claims to demonstrate that self-ownership is inconsistent. According to the paradox, I own myself, and yet I must also be the property of my parents since I am the product of their bodies and labour. In other words, what I have identified as property rights (a) and (c) conflict with one another and self-ownership is therefore inconsistent. Again I reject this objection, and will argue that the presence of autonomy is a sufficient condition for ceasing to consider something (or someone) to be a labour product, and the property of its producer(s). Moreover, I maintain that this is not merely an arbitrary stipulation, since the free exercise of autonomy – understood as the need to be self-governing without interference from others – is a fundamental libertarian premise on which the property rights of self-ownership are founded.

Having demonstrated that doubts regarding the coherence and consistency of self-ownership can be overcome I will then address, in chapter four, more substantial criticisms relating to the allegedly objectionable consequences that upholding self-ownership rights might lead to. These objections have been outlined most comprehensively by G. A. Cohen, and his critique will form the basis of this chapter. I divide his objections into four sections: the proposed connection between self-ownership and slavery; that between self-ownership and autonomy; the utilitarian use of people; and the inequality that stems from upholding self-ownership given differences in brute luck. While I concede that some of Cohen's points can be

sustained – for example, his claim that self-ownership is *not* the only conceivable alternative to slavery – some of his other objections cannot be upheld. Cohen argues that self-ownership is hostile to autonomy, since it could leave people with too few acceptable choices to qualify for being a truly self-governing life. However, I will show that self-ownership is hostile to autonomy only if autonomy is conceived in terms which a libertarian is not obliged to accept. The form of autonomy supported by libertarians is not undermined by a commitment to self-ownership, and allegations that the libertarian position is self-defeating are unfounded. Cohen also argues that self-ownership provides no guarantee against what he calls ‘a utilitarian use of people’, but I will argue that no preferable alternative to self-ownership has been found which would provide greater protection to people against being used by others in ways contrary to their will. Finally I will consider the objection that unjust inequalities will result from upholding self-ownership, since the property rights of self-ownership assure to people the rewards of exercising their talents and abilities. Any natural differences will therefore be reinforced, and since these are frequently the result of luck, this outcome cannot be justified on the basis that it reflects people’s choices. I suggest, however, that the inequalities that arise when the effects of brute luck are reinforced by self-ownership can be mitigated once we have considered ownership over natural external worldly resources.

The rights of self-ownership that I have established outline some libertarian property rights, but do not in themselves say anything about property rights in the external world or in products which require the use of the external world in their production. The aim of Part III is partly to find an interpretation of world ownership that is compatible with effective or robust self-ownership, that is: where the self-ownership rights themselves are accompanied by rights to sufficient worldly resources so that an individual is not forced to give up her self-ownership rights (for example, being forced to sell her labour). In addition to this, I am also interested to explore how far libertarianism can be pushed towards egalitarianism without undermining any of its fundamental tenets. To this end, I begin chapter five by proposing a Georgist approach to world ownership (following Henry George) which prohibits full private property in land but allows private appropriation, excluding others from its use, on

the condition of the payment of rent. This contrasts with the approach of John Locke, who advocated the permissibility of private appropriation resulting in private property rights, subject to the observation of a proviso ensuring that ‘enough and as good’ is left for others. George and Locke also differ with regard to the manner of creating property rights in external objects: for George this is by production alone, while for Locke it is through production or labour-mixing, where labour mixing can amount to little more than first occupation. I propose the Georgist model in the interests of seeing how egalitarian an approach to world ownership can be before it threatens to undermine self-ownership.

The prohibition on private ownership of land is opposed most vehemently by radical right-wing libertarians, including Murray Rothbard and Israel Kirzner. They reject even the imposition of a Lockean-style proviso, on the grounds that there is no right *not* to be disadvantaged by the appropriation of resources by others, and that discovering a resource ought to confer the same rights of ownership as its creation. However, I argue that the full appropriation of worldly resources that would be permitted in the absence of a proviso is incompatible with effective self-ownership. In a world where all resources are already appropriated an individual will be unable even to occupy standing room without encroaching on the property of others, and her self-ownership is rendered merely formal. Moreover, even if lacking robust self-ownership was not a concern in itself, permitting unlimited appropriation would also create a situation whereby the self-ownership rights of some come into conflict with the property rights of others. It greatly undermines a theory of justice to advocate a set of rights which are not compossible – that is: that cannot be realised simultaneously – providing further reason to reject radical right-wing libertarianism.

I turn then to libertarian accounts that *do* recognise the need for the observation of a proviso. I call these Lockean libertarian accounts, and begin with a right-wing interpretation of the proviso, famously proposed by Nozick. For Nozick, private appropriation is permitted provided it does not make others ‘worse off’. But this raises two important questions: ‘worse off *compared to* what?’ and ‘worse off *in terms of* what?’ If we adapt Nozick’s interpretation of these criteria we can modify

his proviso to yield a far more egalitarian distribution than the one he advocates. However, the equality achievable under a proviso that does not also recognise egalitarian world ownership will always be limited. Ensuring that ‘enough’ is left for others will guarantee robust self-ownership, but it could also allow substantial inequalities where some possess great wealth while others have a mere sufficiency. A further commitment to egalitarian ownership of worldly resources is one of the premises of left-libertarianism (the other premise being a commitment to self-ownership). I shall briefly defend left-libertarianism as a coherent thesis, able to promote significant equality while upholding self-ownership, before going on to discuss in more detail the competing conceptions of egalitarian ownership put forward by its supporters.

Maintaining the Georgist approach to common ownership of land, I propose that rent is paid into a common fund on land that is privately appropriated. This appropriation does not give rise to a full property right, only a right of exclusive use, but I will argue that someone does have a private property right over what she can produce through labouring on land on which she has paid rent. This is because the natural resource component of the product has already been taxed, so to impose any further taxes would be to tax the labour component, which would violate self-ownership. I compare this Georgist common ownership approach in chapter six with two other accounts that propose collecting a payment on natural resource use: Hillel Steiner’s Global Fund and Thomas Pogge’s Global Resources Dividend. In discussion of these approaches I identify a problem in collecting a payment on those resources that can be used up, such as oil or minerals. On a common ownership approach like George’s or Steiner’s, the payment on the resource would decrease as the resource itself decreases. Not only would this provide no incentive to conserve, but it actively rewards countries who use up resources, since they will still be permitted to benefit from the common ownership of resources remaining elsewhere. This prompts me to adopt an alternative method of ownership for those resources which – unlike land – are depleted by their use. This method is joint ownership. Under joint ownership, resources can only be used following a collective decision-making process. Though traditionally thought to be incompatible with effective self-ownership, I will show

that by restricting joint ownership so that it covers only those non-renewable resources which are depleted by use (such as oil and metals) – access to which is not necessary for the exercise of self-ownership – this objection can be overcome. These jointly held resources can be put to use only following collective agreement, at which point a substantial portion of their value (realised on the free market) will be paid into the common fund, along with the rent paid on privately appropriated land. I shall also defend in chapter six my conceptualisation of natural resources, arguing that it is reasonable to conceive of natural phenomena as resources, and we can justifiably see them as things that are owned equally by all, even once their value has been realised in a distributable form, since labour-mixing does not confer a property right. I shall also defend my decision to restrict the natural resource base to physical resources – rather than extending it to include such things as genetic information or the work ethic – in the interests of maintaining a strong commitment to self-ownership. I shall also reject the alternative conceptualisation of ecological space on the grounds that my Georgist approach provides more scope for redistribution.

Having established the manner in which resources are owned and the method by which the common fund can be collected, I then turn in chapter seven to address how the fund ought to be distributed. I consider proposals from Michael Otsuka and Peter Vallentyne that we can deviate from an equal distribution without undermining self-ownership. Otsuka proposes promoting equality of opportunity for welfare, which I shall argue can result in self-ownership that is not robust, when some individuals are given fewer natural resources than they need on account of their superior genetic abilities. Vallentyne proposes equality-promoting Georgist libertarianism and equality-promoting full benefit taxation. I shall argue that the latter, which advocates collecting a tax on the benefits of applying personal talents to natural resources, results in a straightforward violation of self-ownership rights, but shall concede that there is some scope to distribute shares unequally according to the first model. I do not insist on equal division of the common fund since self-ownership does not demand any specific conception of world ownership, but I will note that there are limits to the promotion of equality in distributing the collected fund, since the rights of self-ownership must take precedence. From the common fund, then, I shall

propose a basic income, though one whose justification is limited to the common and joint ownership of natural resources. Finally I shall propose some limits on bequeathing that are compatible with self-ownership, in order to ensure that future generations are not excessively disadvantaged.

In concluding this thesis I demonstrate that libertarianism, when its full implications are drawn out, can support negative subsistence rights and enforceable positive duties. Moreover, when it is coupled with the additional premise of egalitarian world ownership we can identify a legitimate tax base with wide-reaching implications for redistribution. This enables a substantial movement towards egalitarianism, without undermining the fundamental libertarian commitment to self-ownership, and shows that many of the undesirable outcomes ordinarily associated with libertarianism can be avoided if we adopt a left-libertarian theory of rights.

## **Part I: A Libertarian Theory of Justice**

# Chapter 1: Libertarianism and Rights

## *Introduction*

I shall begin by setting out what I mean by a libertarian theory of rights, which will form the backdrop of the entire thesis. Primarily in this chapter I intend to construct an argument that will refute the claim that libertarianism is incompatible with recognising subsistence rights as universal human rights. This charge is levelled on the basis of two assertions: (1) that libertarians believe that only negative rights can be human rights; and (2) that subsistence rights are positive. In this chapter I will affirm the first claim but reject the second. In so doing I will explore the possibility of negative subsistence rights, and arrive at the conclusion that subsistence rights can be negative (such as a right not to be deprived of the means of subsistence), and that libertarians can therefore embrace this negative type of subsistence right as a human right. In the following chapter I will then consider the full implications of accepting a negative subsistence right and the range of negative duties which this would confer. If there are negative subsistence rights, then there are duties to refrain from depriving people of the means of subsistence. I will consider further, though, whether these duties can amount to refraining from supporting institutions that engage in activities that deprive people in this way. When the many ways in which people may come to be deprived of the means of subsistence has been taken into account, I argue that a negative subsistence right confers duties to refrain from doing many things that may previously have been thought to be permissible. Moreover, since these are negative duties they are entirely compatible with a libertarian theory of rights and justice.

In this thesis I will use the terminology of justice to refer to the sphere concerning rights and the correlative constraints that they impose. Rights act as a guide for the behaviour of others. If one person has a right then this means that there are ways in which others must behave, or must refrain from behaving. Such constraint on the

conduct of others has been described as “an uncontested feature of rights”<sup>1</sup> and such constraints are deemed to be “the invariable consequences of rights.”<sup>2</sup> The form that such constraint takes depends on the nature of the right. Hohfeld believed that rights could be understood in four ways – as claims, privileges, powers or immunities.<sup>3</sup> A claim-right corresponds to a duty; a privilege to a ‘no-right’ (such that others have no right that the holder of the privilege refrain from doing that thing); a power corresponds to a liability; and an immunity to a disability. Each of these constrains the behaviour of others in a different way. In my thesis the focus will be predominantly on claim rights – what Hohfeld described as a “right in the strictest sense”<sup>4</sup> – since property rights (which are a crucial element of a libertarian rights framework, and take up a considerable amount of discussion in Parts II and III) tend to be formulated as claim rights<sup>5</sup> although, as we will see in due course, they can also take the form of powers, liberties and immunities. It is worth noting that Hohfeld was writing about rights in a legal context, while the rights I am concerned with are moral rights. I believe, however, that this need not pose a problem for my analysis of rights. As Matthew Kramer argues, “virtually every aspect of Hohfeld’s analytical scheme applies as well, *mutatis mutandis*, to the structure of moral relationships.”<sup>6</sup> So while small adjustments may need to be made to demonstrate the applicability of these legal relations in a non-legal context, we can still draw significantly from Hohfeld’s analysis.

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<sup>1</sup> Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994). p. 59

<sup>2</sup> George W. Rainbolt, *The Concept of Rights, Law and Philosophy Library* ; V. 73 (Dordrecht: Springer, 2006). p. 27

<sup>3</sup> Wesley Newcomb Hohfeld, David Campbell, and Philip A. Thomas, *Fundamental Legal Conceptions, as Applied in Judicial Reasoning*, New ed., *Classical Jurisprudence Series* (Aldershot: Ashgate/Dartmouth, 2001). For discussion on the correlativity thesis see James Fieser, "The Correlativity of Duties and Rights," *International Journal of Applied Philosophy* 7 (1992)., Jack Donnelly, "How Are Rights and Duties Correlative?," *Journal of Value Inquiry* 16, no. 4 (1982)., David Braybrooke, "The Firm but Untidy Correlativity of Rights and Obligations," *Canadian Journal of Philosophy* 1, no. 3 (1972)., David Lyons, "The Correlativity of Rights and Duties," *Noûs* 4, no. 1 (1970).

<sup>4</sup> Hohfeld, Campbell, and Thomas, *Fundamental Legal Conceptions, as Applied in Judicial Reasoning*. p. 12

<sup>5</sup> See Levey: "Property rights, like the right to liberty, are claim rights." Ann Levey, "Liberty, Property and the Libertarian Idea," in *Liberty, Games and Contracts: Jan Narveson and the Defence of Libertarianism*, ed. Malcolm Murray (Aldershot: Ashgate Press, 2007). p. 148

<sup>6</sup> Matthew H. Kramer, "Rights without Trimmings," in *A Debate over Rights : Philosophical Enquiries*, ed. Matthew H. Kramer, N. E. Simmonds, and Hillel Steiner (Oxford ; New York: Clarendon Press, 1998). p. 8

These four types of rights and their correlatives are – I maintain – exhaustive of the sphere of justice, but that is not to say they are exhaustive of the moral sphere. I do not rule out that there are other moral considerations (indeed, it would be extraordinary to do so), including non-correlative duties<sup>7</sup> but – on the view I am adopting – these are not a matter of justice.<sup>8</sup> The significance of emphasising this distinction between duties that correlate to rights and other sorts of moral obligation is that, I maintain, only the former are enforceable.<sup>9</sup> When a duty is enforceable then an individual can permissibly be coerced into fulfilling it, by force if necessary (for example, by the threat of violence or imprisonment). I shall discuss the nature of libertarian duties in greater detail in the next chapter. For our purposes here it is sufficient to note that I am using the term ‘duty’ to refer only to something that correlates to a right and which can permissibly be coercively enforced. It is for this reason that it is important to identify what our rights are, and therefore what constraints they can have on our behaviour which can be enforced.

In maintaining that only matters of justice are enforceable, I have indicated that priority ought to be given to matters of justice when there is conflict with other moral considerations, which in turn gives some indication as to my position regarding the inviolable nature of rights. In this thesis I will assume rather than defend the view

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<sup>7</sup> An example of a duty that does not correlate to a right could be a duty of charity. Arguably it is inappropriate to call this a ‘duty’ at all if it does not correlate to a right. Indeed on strict interpretations of the correlativity thesis every right has a correlative duty and every duty has a correlative right – they are two sides of the same coin. On this view, a duty cannot make sense without a right. See F. H. Bradley, *Ethical Studies*, 2nd (rev.) ed. (Oxford: Clarendon Press, 1927). p.188, S. I. Benn and R. S. Peters, *Social Principles and the Democratic State* (London: Allen & Unwin, 1959). p. 89, Marcus Singer, "The Basis of Rights and Duties," *Philosophical Studies* 23 (1972). p. 50, and A. John Simmons, *Moral Principles and Political Obligations* (Ann Arbor: U.M.I. Books on Demand, 1995). p. 195

<sup>8</sup> For support of this view see Robert Nozick, *Philosophical Explanations* (Oxford: Clarendon, 1981). p. 502, Jonathan Wolff, *Robert Nozick : Property, Justice and the Minimal State, Key Contemporary Thinkers* (Cambridge: Polity, 1991)., p. 23, Hillel Steiner, "Just Taxation and International Redistribution," in *Nomos Xli: Global Justice*, ed. I Shapiro and L Brilmayer (New York: New York University Press, 1999)., n. 41 This view also broadly follows Mill’s terminology of perfect and imperfect obligation: “duties of perfect obligation are those duties in virtue of which a correlative right resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right. I think it will be found that this distinction exactly coincides with that which exists between justice and the other obligations of morality”. John Stuart Mill, "Utilitarianism," in *Utilitarianism and Other Essays* (Harmondsworth: Penguin, 1987). p. 322-3

<sup>9</sup> For support of this view see Jan Narveson: “claims about rights are generally understood to be enforceable.” Jan Narveson, "The Right to Liberty Is Incompatible with the Right to Equality," in *Are Liberty and Equality Compatible?*, ed. Jan Narveson and James P. Sterba (Cambridge: Cambridge University Press, 2010). p. 155 (emphasis in original)

that rights have some overriding importance that justifies upholding them even when they conflict with other moral (for example, consequentialist) considerations.<sup>10</sup> While my inclination is to declare (in the interests of consistency if not plausibility) that rights are absolute, and cannot be justifiably violated, infringed or overridden in any circumstances<sup>11</sup> I will follow the lead of prominent libertarian Robert Nozick on this matter. In discussion of what he calls ‘side constraints’ – the constraints upon actions which are determined by the rights of others – he says:

The question of whether these side constraints are absolute, or whether they may be violated in order to avoid catastrophic moral horror, and if the latter, what the resulting structure might look like, is one I hope largely to avoid.<sup>12</sup>

Suffice it to say that I am advocating rights as a stringent influence on behaviour which can be overridden only in exceptional circumstances (and perhaps not even then). Having hopefully clarified these ideas on my understanding of the relationship between rights, duties and justice, I shall now introduce the libertarian theory of justice and begin to address the real issues at the heart of this debate.

## ***Libertarianism and Negative Rights***

In this section I will introduce libertarianism, explain the distinction between positive and negative rights, and provide an account of a libertarian rights framework that supports the claim that all human rights are negative. I shall attempt to provide a plausible theory of rights with some prima facie reasons for rejecting positive human rights, but I will not endeavour to construct a strong defence for this theory of

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<sup>10</sup> See Ronald Dworkin, "Rights as Trumps," in *Theories of Rights, Oxford Readings in Philosophy*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984).

<sup>11</sup> For a discussion on the different uses of these terms see Judith Jarvis Thomson, "Some Ruminations on Rights," in *Reading Nozick: Essays on Anarchy, State and Utopia*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1982).

<sup>12</sup> Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1975). p. 30

rights.<sup>13</sup> Rather, it is my aim to set out the theory of rights in order to ascertain in the latter part of the section what characteristics a subsistence right must fulfil in order to fit the libertarian rights framework that I have set out.

## Introducing Libertarianism

Libertarianism is most widely associated with Robert Nozick, and his seminal work *Anarchy, State and Utopia*.<sup>14</sup> According to Nozick, “The minimal state is the most extensive state that can be justified. Any state more extensive violates people’s rights.”<sup>15</sup> This is because, he claimed, the taxation that would be required to create welfare provision and other services supplied by a more extensive state must be raised through depriving people of their hard-earned money and, according to Nozick, “Taxation of earnings from labour is on a par with forced labour”.<sup>16</sup> So while it is a requisite in the minimal state that people refrain from harming one another – and Nozick permits minimal taxation to pay for such things as a police force<sup>17</sup> – any further state interference is not permissible. The type of state that can be justified on a libertarian theory of justice is thus limited in its authority. Notably,

the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their own good or protection.<sup>18</sup>

For Nozick, the proposal that there are moral side constraints – prohibitions on certain behaviours – is founded on the premise that “there are different individuals

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<sup>13</sup> For support for the idea that libertarian negative rights are the foundation of the most valuable sort of life see the work of Ayn Rand, including particularly Ayn Rand, *The Fountainhead* (London: Penguin, 2007).

<sup>14</sup> In fact, Nozick states in a later work that he no longer considers himself a libertarian (Robert Nozick, *The Examined Life* (New York: Simon & Schuster, 1989). p. 17) but *Anarchy, State and Utopia* is nonetheless a useful source in setting out the libertarian position.

<sup>15</sup> Nozick, *Anarchy, State and Utopia*. p. 149

<sup>16</sup> *Ibid.* p. 169

<sup>17</sup> *Ibid.* p. 27, Wolff, *Robert Nozick : Property, Justice and the Minimal State*. p. 115. I shall address in due course the apparent inconsistency of this position.

<sup>18</sup> Nozick, *Anarchy, State and Utopia*. p. ix

with separate lives and so no one may be sacrificed for others”.<sup>19</sup> Specifically this premise justifies what Nozick calls a ‘nonaggression principle’ – prohibiting aggression against others. From Nozick we can conclude that the libertarian theory of justice is one which permits interference only in order to prevent people from harming others.<sup>20</sup>

Among other libertarians are Nozick’s contemporaries, John Hospers and Murray Rothbard, and – slightly later – Jan Narveson. Rothbard reinforces the emphasis on nonaggression, in arguing “The libertarian creed rests upon one central axiom: that no man or group of men may aggress against the person or property of anyone else.”<sup>21</sup> According to Rothbard, “The libertarian favours the right to unrestricted private property and free exchange; hence, a system of ‘laissez-faire capitalism’.”<sup>22</sup> He also shares Nozick’s views on taxation, calling it “legalised and organised theft on a grand scale.”<sup>23</sup>

Hospers, writing before Nozick’s *Anarchy, State and Utopia*, describes libertarianism as a philosophy of personal liberty:

the liberty of each person to live according to his own choices, provided that he does not attempt to coerce others and thus prevent them from living according to their choices.<sup>24</sup>

This view is shared by Narveson.<sup>25</sup> Clearly the sort of liberty they have in mind is negative liberty – the liberty to do as one wishes without interference from others – not a positive conception of liberty that would involve enabling people in certain ways.<sup>26</sup> On a libertarian account, “Liberty is understood simply as the absence of

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<sup>19</sup> Ibid. p. 33

<sup>20</sup> This captures the essence of Mill’s harm principle, John Stuart Mill, *On Liberty* (Harmondsworth: Penguin, 1985). p. 68

<sup>21</sup> Murray Rothbard, *For a New Liberty: The Libertarian Manifesto*, Rev. ed. (Lanham M.D.: University Press of America, 1978). p. 23

<sup>22</sup> Ibid. p. 24

<sup>23</sup> Ibid. p. 26

<sup>24</sup> John Hospers, *Libertarianism* (Los Angeles Nash, 1971). p. 5

<sup>25</sup> Jan Narveson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1988). p. 15

<sup>26</sup> A full study of the competing conceptions of liberty would be too great a diversion in a study focusing on rights. For discussion of this debate, see Isaiah Berlin and University of Oxford., *Two Concepts of Liberty : An Inaugural Lecture Delivered before the University of Oxford on 31 October*,

human constraint, not the absence of any impediment to one's desires."<sup>27</sup> Narveson also confirms the libertarian focus on non-interference, acknowledging that it is on account of this that libertarianism "has generally been identified with the thesis that our fundamental moral rights are exclusively negative."<sup>28</sup> The implications of a libertarian theory of justice, on Narveson's account, are: that there is no duty to provide people with the necessities of life; that we must allow the market to operate freely; that voluntary social arrangements will be preferred to involuntary ones; and that governments are restricted in what they may do, even with majority support.<sup>29</sup>

Libertarian ideas have been developed in more recent years by left-libertarians Hillel Steiner, Peter Vallentyne and Michael Otsuka.<sup>30</sup> Left-libertarianism reinforces the emphasis on non-interference – in the words of Vallentyne: "all libertarians condemn as unjust the state's use of force to make a person provide personal services for the benefit of others."<sup>31</sup> However, left-libertarians would dispute Rothbard's claim above that this is necessarily a precursor to a commitment to 'unrestricted private property' and 'laissez-faire capitalism'. The question of private property depends largely on the nature of ownership over the external world, and it is on this point that right- and left-libertarians diverge. While right-wing libertarians see external worldly resources as unowned and up for grabs, left-libertarians see them as owned in some egalitarian manner.<sup>32</sup> The distinction between these two types of libertarianism will be the main focus of Part III of the thesis, but in terms of the nature of rights defended on a

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1958, *Inaugural Lecture ; 1958* (Oxford: Clarendon Press, 1958)., David Miller, *The Liberty Reader* (Edinburgh: Edinburgh University Press, 2006)., especially contributions from F.A.Hayek "Freedom and Coercion", Gerald C. MacCallum "Negative and Positive Freedom", and Charles Taylor "What's Wrong with Negative Liberty".

<sup>27</sup> Malcolm Murray, "Introduction," in *Liberty, Games and Contracts: Jan Narveson and the Defence of Libertarianism*, ed. Malcolm Murray (Aldershot: Ashgate Press, 2007).

<sup>28</sup> Narveson, *The Libertarian Idea*. p. 59

<sup>29</sup> *Ibid.* p. 165

<sup>30</sup> For an excellent introduction to left-libertarianism and an overview of its critics see Peter Vallentyne and Hillel Steiner, eds., *The Origins of Left-Libertarianism : An Anthology of Historical Writings* (Basingstoke: Palgrave, 2000). and Peter Vallentyne and Hillel Steiner, eds., *Left-Libertarianism and Its Critics : The Contemporary Debate* (Basingstoke: Palgrave, 2000). See also Michael Otsuka, *Libertarianism without Inequality* (Oxford: Clarendon, 2003).

<sup>31</sup> Peter Vallentyne, "Libertarianism and the State," *Social Philosophy & Policy* 24 (2007). p. 193-4

<sup>32</sup> Peter Vallentyne, "Left-Libertarianism: A Primer," in *Left-Libertarianism and Its Critics : The Contemporary Debate*, ed. Peter Vallentyne and Hillel Steiner (Basingstoke: Palgrave, 2000). p. 15

libertarian basis, both sides are in agreement. There is no duty to help others that can be coercively enforced<sup>33</sup> and so positive human rights must be rejected.

## The Negative/Positive Distinction

So what does it mean to say that our human rights are exclusively negative? In conceiving the distinction between negative and positive rights I shall be using the definition put forward by Charles Fried:

A positive right is a claim to something – a share of material goods, or some particular good like the attention of a lawyer or a doctor, or perhaps the claim to a result like health or enlightenment – while a negative right is a right that something be withheld. Positive rights are inevitably asserted to scarce goods, and consequently scarcity implies a limit to the claim. Negative rights, however, the rights not to be interfered with in forbidden ways, do not appear to have such natural, such inevitable limitation.<sup>34</sup>

Put simply, positive rights are rights that require others to act in certain ways, while negative rights require that others *refrain* from acting in certain ways. If we see rights as claims then having a positive right means that one has a claim against others to provide certain goods or services, while having a negative right means that one can claim from others nothing more than that they refrain from certain actions.

Recall that the only form of interference permissible from a libertarian point of view is interference to prevent people from harming others; it is not permissible to force people to come to the aid of others. To frame the distinction in libertarian terms, then: the fulfilment of positive human rights would require impermissible interference, whereas the fulfilment of negative human rights would not. Depending on the content of our negative human rights, the interference required by the fulfilment of positive human rights could actually constitute a violation of our

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<sup>33</sup> At least in the absence of being causally responsible for their plight. I shall return to this point in the next chapter.

<sup>34</sup> Charles Fried, quoted in Cécile Fabre, *Social Rights under the Constitution : Government and the Decent Life* (Oxford: Oxford Clarendon Press, 2000). p. 40

negative human rights. If someone has a human right to the provision of scarce resources then this will have to be provided by someone else, and if someone is forced to provide it without agreeing to do so then this will violate their negative human right not to be deprived of their resources. In the words of writer Ayn Rand, from whom many libertarians take inspiration:

If some men are entitled *by right* to the products of the work of others, it means that those others are deprived of rights and condemned to slave labour. Any alleged ‘right’ of one man, which necessitates the violation of the rights of another, is not and cannot be a right.<sup>35</sup>

In other words: if we support negative human rights, and positive human rights require the violation of negative human rights, then we must reject positive human rights. This is the libertarian position. Of course, opponents to libertarianism deny such a necessary incompatibility between the two – supporters of positive human rights do not traditionally reject negative human rights. To avoid this charge of incompatibility then they must either reject a negative right not to be deprived of one’s property as a human right, or they must deem it as a right that can permissibly be infringed in the promotion of positive human rights. Both these approaches are unacceptable to the libertarian. I shall now outline the libertarian rights framework in greater detail before considering whether there can be subsistence rights that are human rights.

## **A Libertarian Theory of Human Rights**

Of course, ‘human rights’ can be taken to mean a number of things on different accounts, so now – having set out what libertarianism is and the distinction between negative and positive rights – I will outline the criteria of rights that I am taking to form the basis of my libertarian framework of human rights, according to which all human rights are negative.

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<sup>35</sup> Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* (New York: Penguin Books, 1964), quoted in Hospers, *Libertarianism*. p. 75

a. *Human rights are natural rights*

Firstly, I am using the term ‘human right’ as distinct simply from ‘right’. Human rights, on my account, ‘exist’ in some way independently of institutions.<sup>36</sup> That is to say, a human right is a natural right and is justified on moral grounds. Natural rights differ from legal rights, for example, in that they ‘exist’ regardless of their recognition in law, since they have a moral foundation.<sup>37</sup> Human rights in the sense of natural, moral rights “must somehow be inherent to the human species and thus continue to be justifiably held by persons in society as well as out of it”.<sup>38</sup> This idea of natural rights is associated largely with John Locke – a useful source here as his work is drawn upon considerably in libertarian literature, as we shall see throughout the thesis.<sup>39</sup> Locke states:

The *State of Nature* has a Law of Nature to govern it, which obliges everyone: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty or Possessions.<sup>40</sup>

Clearly we can recognise here the theme of non-interference and something akin to Nozick’s nonaggression principle, but my point here is that Locke believes these rights hold even in a state of nature. This is a criterion that I maintain rights must hold if they are to be ‘human rights’.

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<sup>36</sup> See Peter Jones, *Rights, Issues in Political Theory* (Basingstoke: Macmillan, 1994). p. 79-80, 90

<sup>37</sup> This is in contrast to Jeremy Bentham, who considered natural rights to be ‘nonsense upon stilts’. Jeremy Bentham, "Anarchical Fallacies," in *'Nonsense Upon Stilts': Bentham, Burke and Marx on the Rights of Man*, ed. Jeremy Waldron (London: Methuen, 1987). p. 53

<sup>38</sup> Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge University Press, 1996). p. 327

<sup>39</sup> Although it can be called into question whether Nozick specifically, and libertarians generally, can claim Lockean foundations for a defence of natural rights if they do not share Locke’s belief in biblical authority. Moreover, Locke’s emphasis on the preservation of mankind could arguably give rise to positive rights which the libertarian would reject. See Wolff, *Robert Nozick: Property, Justice and the Minimal State*. p. 27

<sup>40</sup> John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 2003). § 6

*b. Human rights are universal*

The moral basis of human rights need not mean that all moral rights are human rights. In order to be human rights, these moral rights must also be rights that are held by everyone – they must be *universal*. In the words of Maurice Cranston: “Human rights are a form of moral right, and they differ from other moral rights in being the rights of all people at all times and in all situations.”<sup>41</sup> A human right is a right held by all people purely in virtue of being human. This is in contrast to a special right which pertains only between certain individuals, perhaps on account of a particular relationship (parent and child, for example) or following a prior agreement or contract. We can see such a view of human rights in Gewirth, who claims that “Human rights are rights or entitlements that belong to every person; thus, they are universal moral rights.”<sup>42</sup> He recognises that there may be other sorts of moral rights, but maintains that “only those that ought to be universally distributed among all humans are human rights.”<sup>43</sup> Gewirth is not a libertarian, so we can see here common ground between my libertarian rights framework and other accounts of rights.

The idea of human rights as natural and universal are related concepts: if a human right is something held by all people purely in virtue of being human, then clearly this applies to both those who are and who are not a part of any institutional framework that recognises rights. So my claim that human rights must make sense in the absence of such a framework captures both of these criteria. The significance of this for positive and negative rights is this: positive rights, requiring the provision of certain goods and services, are not universal because they only make sense in the context of a contract – a prior agreement between individuals, or between individuals and a governing body. If a right is held merely against a person’s government or community, then this presupposes this sort of society, and excludes anyone who does not live within such a framework. The right is therefore not held by all, and is not

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<sup>41</sup> Maurice Cranston, *What Are Human Rights?* (London: Bodley Head, 1973). p. 21

<sup>42</sup> Alan Gewirth, *Human Rights : Essays on Justification and Applications* (Chicago: University of Chicago Press, 1982). p. 42

<sup>43</sup> *Ibid.* p. 42. See also Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca: Cornell University Press, 2003). p. 10

universal.<sup>44</sup> Moreover, it is not possible for every person to fulfil the positive rights of everybody else, as not everyone will be in a position to provide for others. The duty correlative to the right will therefore not be held by everyone. The positive right and its correlative duty then become a matter between specific parties, and not a right and a duty held by and against all people universally. Some deny that this is a problem for the theory of universal rights. Rather than suggesting that only those in need have the right and only those in a position to give have the duty, we may consider that every individual has the right when he is in need and the duty when he is able to aid, and the right can still be seen as universal.<sup>45</sup> Disagreement with the view that the duties correlating to rights must be held by everyone comes from supporters of positive human rights, who argue that it is not necessary for there to be universal duties. Rather, they argue, it is sufficient that there is ‘full coverage’.<sup>46</sup> In other words, as long as the right is fulfilled, it does not matter whose duty it is to ensure such fulfilment. Henry Shue calls this a ‘division of labour’ with regard to duties.<sup>47</sup>

However, if a duty is not held by everyone then some criterion must be identified to determine who should shoulder the burden of the duty. This problem does not arise with regard to rights of non-interference, as it is perfectly coherent for an individual to claim these rights against everyone, even if he is not part of a contractual scheme, and without having to discriminate between individuals. A division of labour of duties is not necessary for negative rights. Universal negative rights confer universal duties by definition, as Shue acknowledges, stating “Negative duties – duties not to deprive people of what they have rights to – are, and must be, universal”.<sup>48</sup> So, in terms of who holds the negative duties correlative to libertarian negative human rights, the answer is simply: everyone.

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<sup>44</sup> For support of the view that universal rights necessitate universal duties, see Maurice Cranston, "Human Rights Real and Supposed," in *Political Theory and the Rights of Man*, ed. D. D. Raphael (London: Macmillan, 1967). p.96, and Maurice Cranston, "Human Rights: A Reply to Professor Raphael," in *Political Theory and the Rights of Man*, ed. D. D. Raphael (London: Macmillan, 1967).

<sup>45</sup> See for example Gewirth, *Human Rights : Essays on Justification and Applications*. p. 64-5

<sup>46</sup> See Henry Shue, "Mediating Duties," *Ethics* 98, no. 4 (1988). p.690, and Tim Hayward, *Constitutional Environmental Rights* (Oxford: Oxford University Press, 2005). p. 50

<sup>47</sup> Shue, "Mediating Duties." p. 689

<sup>48</sup> *Ibid.* p. 690

It may be countered, however, that even negative rights could be thought to be contractual<sup>49</sup> since someone could refuse to recognise a duty not to murder me (for example) if he has not entered into a voluntary agreement under which he agrees to refrain from murdering me in return for my likewise refraining from murdering him. If he is confident that he would be able to kill me should the occasion arise, he may be reluctant to surrender a Hobbesian liberty to kill me in order to achieve a protection he does not believe he requires. This point potentially poses a threat to the claim that even negative rights are universal, when they have not been consented to in a contractual agreement. However, I maintain that negative rights at least do not *require* a contract in order to be a coherent concept, unlike positive rights, for which a contract is necessary to identify fairly the bearers of the relevant duties. The universality of negative rights can only be dismissed by effectively dismissing the notion of natural rights altogether, which I have identified as a fundamental premise of my libertarian rights framework. While I do not attempt to provide reasons for accepting the existence of natural rights, I do maintain that having accepted natural rights we can draw a distinction between negative and positive such that only the former make sense as natural rights.

*c. A system of rights must be compossible*

The question of compossibility is related to, but distinct from, that of universality. The point in saying that rights are universal is that they are held by everyone, not just people in certain situations. Once these rights that apply to everyone are established, the further stipulation that they must be compossible concerns whether it is conceptually possible (rather than possible in practice) to fulfil the rights of everyone simultaneously. In other words, compossibility is related not to the universality of rights, but to their *universalizability*.

According to Steiner,

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<sup>49</sup> See for example Charles R. Beitz, "What Human Rights Mean," *Daedalus* 132, no. 1 (2003). p. 43

the mutual consistency – or compossibility – of all the rights in a proposed set of rights is at least a necessary condition of that set being a possible one. A set of rights being a possible set is, I take it, itself a necessary condition of the plausibility of whatever principle of justice generates the set.<sup>50</sup>

In other words, if it is not possible for the rights within a set to be fulfilled simultaneously, then the set of rights cannot ground a plausible principle of justice. This is because the duties that correlate to a set of impossible rights are not jointly performable.

Rights are impossible if the right of one person can only be fulfilled by infringing a right of another. This problem does not arise with regard to negative rights that require merely the absence of interference from others, since one person's non-interference does not conflict with the ability of another person similarly to refrain from interfering. Positive rights, however, can conflict with negative rights in precisely the way that would make that set of rights impossible. For example, if a positive right requires interfering with somebody (perhaps by forcing them to provide a service for others that they have not contracted to supply), while a negative right requires non-interference, then these duties would not be jointly performable. These rights are therefore impossible, and cannot ground a plausible theory of justice.

The question of the *possibility* of upholding rights (as opposed to the *compossibility*) is a separate one, but one which also affects the plausibility of positive rights. It may be impossible to fulfil rights simultaneously on account of practical, not conceptual, limitations. This is the case when positive rights come into conflict with one another (as opposed to coming into conflict with negative rights). Positive rights to such things as subsistence, healthcare and education involve rights to scarce resources, and the provision of goods or services to all those in need of them requires that there

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<sup>50</sup> Steiner, *An Essay on Rights*. p. 2-3. See also pages 87, 202. See also Hillel Steiner, "The Structure of a Set of Compossible Rights," *The Journal of Philosophy* 74, no. 12 (1977). and Machan: "compossibility (mutual consistency) is a necessary feature of successful rights ascription" Tibor Machan, *Putting Humans First: Why We Are Nature's Favourite* (Lanham: Rowman & Littlefield, 2004). p. 13. Arguably the requirement of compossibility is only a feature of the Will or Choice theory of rights (which I shall explain shortly), but I maintain that whether or not one adopts this theory of rights, a proposed set of rights will be far more plausible if those rights are able to be fulfilled simultaneously.

are sufficient funds to achieve this. (This is in contrast to negative rights which – by the earlier definition – are not concerned with scarce goods. It is possible for everyone to refrain from interfering at all times). The provision of all these goods and services will often not be achievable, meaning that the positive rights to such provision could not be fulfilled simultaneously for all. While these rights may be compossible, in that fulfilling one does not logically imply infringing another, it is not possible to fulfil them simultaneously. Cranston argues that “If it is impossible for a thing to be done, it is absurd to claim it as a right.”<sup>51</sup> The practicability of simultaneous fulfilment is a further test of a human right, which (like the test of compossibility) positive rights fail.

*d. Human rights are of paramount importance*

A further criterion of human rights is one put forward by Cranston: that of ‘paramount importance’.<sup>52</sup> A universal moral right is only a *human* right when its substance is fundamentally important.<sup>53</sup> This avoids any number of morality-inspired prohibitions from rising to the status of human rights. For example, we could support a right of all humans against being spat at by others. This may be a universal right, with a moral basis, and it is undoubtedly a negative right that others refrain from behaving in a certain way. But it would be inappropriate to consider a right against spitting as a human right, as if it were on a par with a right against torture, for example. The significance of this condition of ‘paramount importance’ will become clear with regard to the argument for property rights that I present in Part II of the thesis. A right not to be deprived of one’s property may be a universal, moral right, but it remains to be seen whether rights over property are of sufficient importance to qualify them as *human* rights.<sup>54</sup>

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<sup>51</sup> Cranston, *What Are Human Rights?* p. 66

<sup>52</sup> See Cranston, "Human Rights Real and Supposed." p. 51

<sup>53</sup> For this reason I believe I am justified in using the term ‘human rights’ on my libertarian account to cover what Narveson calls ‘fundamental moral rights’.

<sup>54</sup> It may also be queried whether property rights can be natural rights. This is also something I will return to later.

e. *The Interest and Will theories of rights*

In the previous point I deliberately avoided saying that human rights *protect interests* of paramount importance. This was in order to avoid an implicit commitment to the interest theory of rights, but I will say a few words here about the interest and will theories of rights, and how they relate to my libertarian rights framework.

The debate over the Interest (or Benefit) Theory of Rights (hereafter the interest theory) and the Will (or Choice) Theory of Rights (hereafter the will theory) is one of the main debates concerning the justification of rights. The distinction can be set out thus:

The Interest theory maintains that all rights consist in the protection of individual or corporate interests. ... The Will Theory... maintains that all rights consist in the enjoyment of opportunities for individual or corporate choices.<sup>55</sup>

The will theory of rights is supported by Steiner and one of its foremost proponents is H.L.A. Hart.<sup>56</sup> On the will theory, according to Steiner,

a right exists when the necessary and sufficient condition, of imposing or relaxing the constraint on some person's conduct, is another person's choice to that effect.<sup>57</sup>

Steiner further claims that "to have a right is to be in possession of the powers to waive or demand and enforce compliance with its correlative duty."<sup>58</sup> The interest

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<sup>55</sup> Matthew H. Kramer, "Introduction," in *A Debate over Rights : Philosophical Enquiries*, ed. Matthew H. Kramer, N. E. Simmonds, and Hillel Steiner (Oxford ; New York: Clarendon Press, 1998). p. 1-2

<sup>56</sup> H. L. A. Hart, "Are There Any Natural Rights?," *The Philosophical Review* 64, no. 2 (1955). Hart later abandoned the Will theory but it has been contended that he did not need to do so. See Hillel Steiner, "Are There *Still* Any Natural Rights?," in *The Legacy of H.L.A. Hart : Legal, Political, and Moral Philosophy*, ed. Matthew H. Kramer, et al. (Oxford: Oxford University Press, 2008). For support of the Will Theory see also Paul Graham, "The Will Theory of Rights: A Defence," *Law and Philosophy* 15 (1996).

<sup>57</sup> Steiner, *An Essay on Rights*. p. 57

<sup>58</sup> *Ibid.* p. 260

theory, in contrast, is supported by Kramer, Raz, Waldron and MacCormick.<sup>59</sup> There is some disagreement as to whether it is a necessary condition that a right must protect an interest<sup>60</sup> but all proponents of the interest theory of rights agree that a right-bearer need not be capable of waiving or enforcing a right.

Libertarians tend to embrace the will theory, precisely because the emphasis from a libertarian point of view tends to be on the choices of the right-bearer in question.<sup>61</sup> Libertarians oppose any prohibitions imposed on an individual for that individual's own good or protection, and such prohibitions can be justified on the interest theory of rights, since the focus is on the promotion of interests, with or without obtaining the right-holder's consent to promote their rights. Hence, the interest theory is generally rejected by libertarians, as noted by Steiner and Vallentyne:

To the best of our knowledge... no libertarian has endorsed the interest-protecting conception of rights. One main problem is that rights, so understood, permit, and may even require, others to use force against an autonomous agent against his will, when it is for his own benefit (e.g. forcibly preventing someone from smoking, or forcing someone to participate in exercise programs). Few, if any, libertarians can endorse that. The resulting conception of self-ownership is far too weak.<sup>62</sup>

I will say more about self-ownership in Part II of the thesis, but what is important to note here is that fulfilling people's interests may involve overriding their negative rights against interference, which a libertarian cannot condone.<sup>63</sup>

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<sup>59</sup> See Kramer, "Rights without Trimmings.", Neil MacCormick, *Legal Right and Social Democracy : Essays in Legal and Political Philosophy* (Oxford: Clarendon, 1984), Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1988), Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988). p. 87. It has been argued that it is the interest theory that has largely prevailed in contemporary rights theorising. See J.E. Penner, "The Analysis of Rights," *Ratio Juris* 10, no. 3 (1997).

<sup>60</sup> See Kramer, "Rights without Trimmings." p. 62; Raz, *The Morality of Freedom*. p. 180

<sup>61</sup> See again Hospers, *Libertarianism*. p. 5

<sup>62</sup> Hillel Steiner and Peter Vallentyne, "Libertarian Theories of Intergenerational Justice," in *Intergenerational Justice*, ed. Axel Gosseries and Lukas H. Meyer (Oxford: Oxford University Press, 2009). p. 56

<sup>63</sup> Further objection to the interest theory can be made on the basis that it cannot explain the rights of third party beneficiaries, but I shall not address that here. For discussion on this see Steiner, *An Essay on Rights*. p. 62, H. L. A. Hart, "Are There Any Natural Rights?," *The Philosophical Review* 64, no. 2 (1955). p. 180

Libertarians may also reject the interest theory on the basis of the contention that the rights founded on interests may not fulfil the requirement of compossibility. Machan, for example, argues:

it is simply not possible for all the purportedly rights-invoking interests to be fulfilled via the specified exercise of rights. The actions such 'rights' legitimate are not jointly performable.<sup>64</sup>

As we have seen, rights must be compossible, and if the rights justified by the interest theory are not compossible, then (the argument goes) we can reject the interest theory. However, this objection does not in fact sustain the argument that rights cannot be grounded on interests. Rather, it shows that the positive rights that can be justified on the interest theory would render the set of rights impossible. These rights would therefore not fit the criteria of human rights, but this is a feature of positive rights and not of rights grounded in interests *per se*. Interests may still be an important criterion in justifying rights, even if the positive rights they ground cannot be human rights on account of not being compossible with negative rights. This does not rule out the prospect that interests could be (at least part of) the basis of negative human rights. In the context of rights of paramount importance, we could say perhaps that the condition of paramount importance is necessary but not sufficient to ground a right, since there is also the necessary condition of compossibility.

Arguably the interest and will theories are both inadequate<sup>65</sup>, and this has led some to suggest a Hybrid Theory of rights.<sup>66</sup> According to Cruft,

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<sup>64</sup> Machan, *Putting Humans First: Why We Are Nature's Favourite*. p.14

<sup>65</sup> Wenar, for example, argues: "Each theory accounts for an insufficiently comprehensive range of rights, leaving large areas of commonly accepted rights unexplained." Leif Wenar, "The Analysis of Rights," in *The Legacy of H.L.A. Hart : Legal, Political, and Moral Philosophy*, ed. Matthew H. Kramer, et al. (Oxford: Oxford University Press, 2008). p. 254. See also Leif Wenar, "The Nature of Rights," *Philosophy and Public Affairs* 33, no. 3 (2005).

<sup>66</sup> See Gopal Sreenivasan, "A Hybrid Theory of Claim-Rights," *Oxford Journal of Legal Studies* 25, no. 2 (2005)., Rowan Cruft, "Rights: Beyond Interest Theory and Will Theory?," *Law and Philosophy* 23, no. 4 (2004).

It can sometimes be conceptually coherent to ascribe rights to people even though such rights are neither accompanied by powers of waiver-or-enforcement, nor serve their holders' interests.<sup>67</sup>

It is perhaps unhelpful, then, to insist that theorists must subscribe to either the interest or the will theory of rights. Indeed, this is the view held by Vallentyne.

Unlike other libertarians, Vallentyne believes

that the choice-protecting conception is too restrictive. ... A more promising account... is a hybrid account according to which rights protect both interests and choices – with the protection of choices being lexically prior.<sup>68</sup>

So while it may be the case that a libertarian cannot consistently embrace the interest theory wholeheartedly, this need not imply a necessary commitment to the will theory either. I intend to stay neutral on the will and interest debate as I do not believe it is crucial to take a stance on this in order to provide prima facie reasons for the libertarian argument that only negative rights can be human rights.<sup>69</sup> It is indeed the case that a libertarian cannot accept all the rights that arise from the interest theory, but this does not necessarily commit them to the will theory of rights. Provided the rights are compossible, and fulfil the other criteria I have set out here, libertarianism can be neutral as to how those rights are grounded.<sup>70</sup>

*f. Human rights as property rights*

It is the view of many libertarians that all rights are, in effect, property rights.

Rothbard, for example, argues that “there are no human rights that are separable from

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<sup>67</sup> Cruft, "Rights: Beyond Interest Theory and Will Theory?." p. 389

<sup>68</sup> Vallentyne, "Libertarianism and the State." p. 193

<sup>69</sup> Some claim that the issue cannot be so easily sidestepped, but I shall not address that here. For a discussion of this see Matthew H. Kramer and Hillel Steiner, "Theories of Rights: Is There a Third Way?," *Oxford J Legal Studies* 27, no. 2 (2007).

<sup>70</sup> As a commitment to human rights is something I assume in this thesis rather than defend, the belief that there are any human rights at all is not one for which I will attempt to provide a justification. For a discussion of such justifications, see Gewirth, *Human Rights : Essays on Justification and Applications*.

property rights”<sup>71</sup> and Narveson claims that “It is plausible to construe *all* rights as property rights.”<sup>72</sup> In fact, seeing rights as property rights is one way to ensure that rights are compossible. According to Steiner, “Conceiving persons’ respective domains as sets of discretely partitioned property rights gives us sets of duties which are guaranteed joint performability.”<sup>73</sup> I do not adopt this position that all human rights are ultimately property rights. I do, however, support the view that the rights of self-ownership are among the most fundamental of our human rights. These rights of self-ownership are property rights, and can also give rise to further property rights over goods external to the self. While the rights constituting self-ownership are, I claim, of paramount importance (and therefore human rights), this is not so clearly the case with property rights over external resources (which may therefore not be human rights). I shall discuss these issues of self-ownership and property rights fully in Part II of the thesis, but I find it neither necessary nor helpful to construe all human rights as property rights. To do so would be to alienate people unnecessarily from the libertarian position, and it is possible to set out such a position without recourse to such measures.

*g. Human rights and autonomy*

Finally, it is worth saying something here about what this rights framework means for the libertarian approach to autonomy. The link between libertarianism and autonomy is not straightforward, nor can it be assumed.<sup>74</sup> Nonetheless it is a theme which will recur frequently throughout the thesis. I shall set out here how autonomy

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<sup>71</sup> Rothbard, *For a New Liberty: The Libertarian Manifesto*. p. 43. See also Murray Rothbard and Institute for Humane Studies., *Power and Market : Government and the Economy* (Menlo Park, Calif.: Institute for Humane Studies, 1970). p. 76

<sup>72</sup> Narveson, *The Libertarian Idea*. p. 66 (emphasis in original).

<sup>73</sup> Hillel Steiner, "Working Rights," in *A Debate over Rights : Philosophical Enquiries*, ed. Matthew H. Kramer, N. E. Simmonds, and Hillel Steiner (Oxford ; New York: Clarendon Press, 1998). p. 270. See also Steiner, *An Essay on Rights*. p. 91

<sup>74</sup> Though some have a tendency to do just that, as I shall demonstrate in chapter four. An exception to this is Darrel Moellendorf, who recognises that one of the practical implications of respecting autonomy are “obligations to develop and protect autonomous choice, obligations not readily recognized by self-ownership”. Darrel Moellendorf, "World-Ownership, Self-Ownership, and Equality in Georgist Philosophy," *International Journal of Social Economics* 36, no. 4 (2009). (p. 474)

relates to the libertarian framework on rights and justice, and will pick up this discussion again in Part II where I will assess the relationship between autonomy and self-ownership.

Rights can be seen as intended to protect people's autonomy<sup>75</sup> but it is important to identify precisely what we mean by 'autonomy' for this to have any significance. Consider this broad definition from Gerald Dworkin. He explains that the term 'autonomy' was originally used with reference to citizens who made their own laws rather than being subject to the control of a foreign power. By extension, this can be applied to people, he argues, such that we can see "persons as being autonomous when their decisions and actions are their own; when they are self-determining."<sup>76</sup> This basic definition is something that is broadly shared, but it can be interpreted and applied in a number of ways, not all of which libertarians would accept.

What is important for libertarians certainly includes the absence of control by others. People must be able to make decisions on their own and carry out actions without any control being imposed on them by others. People must be self-determining to the extent that they must be permitted to determine their future for themselves without any interference. This relates to negative rights and the claim that what is most important is non-interference. On this account, a right against others that they refrain from exercising control and interference over one's life is a right that defends autonomy. This (perhaps rather simplistic) approach to autonomy is by no means uncontroversial. Raz rejects it explicitly, stating, "It is wrong to identify autonomy with a right against coercion."<sup>77</sup> On a contrasting account like Raz's, autonomy is concerned not only with the absence of control from others but also with certain enabling conditions. In other words, the condition of being 'self-determining' mentioned in Dworkin's definition above can be construed to mean not just that one must be able to determine one's future independently of the will of others but also that one must possess (and perhaps even be provided with) the necessary resources

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<sup>75</sup> See for example David A. J. Richards, "Rights and Autonomy," *Ethics* 92, no. 1 (1981).

<sup>76</sup> Gerald Dworkin, "From 'the Theory and Practice of Autonomy'," in *Freedom : A Philosophical Anthology*, ed. Ian Carter, Matthew H. Kramer, and Hillel Steiner (Malden, MA ; Oxford: Blackwell, 2007).

<sup>77</sup> Raz, *The Morality of Freedom*. p. 207

for being able to determine one's future in a significant way. This is not the libertarian account.

The distinction between what libertarians consider to be important about autonomy, and what others may see as important about autonomy could be construed as the difference between the *exercise* of autonomy and the *protection or promotion* of autonomy. From a libertarian point of view the right to exercise one's autonomy is arguably more important than the protection or promotion of it.<sup>78</sup> This relates to the libertarian theme that people may not be forced to behave in certain ways (or prevented from behaving in certain ways) for their own good. The free exercise of autonomy demands that people permit others to exercise control over their own lives, and refrain from interfering. The protection or promotion of autonomy, in contrast, requires positive action on the part of others – either to prevent people from interfering with the behaviour of others (protection), or to help enable people to exercise control over their own lives (promotion).<sup>79</sup> A libertarian need be concerned only with the exercise of autonomy, but not with its active protection or promotion.

A related matter is the question of what it is that hinders the exercise of autonomy. Consider this example: if an individual is enslaved by another – for example, forced to work for no money for 18 hours a day – then she will lack any real control over her life on account of the interference of her enslaver, and is unable to exercise autonomy. But there may be an instance in which an individual does not have control over his life to precisely the same extent, but without any interference from others. Consider an individual stranded on a desert island, with plans to build a shelter, or to devise a plan to escape from the island altogether, but who is unable to on account of having to spend 18 hours a day either searching for food or running away from

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<sup>78</sup> Peter Vallentyne, "Self-Ownership," in *Encyclopedia of Ethics*, ed. Laurence Becker and Charlotte Becker (New York: Garland Publishing, 2001). This argument is often evoked to defend the right to enslave oneself, which we will look at in Part II of the thesis.

<sup>79</sup> The idea that the provision of protection is a positive action and not in fact one that can be derived from a Nozickian style nonaggression principle (contrary to Nozick's claim that we can be justly taxed to pay for the provision of a police force) is one I shall return to shortly in the context of contrasting subsistence rights with security rights.

dangerous wild animals.<sup>80</sup> It would be implausible to suggest that the individual in the first case lacks autonomy but the individual in the second does not, when they lack control over their lives to an equal extent in these two examples. For this reason, there is an additional stipulation to make with regard to the libertarian's approach to autonomy: while libertarians can concede that an individual does indeed lack autonomy if they are unable (for whatever reason) to exercise control over their lives, they could nonetheless maintain that only when this inability to exercise control is brought about through human interference is this a concern for justice.<sup>81</sup> An inability to exercise control in other circumstances, such as our man on a desert island, may count as a lack of autonomy but not in a way that is relevant to justice. As I explained at the beginning of the chapter, only matters of rights are matters of justice, and the man on a desert island – since he has had no interaction whatsoever with other people – has not suffered any rights violations, hence his plight does not represent an injustice. So while libertarians and non-libertarians can agree on what autonomy *is*, there is still disagreement concerning what justice requires with regard to autonomy. On my libertarian account, justice requires that people refrain from interfering with others exercising their autonomy, but it does not require (for example, when such exercise is hindered by natural factors) that that autonomy must be protected or promoted. Furthermore, if such exercise is hindered by human interference, this *is* an injustice, but the libertarian would deny that the failure to protect an individual from such interference is itself an injustice.

As already indicated, I shall not attempt here to justify the libertarian approach to autonomy, or to offer an argument to the effect that it ought to be favoured over other conceptions. In chapter three I will explain how autonomy relates to self-ownership and then in chapter four I will demonstrate that this relationship is consistent within its own terms. The theme of autonomy is also one that shall be revisited briefly in Part III when we consider the ownership of external worldly resources. But for now let it suffice to say that autonomy, on a libertarian account, should be understood as

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<sup>80</sup> I use a desert island example here to indicate that no human activity has influenced this individual's predicament.

<sup>81</sup> See for example Narveson, *The Libertarian Idea*. p. 26-31

an ability to exercise control over one's life, and that when such control is lacking this is a concern for justice only when it has come about through human interference.

To summarise, the libertarian's reason for rejecting positive human rights is based primarily on a prioritisation of non-interference. I have stated here that libertarian human rights are universal moral rights of paramount importance. I have suggested that libertarians can remain neutral with regard to the grounds on which human rights are justified, provided this justification gives rise to a compossible set of rights. I have shown that the requirement to fulfil these criteria gives us prima facie reason to deny that positive rights can be human rights, lending credibility to the libertarian position. Naturally this view is highly contested, but as my aim here is to show that a libertarian account of rights – according to which human rights are exclusively negative – is compatible with certain subsistence rights, it is sufficient for this purpose that I have provided a suitable exposition of this libertarian rights framework without also providing a comprehensive defence of it.

### ***Negative Subsistence Rights***

So far in this chapter I have outlined the libertarian theory of rights, demonstrating support for the claim that libertarians believe that only negative rights can be human rights. I will now demonstrate why we ought to reject the second claim that I identified at the beginning of the chapter: that all subsistence rights are positive. These two claims, taken together, can lead people to argue that libertarians cannot accept subsistence rights as human rights. In demonstrating how we can reject the second claim, I intend to show how we can also reject this conclusion.

Subsistence rights are a subcategory of socio-economic rights, rights that concern (among other things) health, education, and an adequate standard of living. These rights are often held up in contrast to civil and political rights – rights concerned primarily with security and political freedoms such as freedom of speech and freedom of association. This contrast, however, is overstated. Henry Shue, who

vehemently denies that only negative rights can be human rights, argues that human rights are “often artificially divided into ‘civil and political’ and ‘economic, social and cultural’ rights.”<sup>82</sup> On this point I am in agreement with Shue. But even more significant, I claim, is the conflating of the proposed distinction between civil and political and socio-economic rights with the negative-positive distinction<sup>83</sup> such that all civil and political rights are supposed to be negative and all socio-economic rights are supposed to be positive.

Shue proposes that what he calls ‘basic rights’ “are everyone’s minimum reasonable demands upon the rest of humanity.”<sup>84</sup> Shue considers rights to be ‘basic’ when the enjoyment of them is essential to the enjoyment of all other rights. He maintains that there is a basic right to physical security, including rights against murder, torture, rape, assault and so on. This is on account of the fact that “Being physically secure is a necessary condition for the exercise of any other right.”<sup>85</sup> In addition to this (and demonstrating a clear difference from traditional libertarian thinking) Shue also maintains that there is a basic right to minimal economic security, or subsistence, including unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter and minimal preventive healthcare. He argues: “the same considerations that support the conclusion that physical security is a basic right support the conclusion that subsistence is a basic right.”<sup>86</sup> In fact, subsistence rights may be even more basic, he argues, since people can defend themselves against attack from others, whereas without economic essentials they are utterly helpless. Subsistence rights, for Shue, are as fundamental and as important as security rights. They are an example of a socio-economic right which ought to be given equal priority with political rights, and even greater priority than some political rights – those political rights that are not basic. On this account Shue rejects the argument that political rights will always take priority over economic rights.

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<sup>82</sup> Henry Shue, *Basic Rights : Subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. (Princeton, N.J.: Princeton University Press, 1996). p. 5. See also Howard: “the separation of the two ‘kinds’ of rights is a false distinction arising out of ideological and political disputes.” Rhoda Howard, “The Full-Belly Thesis: Should Economic Rights Take Priority over Civil and Political Rights? Evidence from Sub-Saharan Africa,” *Human Rights Quarterly* 5, no. 4 (1983). p. 488

<sup>83</sup> I attribute this position to Cranston. See for example Cranston, “Human Rights Real and Supposed.”

<sup>84</sup> Shue, *Basic Rights : Subsistence, Affluence, and U.S. Foreign Policy*. p. 19

<sup>85</sup> Ibid. p. 21-22

<sup>86</sup> Ibid. p. 24

According to Shue, the assumption that security rights take priority over subsistence rights is based on four premises:

1. The distinction between subsistence rights and security rights is (a) sharp and (b) significant
2. The distinction between positive rights and negative rights is (a) sharp and (b) significant.
3. Subsistence rights are positive
4. Security rights are negative.<sup>87</sup>

Shue argues that premises 3 and 4 are misleading, which, he claims, casts considerable doubt on premise 2. He claims: “the whole notion that there is a morally significant dichotomy between negative rights and positive rights is intellectually bankrupt – that premise 2... is mistaken.”<sup>88</sup> At the very least, he says, the dichotomy is distorted when applied to security rights and subsistence rights, such that premises 3 and 4 can be shown to be mistaken. I agree with this last point, but reject his conclusion: I maintain that we can deny premises 3 and 4 while upholding premise 2.

Civil and political rights include rights against murder, torture and arbitrary detention, among others, which may be seen as straightforwardly negative in character. Likewise, socio-economic rights encompass many rights which are unambiguously positive – rights to be provided with education, healthcare, shelter, the means of subsistence and so on. To look simply at rights of this kind, it is accurate to state that on the libertarian rights framework that I have set out, a right against torture is a human right, but a right to healthcare or to the provision of aid is not.<sup>89</sup>

However, it is erroneous to think that civil and political rights and socio-economic rights fit so neatly into the negative-positive divide. Political rights such as a right to vote or to stand for office clearly do not make sense in the absence of the

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<sup>87</sup> Ibid. p. 36

<sup>88</sup> Ibid. p. 51

<sup>89</sup> For a libertarian rejection of subsistence rights see Tibor Machan, "The Non-Existence of Basic Welfare Rights," in *Liberty for the Twenty-First Century: Contemporary Libertarian Thought*, ed. Tibor Machan and Douglas B. Rasmussen (Rowman and Littlefield, 1995).

establishment of institutions. They therefore do not fulfil the criteria of being a natural right that I set out at the beginning of the chapter. More pertinent for the question of positive and negative rights is the issue of security rights. It may be contended that a right against torture demands not merely that people refrain from torturing others, but also that people are provided with police protection to prevent others from torturing them, or to punish aggressors if torture does occur. As Shue rightly points out, the provision of a police force and of institutions such as judicial courts no more reflects a negative right than does the provision of education and healthcare. He explains:

The design, building, and maintenance of institutions and practices that protect people's subsistence against the callous... is no more and no less positive than the conception and execution of programs to control violent crimes against the person. It is not obvious which, if either it is more realistic to hope for or more economic to pursue. ... Neither looks simple, cheap, or 'negative'.<sup>90</sup>

If a right not to be tortured includes a right to protection against torture then it cannot be seen as a negative right. Likewise, a right to goods and services need not be interpreted as a right to provision but could rather be understood as a right to pursue these things without interference – for example, a right to pursue an education unhindered, or a right not to be deprived of the means of subsistence – in which case this right is not really a positive right. From this reasoning Shue concludes that rights to security or to subsistence cannot be seen as either purely positive or purely negative, as they combine elements of both. A subsistence right can be couched in the negative terms of being allowed to pursue one's own subsistence without interference, and a security right can be considered in the positive sense of a right to protection against attack, requiring the provision of police, judicial institutions and so on.

As I have indicated, I am in agreement with Shue to the extent that I do not believe that security and subsistence rights fit the negative-positive divide in the way that they may first appear to. What I dispute however, is where he next takes this line of

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<sup>90</sup> Shue, *Basic Rights : Subsistence, Affluence, and U.S. Foreign Policy*. p. 45

argument. In arguing that it is wrong to equate these two distinctions since no right is entirely negative or positive but constitutes elements of both, Shue arrives at the conclusion that the distinction between positive and negative rights is neither sharp nor significant.<sup>91</sup> He believes that the distinction between positive and negative can be helpful, but with regard to duties not to rights. Moreover, he argues, “there are no one-to-one pairings between kinds of duties and kinds of rights.”<sup>92</sup> This is because for any right to be fulfilled a number of duties must be performed – what he calls the ‘tripartite typology of duties’. This comprises duties to avoid depriving, to protect from deprivation, and to aid the deprived,<sup>93</sup> though he maintains that the duties need not all be performed by the same people. He argues:

While one can line up particular duties correlative to various rights on a spectrum, running from onerous actions to costless omissions, what one cannot find in practice is a right that is fully honored, or merely even adequately protected, only by negative duties or only by positive duties. It is impossible, therefore, meaningfully and exhaustively to split all rights into two kinds based upon the nature of their implementing duties, because the duties are always a mixture of positive and negative ones.<sup>94</sup>

Duties to avoid depriving fit the libertarian rights framework. But Shue believes there need to be duties to protect, in addition, since we cannot assume that everyone will fulfil their duties to avoid depriving. He argues,

since it would be naïve to expect everyone to fulfil his or her duties to avoid and since other people’s very survival is at stake, it is clearly necessary that some individuals or institution have the duty of enforcing the duty to avoid.<sup>95</sup>

He even states that duties to avoid depriving are the least essential, since duties to protect from deprivation provide enforcement for these duties.<sup>96</sup> The suggestion that

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<sup>91</sup> Ibid. p. 36. See also Henry Shue, "The Bogus Distinction - 'Negative' and 'Positive' Rights " in *Making Ethical Decisions*, ed. Norman E. Bowie (New York: McGraw-Hill, 1985). and Elizabeth Ashford, "The Alleged Dichotomy between Positive and Negative Rights and Duties," in *Global Basic Rights*, ed. Charles Beitz and Robert E. Goodin (Oxford: Oxford University Press, 2009).

<sup>92</sup> Shue, *Basic Rights : Subsistence, Affluence, and U.S. Foreign Policy*. p. 52

<sup>93</sup> Ibid. p. 52

<sup>94</sup> Ibid. p. 155

<sup>95</sup> Ibid. p. 55

<sup>96</sup> Ibid. p. 60

all human rights are negative, he argues, is inappropriate, since every right will in fact confer both positive and negative duties if it is actually to be fulfilled.

But it is inappropriate of Shue to suggest that guaranteed fulfilment is part of the content of a right. Andrew Cohen argues, against Shue, that rights do not necessarily impose enforceable positive duties of protection or provision. He claims, "If rights impose such [correlative positive] duties, it is because of substantive – not conceptual – considerations."<sup>97</sup> These duties are "not necessarily part of the concept of a moral claim right"<sup>98</sup> as Shue seems to think. I agree that the positive duties of this kind are not a necessary feature of a negative right, a view shared also by Narveson. The criticism of the negative-positive rights distinction based on the idea that institutional enforcement of any right will necessarily involve costs (effectively making the right appear positive) does nothing to undermine the claim that only negative rights are human rights. According to Narveson: "the distinction of negative and positive rights essentially lies in the *content* of the requirements imposed on people, *not* in the *methods of enforcement* to be used."<sup>99</sup> A right not to be assaulted need not imply a right to protection against such assault. As Narveson explains,

the enforcement of rights need not be something to which others have a positive right, *in addition to* their negative right not to have the things done to them in the first place.<sup>100</sup>

Hospers shares this view, arguing that "A right does not include the material implementation of that right by other men; it includes only the freedom to earn that implementation by one's own effort."<sup>101</sup> So while it is true of negative rights that their content can be protected and their fulfilment enforced through positive measures, this does not make these positive measures part of the concept of the

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<sup>97</sup> Andrew I. Cohen, "Must Rights Impose Enforceable Positive Duties?," *Journal of Social Philosophy* 35, no. 2 (2004). p. 264

<sup>98</sup> *Ibid.* p. 269

<sup>99</sup> Narveson, "The Right to Liberty Is Incompatible with the Right to Equality." p. 157 (emphasis in original)

<sup>100</sup> *Ibid.* p. 158. In any case, Narveson queries whether state enforcement is a requisite of rights, suggesting that enforcement could be provided by voluntary means. p.158

<sup>101</sup> Hospers, *Libertarianism*. p. 76

negative right. Shue is wrong to claim, then, that we cannot draw a distinction between positive and negative rights.

In addition to maintaining a distinction, I argue that there is a moral significance in the distinction between negative and positive rights, something which Shue denies. He argues that,

the moral significance, if any, of the distinction between positive rights and negative rights depends upon the moral significance, if any, of the distinction between action and omission of action.<sup>102</sup>

Since he describes the notion of a morally significant dichotomy between negative and positive rights as “intellectually bankrupt”<sup>103</sup> we can infer that he rejects the moral significance of the act-omission distinction, as he claimed the former was dependent on the latter. However, he does not make his reasons for rejecting the act-omission distinction explicit. I maintain that there *is* a morally significant distinction between action and omission of action.<sup>104</sup> To deny that there is a distinction is typically consequentialist, as consequentialists argue that there is effectively no moral difference between an action and an omission of action if the consequences are the same.<sup>105</sup> Indeed it has been argued that, in recognising the distinction between

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<sup>102</sup> Shue, *Basic Rights : Subsistence, Affluence, and U.S. Foreign Policy*. p. 37

<sup>103</sup> Ibid. p. 51

<sup>104</sup> Narveson is one libertarian who explicitly endorses the act-omission distinction, arguing that we should reject the claim “that there is literally no distinction between causing harm and failing to cause good.” Narveson, *The Libertarian Idea*. p. 40. The act-omission distinction is also sometimes construed as the difference between doing and allowing harm. To go into the matter in any great detail here would distract us from the key theme under discussion, but for some excellent discussions of the distinction between actions and omissions, and doing and allowing harm, see Warren S. Quinn, “Actions, Intentions, and Consequences: The Doctrine of Doing and Allowing,” *The Philosophical Review* 98, no. 3 (1989)., Kai Draper, “Rights and the Doctrine of Doing and Allowing,” *Philosophy & Public Affairs* 33, no. 3 (2005)., Samuel C. Rickless, “The Doctrine of Doing and Allowing,” *The Philosophical Review* 106, no. 4 (1997), Samuel Scheffler, “Doing and Allowing,” *Ethics* 114, no. 2 (2004)., Philippa Foot, *Moral Dilemmas and Other Topics in Moral Philosophy* (Oxford: Clarendon Press, 2002)., Judith Jarvis Thomson, “Killing, Letting Die, and the Trolley Problem,” *Monist* 59 (1976)., Jeff McMahan, “Killing, Letting Die, and Withdrawing Aid,” *Ethics* 103, no. 2 (1993)., Bonnie Steinbock and Alastair Norcross, eds., *Killing and Letting Die*, 2nd ed. (New York: Fordham University Press, 1994). including essays from Judith Lichtenberg “The Moral Equivalence of Action and Omission” and Nancy Ann Davis “The Priority of Avoiding Harm”.

<sup>105</sup> See for example the consequentialist John Harris who states, “in whatever sense we are morally responsible for our positive actions, in the same sense we are morally responsible for our negative actions.” John Harris, “The Marxist Conception of Violence,” *Philosophy and Public Affairs* 3, no. 2 (1974). p. 211

positive and negative, libertarians are unable to take consequences into account.<sup>106</sup> There appears to be a conflict between drawing a distinction between actions and omissions, and focusing on the consequences as the moral focus of the situation: either it is the consequences that matter (which a rights theorist must necessarily reject), or it is the behaviour that brought about the consequences that matters (which is inconsistent with not distinguishing between actions and omissions). It is unclear, then, how a rights theorist like Shue can maintain that there is no moral significance in the distinction between actions and omissions. It is surely not consistent for a rights theorist to dismiss the moral significance of the act-omission distinction on the grounds that the consequences are the same.<sup>107</sup> Unless some other reason may be found for denying the moral significance of the act-omission distinction it seems that rights theorists must necessarily accept it. And if they must accept the moral significance of that distinction, then they must – as Shue explained – also accept the moral significance of the distinction between positive and negative rights.

Perhaps some non-consequentialist reason *can* be found for denying the claim that actively doing harm is worse than allowing harm to occur by omission.<sup>108</sup> In any case, I believe that Shue has not succeeded in demonstrating that there is no sharp or significant distinction between positive and negative rights when he explains how each right (such as a right to security or to subsistence) can be understood in either a negative or a positive way. Just because security rights are not entirely negative and subsistence rights are not entirely positive that does not mean, as Shue seems to

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<sup>106</sup> See Van Duffel: "In drawing the line between positive and negative duties, libertarianism theoretically leaves no conceptual scope for any consideration of the weight of the consequences of an act (or of its omission)." S. Van Duffel, "Libertarian Natural Rights," *Critical Review* 16, no. 4 (2004). p. 354. See also Sterba: "to take only the fact that both acts of omission and acts of commission contribute to such consequences to be morally relevant and to ignore the different ways in which both types of acts causally contribute to such consequences is to beg the question against libertarians who want to morally distinguish between these two types of acts." James P. Sterba, "Equality Is Compatible with and Required by Liberty," in *Are Liberty and Equality Compatible?*, ed. Jan Narveson and James P. Sterba (Cambridge: Cambridge University Press, 2010).p. 44

<sup>107</sup> Note that Shue does seem to attach quite a weight to consequences: "Consequences are not all that matters morally, but they do matter very much." Shue, *Basic Rights : Subsistence, Affluence, and U.S. Foreign Policy*. p. 90

<sup>108</sup> Perhaps on the grounds of intention – for example, if one fails to intervene so that a certain outcome will occur. On the distinction between intending and merely foreseeing the outcome of one's behaviour, see Philippa Foot, "The Problem of Abortion and the Doctrine of Double Effect," in *Killing and Letting Die*, ed. Bonnie Steinbock and Alastair Norcross (New York: Fordham University Press, 1994).

think, that we cannot draw a significant distinction between positive and negative when talking of rights. In fact, in showing how each right can be divided up in this way Shue *has* demonstrated the clear distinction between negative and positive rights. This view is outlined by Pogge, who queries why rights should be seen to combine positive and negative elements in such an inseparable way, “given that Shue has managed to separate things so neatly on the correlative-duties side”.<sup>109</sup> For example, we can consider a security right to be not just one right but two: a negative right not to be harmed and a positive right to protection.<sup>110</sup> These two rights are sharply and significantly distinct, and on the libertarian account only the former right is a human right.

Shue objects that understanding the rights separately in this way (a negative right against being harmed and a positive right to protection against being harmed) can only be of interest in a “wilderness situation” but not in an “organised society”.<sup>111</sup> However, human rights as I have defined them are natural rights, and must be applicable even in the absence of so-called organised society. Furthermore, they need not be assured before we can conceive of them as human rights. In terms of establishing which rights are human rights it is not necessary to think of them in the context of ‘organised society’.

Others have recognised that there may be a reasonable distinction between acting and refraining from acting, but have then concluded that this “lends no credence to the opposition between immunity against government interference and entitlement to government service.”<sup>112</sup> This criticism is based on the suggestion that people who want to uphold such a distinction wish to do so in order to deny the requirement to pay towards redistributive taxes, while simultaneously demanding protection of their negative civil and political rights. As I have already conceded, this is indeed

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<sup>109</sup> Thomas Winfried Menko Pogge, "Shue on Rights and Duties," in *Global Basic Rights*, ed. Charles Beitz and Robert E. Goodin (Oxford: Oxford University Press, 2009).p. 128

<sup>110</sup> For support of this view see also Fabre, *Social Rights under the Constitution : Government and the Decent Life*. p. 52-3

<sup>111</sup> Shue, *Basic Rights : Subsistence, Affluence, and U.S. Foreign Policy*. p. 38

<sup>112</sup> Stephen Holmes and Cass R. Sunstein, *The Cost of Rights : Why Liberty Depends on Taxes* (New York: W.W. Norton, 1999)., quoted in Alan Gewirth, "Are All Rights Positive?," *Philosophy and Public Affairs* 30, no. 3 (2001). p. 325

contradictory, but such a concession does nothing to undermine the libertarian position. So as long as the libertarian is prepared to accept (as I claim she is) that the provision of protective measures is no more a human right than is provision of subsistence, then there is no need to accept that all rights are positive to some extent, and the distinction between negative and positive rights can be upheld. We can therefore draw a clear distinction between negative and positive rights – whether security rights or subsistence rights – and maintain that only the former are human rights.

## ***Conclusion***

In this chapter I have affirmed the claim that on a libertarian rights framework only negative rights are human rights, and have attempted to provide prima facie reasons for adopting this position. I have then argued that it is mistaken to think that upholding only negative rights as human rights means that there can be no human rights to subsistence. Rather, subsistence rights can be understood as rights not to be *deprived* of the means of subsistence, rather than rights to be *provided* with these means. Although Shue likewise believes that subsistence rights cannot be understood in purely positive terms I have rejected his conclusion that we cannot draw any morally significant distinction between positive and negative rights, and have therefore maintained that there is coherence in the claim that all human rights are negative. Libertarian human rights include rights against murder, assault, torture, imprisonment and theft, but also rights not to be deprived of the means of subsistence, or deprived of good health or a clean living environment, or prevented from pursuing an education. Rights that are not human rights on a libertarian framework include rights to food and healthcare, but also positive security rights, such as a right to police protection. In the next chapter I shall consider how these negative libertarian rights can be violated, and the nature of the duties they impose on others.

## Chapter 2: Libertarian Duties

### *Introduction*

In the last chapter I outlined the libertarian theory of human rights, according to which human rights can only be negative rights. I denied, however, that these human rights could only be civil and political rights, and argued that subsistence rights can be understood in negative terms, such as a right not to be deprived of the means of subsistence. Likewise, I argued that not all civil and political rights are negative – including a right to police protection – which is also not a human right according to my libertarian rights framework. I shall first consider the negative duties which correlate to the negative rights outlined in the previous chapter. In this discussion I shall consider Thomas Pogge’s institutional approach to rights, and consider the full reach of the duties correlating to rights against harm and against being deprived of the means of subsistence. I shall argue that individuals can be seen to be responsible for the acts of institutions, meaning that the duties correlating to negative rights amount not merely to refraining from committing the action one’s self, but also to refraining from assisting institutions to commit those actions.

If all human rights are exclusively negative, this implies that all the duties correlating to human rights are also exclusively negative. However, in the second half of this chapter I shall turn to consideration of positive duties on a libertarian account. First I shall look at the misleadingly named ‘duties’ of charity – the charitable acts we may feel obliged to fulfil but which do not correlate to rights. These are not entailed by a libertarian theory of rights, but are entirely compatible with it (indeed the prohibition of charitable acts would count as interference). Then I shall consider a second type of positive duty which is also not correlative to rights: the duty to fulfil one’s contractual obligations. While it is not optional to fulfil one’s contractual obligations on a libertarian account, one *does* have the option whether or not to agree to these obligations in the first place, so these duties also have an element of voluntariness.

This is not the case for the third and most important positive duty I shall turn to: positive duties derived from negative rights. These positive duties are duties of rectification and arise following the past violations of rights. Those who have previously violated rights have a positive duty to compensate for the injustice and, where possible, to undo the harm that they have done. The relationship between individuals and institutions will again be relevant here, since all those people who can be identified as having violated negative rights – including through their support for institutions – are responsible for fulfilling positive duties of rectification.

### ***Libertarian Negative Duties***

Some of the negative duties correlating to the previously identified negative rights are entirely uncontroversial. Clearly, to avoid violating negative security rights, we must refrain from harming – for example, refraining from murdering, torturing and so on. Negative subsistence rights then generate a duty to refrain from depriving people of the means of subsistence, but it is not so clear what this would amount to. Clearly one could deprive people of their subsistence by stealing from them (taking their food, or the livestock or production capital that represents their source of income, for example), but negative subsistence rights are not merely property rights. (If they were then there would have been no need to make a libertarian case for them in the previous chapter). Rather, the sort of duty that correlates to a negative subsistence right is a duty to refrain from behaving in such a way as to render others incapable of sustaining themselves, for example by causing pollution that makes the local water supply unfit to drink, or the soil unfit for agriculture. These are duties that may not ordinarily be recognised on a libertarian account of rights, but in any case they arguably have little impact on an individual's behaviour, since an individual will rarely find himself in a position to behave in such a damaging way. For this reason it is important to see how these harms might come about (as they undoubtedly do), and what duties this confers from a libertarian point of view. I will suggest that these negative duties owed by individuals both not to harm and not to deprive of the means

of subsistence may be far more extensive than may initially be thought. In considering this I will draw on Thomas Pogge and his institutional approach to rights.

In his influential book *World Poverty and Human Rights*, Pogge aims to undermine what he sees as two common prejudices:

- (1) that the persistence of severe poverty abroad does not require our moral attention, and
- (2) that there is nothing seriously wrong with our conduct, our policies, and the global economic institutions we forge and uphold.<sup>113</sup>

Pogge shares the libertarian view “that the distinction between actively causing poverty and merely failing to prevent it is morally significant in regard to both conduct and institutional design.”<sup>114</sup> So while some people may think that behaving in a way that allows more poverty than would exist if one were to behave differently does in itself constitute a violation of a right, Pogge concedes that the causal element is important – it is only a rights violation if the poverty has actually been caused by the behaviour, not merely if it could have been avoided had people behaved otherwise. In a significant departure from many others who support the moral significance of this distinction, he states: “I deny that our imposition of the existing global order is not actively causing poverty, not harming the poor.”<sup>115</sup> If the existing global order *is* causing poverty and harming the poor, then it is violating rights, and this is not something that any rights-supporter, including libertarians, can ignore.

It has been argued that Pogge has done insufficient empirical work to claim that the existing institutional order harms the poor<sup>116</sup> and Risse argues, conversely to Pogge, that “Historically speaking, the global order seems to have greatly benefited the

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<sup>113</sup> Thomas Winfried Menko Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*, 2nd ed. (Cambridge: Polity, 2008). p. 6-7.

<sup>114</sup> Ibid. p. 15

<sup>115</sup> Ibid.

<sup>116</sup> See Alan Patten, "Should We Stop Thinking About Poverty in Terms of Helping the Poor," *Ethics & International Affairs* 19, no. 1 (2005).

poor.”<sup>117</sup> Reitberger also argues that "Participation in, and benefit from, global institutions is unlikely to constitute a violation of our negative duties towards the poor"<sup>118</sup> since he believes that Pogge fails to distinguish between harms done by institutions and harms brought about through collective action. I will not attempt to engage with the empirical debate here, but this latter point is an important one, and for this reason I shall be focusing on the acts of unjust institutions, rather than the outcome of upholding an institutional order more generally. I shall assume for the purposes of this thesis that at least some instances of poverty and deprivation have come about through the unjust behaviour of institutions.

Pogge distinguishes between institutional and interactional understandings of rights, arguing that,

We should conceive human rights primarily as claims on coercive social institutions and secondarily as claims against those who uphold such institutions. Such an *institutional* understanding goes beyond an *interactional* one, which presents human rights as placing the treatment of human beings under certain constraints that do not presuppose the existence of social institutions.<sup>119</sup>

The libertarian theory of rights that I have set out is interactional on this view, since it does not presuppose social institutions. However, as I have previously indicated, negative subsistence rights doubtlessly *are* being violated, and this cannot be accounted for without considering the role of institutions, which is why it is necessary to consider Pogge's institutional approach. This approach leads Pogge to state that "A human right is a moral claim *on* any coercive social institutions imposed upon oneself and therefore a moral claim *against* anyone involved in their

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<sup>117</sup> Mathias Risse, "Do We Owe the Global Poor Assistance or Rectification?," *Ethics & International Affairs* 19, no. 1 (2005). p. 12. He also argues that the global order only harms the poor in a right-violating sense if there is egalitarian world ownership: "unless those barred from enjoying a share of resources have a legitimate claim to them, no rights violation occurs through unilateral appropriation."

Mathias Risse, "How Does the Global Order Harm the Poor?," *Philosophy and Public Affairs* 33, no. 4 (2005). p. 359. This is the focus of Part III of the thesis and we shall return to this matter there.

<sup>118</sup> Magnus Reitberger, "Poverty, Negative Duties and the Global Institutional Order," *Politics, Philosophy, and Economics* 7 (2008). p. 379

<sup>119</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 51 (emphasis in original)

design or imposition.”<sup>120</sup> Clearly my account differs, since I deny that a human right is a claim *only* on institutions, but certainly institutions must refrain from violating rights, just as individuals must refrain from so doing. With the institutional approach, Pogge finds it more appropriate to talk of the non-fulfillment or underfulfillment of human rights rather than of their violation. He argues,

a valid complaint against our social institutions can be presented by all those whose physical integrity is not sufficiently secure, not by all those who happen to suffer an assault. This is why it makes more sense, on my institutional understanding, to speak of non-fulfillment or underfulfillment rather than violation of human rights. A human right to life and physical integrity is fulfilled for specific persons if and only if their security against certain threats does not fall below certain thresholds.<sup>121</sup>

The fact that a valid complaint can be made does not mean that a right has been violated, on Pogge’s view. Rather, the complaint can be made because there is a pseudo-contractual agreement whereby the state will provide security. This is an important deviation from my theory of rights, since I am concerned only with the violation of rights. The notion of ‘fulfilling’ rights, rather than refraining from violating them, suggests a positive provision of something – whether that is subsistence or police protection – which I have argued cannot be a human right from a libertarian perspective. In any case, let us continue the assessment of Pogge’s approach before we draw our conclusions.

According to Pogge:

The institutional understanding thus occupies an appealing middle ground: it goes beyond (minimalist interactional) libertarianism, which disconnects us from any deprivations we do not directly bring about, without falling into a (maximalist interactional) utilitarianism of rights, which holds each of us responsible for all deprivations whatever, regardless of the nature of our causal relation to them.<sup>122</sup>

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<sup>120</sup> Ibid. p. 52 (emphasis in original)

<sup>121</sup> Ibid. p. 53

<sup>122</sup> Ibid. p. 72

I agree that the institutional account, unlike my interactional one, enables us to consider the role of institutions, and the role of individuals within an institutional order, which is an important factor of modern human rights concerns. The harms which deprive people of their means of subsistence are generally carried out not by individuals but by institutions. This is also frequently the case with violations of other negative rights, such as rights against murder and torture which may likewise be systematically violated by institutions. I deny, however, that a libertarian account would necessarily discount ‘any deprivations we do not directly bring about’. Libertarianism prohibits the violation of rights by institutions just as much as individuals, and if rights *are* being violated by institutions then this must feature on the libertarian radar. Since institutions are necessarily composed of individuals, it is ultimately individuals who are responsible, and I see no reason to suppose that a libertarian would not hold responsible all those who have contributed to the harm. While I feel Pogge may have overstated the extent to which he ‘goes beyond libertarianism’, the libertarian appeal of his position is entirely deliberate. He considers it to be a “remarkable feature” of his institutional account that it does not deny the central libertarian tenet: “that human rights entail only negative duties.”<sup>123</sup>

By focusing on negative duties, Pogge is able to construct an approach to subsistence rights that he believes libertarians can accept. He claims,

Libertarians insist on a minimalist constraint on what duties human rights can impose: human rights require that we not harm others in certain ways – not that we protect, rescue, feed, clothe and house them. My institutional understanding can accept this constraint without disqualifying social and economic rights. Given the minimalist constraint, such human rights give you claims not against all other human beings, but specifically against those who impose a coercive institutional order upon you.<sup>124</sup>

This last point touches on the question of compensation – the idea that people may make claims against those who have previously violated their rights – and this is a point I return to later in the chapter. For now, suffice it to say that Pogge has identified a system of rights that appears not to involve positive rights to food,

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid. p. 72-3

clothes, shelter and so on, and for this reason I accept that his argument can appeal to libertarians. It has been argued that Pogge's institutional approach leaves him open to libertarian objections, since it assimilates civil and political rights with socio-economic rights.<sup>125</sup> However, as I have shown in chapter one, a libertarian need not draw such a clear distinction between these two sorts of rights – certainly she need not consider the former to be negative while the latter is positive, and she can maintain that there are negative subsistence rights. It is mistaken, then, to think that the libertarian would necessarily see a problem in this element of Pogge's approach. I also reject the claim made by Patten that it is a "factual premise" of libertarianism that the affluent do not harm the poor by causing their poverty.<sup>126</sup> The causal link between people's actions (including those of the affluent) and the poverty in question determines whether there is a rights violation. Pogge appears to adopt (as I have) a negative understanding of social and economic rights, such that it is possible to harm people through depriving them of their means of subsistence, and he specifies that this deprivation comes about through the imposition of a coercive institutional order. His institutional approach is concerned primarily with the relationship between individuals and institutions, while the interactional approach focuses on interactions between individuals. According to Pogge,

On the interactional view human rights impose constraints on conduct, while on the institutional view they impose constraints, in the first instance, upon shared practices.<sup>127</sup>

So, on the interactional view one would violate another's right to subsistence by depriving them of the means of subsistence, whereas on the institutional view one could violate this right merely by supporting an institutional order under which people are deprived of these means. On account of this Pogge argues that "severe poverty should be classified as a human rights violation insofar as it is a foreseeable

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<sup>125</sup> See Samantha Besson, "Review: Human Rights, Institutional Duties and Cosmopolitan Responsibilities," *Oxford Journal of Legal Studies* 23, no. 3 (2003). p. 517-8

<sup>126</sup> Patten, "Should We Stop Thinking About Poverty in Terms of Helping the Poor." p. 19. Although this is the position held by Narveson. See Jan Narveson, "We Don't Owe Them a Thing!: A Tough-Minded but Soft-Hearted View of Aid to the Faraway Needy," *The Monist* 86, no. 3 (2003).

<sup>127</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p.176

and avoidable effect of how the world economy is currently structured".<sup>128</sup> It is important that Pogge makes no direct appeal to positive duties, but there is a danger here that, on this argument, rights could be violated not just by action but also by omission of action, which I have denied. Arguably, if we have a negative duty not to uphold an unjust order, this could just as well be interpreted as a *positive* duty to uphold a *just* order.<sup>129</sup> If Pogge's argument is truly to maintain the libertarian appeal he believes it to have, then we must distinguish between imposing an unjust institutional order – in which institutions engage in unjust practices that actively violate rights – and merely the presence of an institutional order under which people's access to food, shelter and so on is not as good as it might otherwise have been. This again returns to the distinction between the violation of rights, and their underfulfillment. It is only the former with which I am concerned, since the latter has connotations of positive rights which the libertarian would wish to avoid.

This is not the only way in which the libertarian must be cautious about embracing the institutional account. In fact I suggest that there are a number of issues about which a libertarian may have reservations. Firstly, Pogge's argument amounts, in effect, to the claim that rights can only be violated by institutions and not by individuals. He says:

Human rights can be violated by governments, certainly, and by government agencies and officials, by the general staff of an army at war, and probably also by the leaders of a guerrilla movement or of a large corporation – but not by a petty criminal or by a violent husband.<sup>130</sup>

So if an act of theft or violence were committed against an individual by another individual, this would not constitute a human rights violation, but if precisely the same act were committed by the government, then it *would* constitute a human rights violation. Pogge maintains,

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<sup>128</sup> Thomas Winfried Menko Pogge, "Introduction," in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*, ed. Thomas Winfried Menko Pogge and Unesco. (Paris; Oxford, [England] ; New York, N.Y.: United Nations Educational, Scientific; Oxford University Press, 2007). p. 6

<sup>129</sup> See for example Hayward: "many people think that the (negative) duty not to uphold an unjust institutional order does indeed imply a (positive) duty to uphold a just one". Tim Hayward, "On the Nature of Our Debt to the Global Poor," *Journal of Social Philosophy* 39, no. 1 (2008). p. 5

<sup>130</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 64

that human-rights violations, to count as such, must be in some sense official, and that human rights thus protect persons only against violations from certain sources.<sup>131</sup>

The suggestion here is that the terminology of ‘human rights violation’ ought to be reserved for acts that have been carried out in some official capacity. Pogge’s claim that “Human rights are, then, moral claims on the organization of one’s society”<sup>132</sup> indicates that he does not acknowledge that an act of torture, for example, would count as a human rights violation if not conducted at some institutional level.

However, I find it implausible that a person may be harmed by two different moral agents in an identical way and yet for only one of these to count as a human rights violation, depending on whether or not the agent is acting on behalf of an institution. Perhaps it is preferable not to dignify common criminals with the title of ‘human rights violator’, but in distinguishing between individuals and institutions in this way Pogge is in danger of giving insufficient weight to the responsibility of individuals. Individuals have a duty to refrain from harming others, and to make little of this provides an incomplete picture of the duties correlating to human rights. According to Tasioulas, by excluding a violent husband (to take an example from Pogge’s quotation above) from being seen as a violator of a human right, Pogge “arguably fails to cover paradigmatic cases of the violation of negative duties to refrain from harm.”<sup>133</sup> In order to identify fully the bearers of the duties conferred by human rights, it is more appropriate to consider all those who could violate those rights, not merely those acting on behalf of institutions.

This is a criticism of the institutional approach to rights which is shared by Elizabeth Ashford. Ashford (like Tasioulas) is not a libertarian, which shows that it is not merely from a libertarian perspective that such criticism can be drawn. She claims:

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<sup>131</sup> Ibid. p. 63

<sup>132</sup> Ibid. p. 70

<sup>133</sup> John Tasioulas, "The Moral Reality of Human Rights," in *Freedom from Poverty as a Human Right : Who Owes What to the Very Poor?*, ed. Thomas Winfried Menko Pogge (Paris; Oxford, [England] ; New York, N.Y.: United Nations Educational, Scientific; Oxford University Press, 2007). p. 98

Human rights claims are claims of basic justice... These claims ought to be institutionally guaranteed, but since human rights are grounded in fundamental moral principles they are independent of established institutional standards.<sup>134</sup>

Pogge does recognise this as a limitation of his institutional approach – that it is contingent on the emergence of social institutions, and specifically a global institutional order. Prior to the establishment of such institutions, he says, “human rights are merely latent”.<sup>135</sup> This risks moving away from a conception of human rights as I have defined them as the natural rights of all humans in all places and at all times, towards a system of ‘special rights’, which arise through relationships between individuals and their institutions. It is important that human rights are seen not merely as special rights, as this will draw us away from the libertarian rights framework that I have set up. While a libertarian can accept an institutional role with regard to human rights, she cannot accept that, in the absence of institutions, human rights are ‘merely latent’.

An additional distinction arising from the institutional/interactional debate which may prompt libertarian reservations about the institutional account concerns not who can violate rights, but rather what precisely is a matter of human rights at all. Pogge distinguishes between two situations: firstly, where one enjoys X while being insecure in it, and secondly, where one is deprived of X in a society that is usually good at securing X. In contrast to the interactional view, Pogge’s institutional approach considers only the first case to be a problem of human rights. Pogge explains,

some of what count as human-rights violations on the interactional view (e.g. certain assaults) do not count as unfulfilled human rights on the institutional view (because the victims enjoy a high level of physical security which made the assault they actually suffered highly unlikely). Conversely, some of what count as unfulfilled human rights on the institutional view (e.g. inadequate protection associated with a considerable risk of assault) may not register on

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<sup>134</sup> Elizabeth Ashford, "The Duties Imposed by the Human Right to Basic Necessities," in *Freedom from Poverty as a Human Right : Who Owes What to the Very Poor?*, ed. Thomas Winfried Menko Pogge (Oxford: Oxford University Press, 2007). p. 185

<sup>135</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 176

the interactional view (because some insufficiently protected persons are not actually assaulted).<sup>136</sup>

This point highlights again the distinction between the violation of rights, and their underfulfillment. There is a suggestion here that the actual occurrence of a harm is neither a necessary nor a sufficient condition for the occurrence of a human rights violation, but rather that the categorisation of human rights violation depends on the institutional arrangement. It could be objected then that the institutional view not only identifies fewer human rights violators than would the interactional approach, but perhaps also fewer instances of human rights violations. From a libertarian perspective it is important to identify all sources of rights violations, since every harm that is suffered by an individual – whether at the hands of an institution or not, and whether or not that institution ordinarily does a good job of protecting against that harm – is of vital importance. This gives further cause for the libertarian (and indeed others) to have reservations about Pogge's institutional account.

I have suggested a few ways in which the institutional account of rights can be criticised, and which would cause the libertarian to hesitate in embracing that approach unreservedly. But even if the institutional account ought to be considered in addition to the interactional account (rather than instead of it), the fact remains that individuals must take responsibility for the behaviour of the institutions that they support. Despite certain reservations, the libertarian cannot deny that an individual may cause harm indirectly, through the activities of institutions, and that Pogge is correct to draw attention to the harms conducted by institutions for which individuals may share responsibility. Just as the responsibility of the individual when acting alone cannot be understated (something I have suggested Pogge is guilty of), likewise individual responsibility must not be underestimated when harms are perpetrated, on their behalf and with their support, by institutions. Supporting unjust institutions that violate rights is an indirect way of causing harm, but it is causing harm nonetheless. For this reason, involvement with institutions that violate human rights can constitute a violation of human rights just as much as a violation one commits directly.

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<sup>136</sup> Ibid. p. 180

Since institutions that violate human rights are supported by individuals, we could arguably identify Pogge's account as both institutional and interactional.<sup>137</sup> Perhaps surprisingly, I find myself in agreement with Shue, according to whom individuals, in addition to their governments, are under a duty to refrain from depriving others of the substance of their basic rights. This means that each person

ought to restrain not only themselves as individuals but also the government that is their agent from depriving anyone, including people of other countries, of their rights.<sup>138</sup>

I advocate bringing institutional and interactive approaches together, as I believe this approach from Shue effectively does since it recognises that institutions merely act on behalf of individuals, who are the real bearers of the duties to avoid depriving.

Shue states:

Many of the duties toward persons outside its own jurisdiction that a national government will fulfil are therefore, strictly speaking, duties borne by the government's constituents. They are the government's duties only indirectly by way of the government's duty to its constituents to serve as their agent, when they choose, in the fulfilment of their duties.<sup>139</sup>

In addition to governments, I propose that the same can be said for other institutions, including, for example, multi-national corporations. Private companies might violate rights, for example by causing severe pollution in their manufacturing processes which damages the local water or soil quality. They have a duty to avoid violating rights, but the company is ultimately acting on behalf of its customers and shareholders. These people also have the duty to refrain from violating rights, but it is the company who must carry out this duty on their behalf.

A negative duty to refrain from harming – including a negative duty to refrain from depriving others of the means of subsistence – requires not merely that one avoids

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<sup>137</sup> Besson, "Review: Human Rights, Institutional Duties and Cosmopolitan Responsibilities." p. 516

<sup>138</sup> Shue, *Basic Rights : Subsistence, Affluence, and U.S. Foreign Policy*. p. 151. Shue adopts the institutional approach in order to undermine the claim that priority ought to be given to compatriots. p. 134

<sup>139</sup> *Ibid.* p. 151

harming directly, but also that one avoids supporting institutions that cause these harms. Pogge maintains that many individuals *are* responsible for supporting institutions in this way. He claims that a large number of people do nothing to help people in other countries, “though they know about hunger and torture abroad and do not doubt that, with a bit of research, they could contribute to an effective protection effort.”<sup>140</sup> But more significant than this failure to help is their contribution to the perpetration of the harm in the first place. He continues:

Conceding that they are not human rights violators for passively ignoring even the most vital needs of others, we can still point out that nearly all of them are human rights violators through the uncompensated participation in the imposition of a global institutional order that, foreseeably and avoidably, reproduces a huge excess in human rights underfulfillment.<sup>141</sup>

Every individual who participates in imposing such a damaging order, according to Pogge, is not fulfilling their negative duty to others. I share the underlying theme of this view – that people can violate the rights of others through their support of institutions, so their negative duties extend not merely to refraining from harming directly, but also to refraining from supporting institutions that harm. Two reservations, however, arise from the way in which Pogge has expressed this above. Firstly, the act of ‘imposing a global order’ is far harder to pin down than the act of supporting institutions, so I believe we ought to talk in terms of the latter. Secondly, the phrase ‘excess in human rights underfulfillment’ suggests some recognition of positive rights to things which have not been provided, rather than negative rights not to be deprived of what one has, and it is more in-keeping with libertarian views to talk in terms of the violation of rights.

By talking about ‘supporting institutions’ (rather than ‘upholding a global order’) and ‘violating rights’ (rather than creating a situation in which rights are ‘underfulfilled’) it is easier to see precisely what duties every individual has, since we can avoid the more vague notions of responsibility that individuals may have for not opposing unjust policies. O’Neill claims that each person who is in a position to support or

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<sup>140</sup> Thomas Winfried Menko Pogge, "Real World Justice," *Journal of Ethics* 9, no. 1-2 (2005). p. 44

<sup>141</sup> *Ibid.* p. 44-5

oppose the policies of a given institution must decide which to support and which to oppose.<sup>142</sup> However, she acknowledges that the reality is that the vast majority of people do nothing either to support or to oppose such policies, whether directly or indirectly, casting doubt on when an individual can be said to have ‘caused’ a harm through involvement with a coercive global order. According to Lichtenberg, “no individual’s action is *the* cause of harm; an individual’s action makes at most a causal contribution to an overall effect that may be large and significant.”<sup>143</sup> This ‘causal contribution’ is sufficient, I maintain, to be seen as a violation of a negative duty to refrain from harming. Moreover, while it may once have been justifiable to think that the affluent have done nothing to bring about starvation in developing countries, this can no longer be held to be the case, on account of what O’Neill calls “the economic and technological interdependence of today.”<sup>144</sup> Pogge argues,

By continuing to support the global order and the national policies that shape and sustain it without taking compensating action toward institutional reform or shielding its victims, we share a negative responsibility for the undue harms they foreseeably produce.<sup>145</sup>

However, ‘involvement’ with a coercive institutional order can mean not just support for institutions, but also acquiescence in their practices. Involvement with an institutional scheme could then be seen as an omission of action rather than an action, and then it would not count as a violation of a negative duty from a libertarian perspective.

It may be countered in response to this that if one knowingly does nothing to prevent a human rights violation that is being committed in one’s name, or from which one is gaining a benefit, then it is inappropriate to consider this to be an omission of action, and that some causal responsibility must be accepted. Failing to oppose the policies of one’s own government that violate the human rights of others, for example, though ostensibly an omission of action, could be seen as giving the government

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<sup>142</sup> Onora O’Neill, “Lifeboat Earth,” *Philosophy and Public Affairs* 4, no. 3 (1975). p. 288

<sup>143</sup> Judith Lichtenberg, “Negative Duties, Positive Duties, and The “New Harms”,” *Ethics* 120, no. 3 (2010). p. 561

<sup>144</sup> O’Neill, “Lifeboat Earth.” p. 279

<sup>145</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 150

permission to violate human rights on one's behalf, by providing the institution with the authority to behave in such a way.<sup>146</sup> This would mean that all the affluent people who benefit from the current global order are complicit in the harms it perpetrates and must therefore accept responsibility for violating their negative duties. However, I believe that this is pushing the libertarian position too far. I maintain that the most that negative duties require of us is that we refrain from actively supporting unjust institutions, not that we cannot be allowed to benefit from the existing global order. That is not to say that these negative duties are not extensive. They could include, for example, a duty not to buy products from companies or to supply funds to institutions who engage in practices that deprive people of their means of subsistence (for example, through pollution) or who violate negative rights in more obvious ways, such as torturing or murdering unproductive or subversive workers. One must refrain from actively supporting institutions that violate rights but this is as far as the libertarian account can go. If I am benefiting from the existing global order but not in fact doing anything actively to uphold unjust institutions, then I am fulfilling my negative duties. For example, if I am able to buy ethically produced goods at a good price on account of the competitive market prices that come about as a result of a capitalist economy, then I have not contributed in any way to the violation of negative human rights, despite arguably benefiting from the existing institutional order.

The negative human rights that are justified by a libertarian rights framework confer negative duties on others both to refrain from harming in the more obvious ways – refraining from killing, torturing and so forth, which would violate negative security rights – and also from depriving people of the means of subsistence, which would violate negative subsistence rights. Moreover, when we consider the role of institutions and the role of individuals within those institutions we can extend these duties to include duties to avoid supporting or contributing to institutions that violate these negative rights. This would include a negative libertarian duty to refrain from purchasing products from companies that violate rights. Duties of this kind perhaps

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<sup>146</sup> Such an appeal to 'civic responsibility' is made by Satz, although she does go on to question what should count as support for unjust institutions. Debra Satz, "What Do We Owe the Global Poor?," *Ethics & International Affairs* 19, no. 1 (2005). p. 50-1

go farther than a libertarian rights framework is ordinarily thought to demand. Nevertheless, they are still negative duties to refrain from behaving in certain ways. I shall now turn to positive duties, and ascertain whether there are any enforceable positive duties on a libertarian theory of justice.

### ***Libertarian Positive Duties***

So far I have considered the negative duties that correlate to negative libertarian human rights, but I will now consider the possibility of positive duties, in the absence of positive human rights. If the duties that correlate to negative rights are exclusively negative, and if all human rights are negative, then it would follow that all duties correlating to human rights are negative. However, in this chapter I aim to show not only that libertarians can support positive duties, but also that positive duties can be derived from negative human rights. Firstly, I will acknowledge the compatibility of libertarianism with so-called ‘duties’ of charity – the non-correlative obligations mentioned in chapter one which stem from moral considerations other than rights.<sup>147</sup> Since this is a study of a libertarian theory of *justice*, however, I shall address these non-correlative obligations only briefly. I shall then consider (again, fairly briefly) positive duties which people incur voluntarily through the establishment of contracts, such as in a system of legal rights. These duties *are* correlative, but are still not the type of duties with which I am most concerned. The most important positive duties which are the real focus here are those non-voluntary positive duties which can be derived from human rights. Libertarians support the idea of rectification following the previous violation of a right. When a negative right has been violated in the past – for example, if people have previously been deprived of the means of subsistence – then there is a positive duty held by those who have brought about the deprivation to provide compensation for this past injustice. Likewise, if people have been deprived

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<sup>147</sup> Recall that I maintained that rights and duties are important moral concepts but are not exhaustive of the moral sphere. This view is supported by Steiner, who states that “Rights do not, and arguably cannot, exhaust the moral universe.” Steiner, “Working Rights.” p. 259. He also states: “Only Plato and a few misguided others have ever imagined that the demands of rights or justice encompass all our duties, that all our duties are correlative ones.” Steiner, *An Essay on Rights*. p. 62

of a clean living environment then there is an enforceable duty on the part of the polluters to restore this to them. Crucially, this duty is held only by the perpetrator of the rights violation. Just as I have argued there is no right to protection, there is equally no right to compensation, broadly speaking. But the perpetrator of the injustice, on account of his or her past behaviour, has a duty to compensate their victim or, where possible, to undo the harm done. If libertarians are to pay full attention to negative human rights, which are the fundamental lynchpin of their entire theory of justice, they must also take seriously the issue of rectification and the positive duties that are owed following the past violation of a negative right.

It has been suggested that positive and negative duties cannot be distinguished from each other as neatly as I am attempting to do here<sup>148</sup> but this distinction is utilised by Pogge in his study of attitudes to global poverty. He believes that we can conceive of poverty as a moral challenge in two ways:

we may be failing to fulfil our *positive* duty to help persons in great distress; and we may be failing to fulfil our more stringent *negative* duty not to uphold injustice, not to contribute to or profit from the unjust impoverishment of others.<sup>149</sup>

The negative duty, its role in a libertarian theory of justice, and its implications for negative subsistence rights, has been discussed in the first part of the chapter. The positive duty Pogge refers to here is what I am calling a charitable obligation, which falls into the first category outlined above. The positive duties that are the most important in this discussion are positive duties of the third kind, which result from the past failure to fulfil one's negative duties. In considering these duties I shall return to Pogge and the significance of his institutional theory of rights in determining the positive duties that can be derived from negative human rights.

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<sup>148</sup> See Judith Lichtenberg, "Are There Any Basic Rights?," in *Global Basic Rights*, ed. Charles Beitz and Robert E. Goodin (Oxford: Oxford University Press, 2009). p. 84-88

<sup>149</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 203

## Positive 'Duties' of Charity

When considering whether libertarianism is incompatible with positive duties it must first be acknowledged that libertarians have no problem with people *choosing* to give away their money. (In fact, they certainly *would* have a problem if people were prevented from giving away their money). To accept the permissibility of helping others is of course not to argue that there is in fact a moral *duty* to help others, but even the idea that there are some things we are morally obliged to do (even if we have the right *not* to do them, and we may not permissibly be *coerced* into doing them)<sup>150</sup> is something that does not contradict libertarian principles.

The use of the word 'duty' to indicate non-correlative moral obligations is contrary to my use of the term as outlined in the previous chapter, and I include it here only in the interests of addressing what, in common, language, is often thought to be a 'duty'.<sup>151</sup> I deny that charitable obligations are 'duties' in the relevant sense, since they can not be coercively enforced, that is: people can not legitimately be forced to fulfil them. According to Mill,

It is a part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfil it. Duty is a thing which may be *exacted* from a person, as one exacts a debt. Unless we think that it may be exacted from him, we do not call it his duty.<sup>152</sup>

To think of these non-correlative obligations as 'duties' would therefore be misleading. It may be countered that people may be 'compelled to fulfil' charitable obligations by the threat of social ostracism, if not by the threat of violence or imprisonment<sup>153</sup> but I think this would still push the terminology too far, and – in the

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<sup>150</sup> Steiner, for example, argues: "People have moral rights to do morally wrong actions. We should criticise – even stigmatise – them for doing such things, but we cannot justly prevent them from doing so". Mario Ricciardi, "Liberty, Rights and Justice: A Conversation with Hillel Steiner," *Politics* 17 (1997). p. 36

<sup>151</sup> Feinberg argues that the word 'duty' has come to be used in a variety of ways, and is used "for any action we feel we must (for whatever reason) do". Joel Feinberg, *Social Philosophy, Foundations of Philosophy Series* (Englewood Cliffs, N.J.: Prentice-Hall, 1973). p.63. See also Rex Martin and James W. Nickel, "Recent Work on the Concept of Rights," *American Philosophical Quarterly* 17 (1980). p.166.

<sup>152</sup> Mill, "Utilitarianism." p. 321-2

<sup>153</sup> See Narveson, *The Libertarian Idea*. p. 263

interests of clarity – the term ‘duty’ is best reserved for correlative obligations. The contrast between non-correlative obligations and the duties that correlate to rights captures a familiar distinction between what may be *the morally right thing to do* and what one may be forced to do *in virtue of another’s right*. To help an elderly neighbour to carry their shopping bags, for example, might be a good thing, but failure to do so would ordinarily be considered unkind rather than unjust, whereas to force someone to help, against their will, *would be* an injustice.<sup>154</sup>

A moral duty to aid, grounded in utilitarian rather than rights-based considerations, is famously advocated by Peter Singer and his shallow pond analogy.<sup>155</sup> He proposes: “if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it.”<sup>156</sup> The idea that we ought to help if we can, especially if we will incur no significant cost to ourselves by so doing, is an idea that libertarians can readily accept as long as it involves no coercion, and indeed we can observe widespread libertarian support for a principle of this kind.<sup>157</sup>

The plausibility of the idea of non-enforceable charitable obligations may be called into question, and doubt cast upon whether libertarians will in reality provide charity and fulfil positive obligations when they are not coerced into so doing.<sup>158</sup> For these

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<sup>154</sup> For libertarian support (both right- and left-) for the position that we ought to help even if we can not permissibly be forced to help, see Hospers, *Libertarianism*. p. 21, Vallentyne, "Left-Libertarianism: A Primer." p. 4

<sup>155</sup> Singer argues that in order to save a drowning child from a shallow pond I would need to get my clothes muddy, but that is an insignificant cost whereas the death of the child would be a very bad thing. The example is intended to be analogous with the situation of starving people in developing countries: what I would need to give up in order to send enough money to save one person from starvation is an insignificant cost compared with the death of that person. See Peter Singer, "Famine, Affluence, and Morality," *Philosophy and Public Affairs* 1, no. 3 (1972). This kind of duty to rescue is non-correlative. See Bernard Mayo, "What Are Human Rights?," in *Political Theory and the Rights of Man*, ed. D. D. Raphael (London: Macmillan, 1967). p. 75

<sup>156</sup> See Singer, "Famine, Affluence, and Morality." p. 231. He then weakens this proposition, replacing ‘anything of comparable moral importance’ with ‘anything else morally significant’.

<sup>157</sup> See for example Steiner, "Working Rights." p. 290; and Narveson on the ‘Silver Rule’ of mutual aid, Narveson, *The Libertarian Idea*. p. 242, Narveson, "We Don't Owe Them a Thing!: A Tough-Minded but Soft-Hearted View of Aid to the Faraway Needy." p. 421, 425, 428. (Despite reference to ‘marginal benefit’ Narveson denies that his proposal is ‘utilitarian in spirit’).

<sup>158</sup> Nagel, for example, claims that people are in fact less likely to give when they are not assured that others will also give. Thomas Nagel, "Libertarianism without Foundations," in *Reading Nozick : Essays on Anarchy, State and Utopia*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1982). He also

reasons there is opposition to the idea that things should be left in the hands of voluntary donations. But it can be countered that in effect to make charity compulsory is to rob it of its compassion.<sup>159</sup> It has also been argued that unless redistribution is voluntarily consented to it is undemocratic.<sup>160</sup> If people want there to be redistribution then they will make sure that it comes about; if they do not want redistribution then it is unjust and undemocratic to impose it coercively. Coercive redistribution is then either unnecessary or unjust, leaving voluntary charitable contributions as the only permissible method of redistribution, even in the absence of an independent commitment to libertarianism.

Before concluding this section, it is worth noting Locke's position on charity, since he is influential on the libertarian position in many ways as will become clear in due course. According to Locke, "Charity gives every Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise."<sup>161</sup> Perhaps Locke did not intend these rights to be legally enforceable,<sup>162</sup> but if it is the nature of a right (as I have argued) that it gives rise to enforceable duties, and if this 'title' amounts to a right in this sense, then these duties could be enforced.<sup>163</sup>

I have shown in this short section that there is libertarian support (albeit not by necessity) for some sort of charitable obligation, even if people cannot be forced to fulfil such acts of charity. I shall now consider a further two types of libertarian

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believes that people may lack the individual motivation, even if there is consensus that giving is the right thing to do. Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1995).

<sup>159</sup> See Machan: "moral conduct must be undertaken as a matter of conscience and free choice; otherwise the act loses its moral worth." Tibor Machan, "Should Business Be Regulated?," in *Just Business*, ed. Tom Regan (New York: Random House, 1984). quoted in Narveson, *The Libertarian Idea*. p. 262; see also Douglas J. Den Uyl, "The Right to Welfare and the Virtue of Charity," in *Liberty for the Twenty-First Century: Contemporary Libertarian Thought*, ed. Tibor Machan and Douglas B. Rasmussen (Rowman and Littlefield, 1995). p. 305

<sup>160</sup> Clare Chambers and Philip Parvin, "Coercive Redistribution and Public Agreement: Re-Evaluating the Libertarian Challenge of Charity," *Critical Review of International Social and Political Philosophy* 13, no. 1 (2010).

<sup>161</sup> Locke, *Two Treatises of Government*. First Treatise §42 (emphasis in original)

<sup>162</sup> See Wolff, *Robert Nozick : Property, Justice and the Minimal State*. p.27, n.16

<sup>163</sup> This position is held by Paul Russell, who argues "that individuals are obliged to be charitable and that this obligation places limits on what they are entitled to. What charity requires of us... we have no rights over and we must relinquish." Paul Russell, "Nozick, Need and Charity," *Journal of Applied Philosophy* 4, no. 2 (1987). p. 205

positive duties, both of which are enforceable but only the latter of which is derived from human rights.

## **Contractual Positive Duties**

Another type of positive duty which is consistent with the libertarian position is a duty which one must fulfil in order to fulfil contractual obligations. These duties are voluntary to the extent that (unlike with human rights) people can decide whether or not to enter into contracts with others, and therefore whether to incur duties of these kinds. But they are *not* voluntary to the extent that, having incurred them, individuals may not choose not to fulfil them in the way that they can choose not to be charitable. The original creation of a system of legal rights and a welfare state are examples of a contractual scheme on a grand scale, which would create enforceable positive duties for any individuals who have voluntarily signed up to them. Provided that consent has been given, these positive duties – coercively enforced – would not interfere with libertarian negative human rights.

Just as Nagel observed, people may feel individually motivated to give to the needy, but may also know they lack the will power to do so. Alternatively, they may want to give only if they are assured that others will do the same. For these reasons, people may voluntarily set up a system of legally enforceable rights that would ensure that people gave to the needy through taxation. This system of legal rights will of course only be acceptable to libertarians if everyone has consented to be a part of it. There must be the option of ‘opting out’ in order to ensure that no one is coerced into giving without having signed up voluntarily to be coerced in such a way. But it is not implausible that such a voluntary agreement can be reached. This is in fact Nozick’s framework for utopia. He argues that people may voluntarily create any sort of state they like, which may be far more extensive than the minimal state. Despite the necessity for unanimous consent it must be acknowledged that there is scope on a libertarian point of view for a more extensive state, and it has been argued that “the

framework for utopia should be remembered by those convinced of the stark heartlessness of the libertarian vision.”<sup>164</sup>

I indicated in the previous chapter a number of reasons for supposing human rights to be exclusively negative. The same reasons cannot be used to oppose positive *legal* rights. Legal rights are simply those rights proclaimed in a legal document. Anything can be a legal right, purely by stating it as such, so naturally there can be positive legal rights if positive rights have been enshrined in law. They may or may not have any basis in morality, and even with a moral basis they need not protect anything of fundamental importance. So clearly there can be legal rights which are not human rights. The duties correlating to legal rights of this kind might come into conflict with those duties correlating to certain human rights. This could provide sufficient reason to abandon the notion of positive legal rights. Alternatively, a libertarian system of positive legal rights could be conditional on giving priority to human rights (that are not also legal rights) when the two come into conflict. In other words, if it is not possible to uphold simultaneously both the negative human right and the positive legal right, then the former must be the one that is fulfilled.<sup>165</sup>

In addition, then, to the charitable obligations outlined in the previous section, positive duties may be voluntarily incurred by entering into contracts. (But once incurred, it is not optional to fulfil these duties). Both these types of libertarian positive duties – since they are either voluntary to fulfil or voluntary to incur – may be deemed inadequate, and far more interesting is the prospect of positive duties which are enforceable and which are derived from human rights. These are the duties I shall turn to now.

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<sup>164</sup> Wolff, *Robert Nozick : Property, Justice and the Minimal State*. p. 15

<sup>165</sup> For support of the view that human rights must take priority, see Donnelly: “As the highest moral rights... [human rights] take priority over other moral, legal and political claims.” Donnelly, *Universal Human Rights in Theory and Practice*. p. 1

## Positive Duties Derived from Negative Rights

The concept of a libertarian positive duty derived from a negative human right stems from the libertarian commitment to rectification. We have a positive duty actively to *do* something, rather than merely to *refrain* from doing something, when we have failed to refrain from acting in a certain way in the past. In other words, we have positive duties – duties which we may justifiably be coerced into fulfilling – to help others when we are *causally responsible* for their situation.

The principle of rectification is most plainly presented by Nozick.<sup>166</sup> He supports two principles of justice in holdings, that is: two principles the observance of which would ensure that people have just title to their property. These are the principle of justice in acquisition and the principle of justice in transfer. But, as Nozick notes, not all holdings have come about through the implementation of these two principles. People steal and defraud, for example, and these are not permissible methods of acquiring titles over things. Rather, practices of this kind constitute a violation of the first two principles of justice, and previous violations like this constitute a past injustice. This raises the question of the “rectification of injustice in holdings.”<sup>167</sup> Nozick identifies numerous problems which are associated with the matter of rectification: how should compensation be calculated and then exacted? What if the original beneficiary and victim are no longer alive – must rectification be applied to the descendants? How far back in time does consideration of past injustices need to go? Nozick (consciously) does not attempt to specify the details of a principle of rectification. But in the general outline of his theory of justice in holdings he states that

the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice (as specified by the first two principles).<sup>168</sup>

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<sup>166</sup> Nozick, *Anarchy, State and Utopia*. p. 150-2. See also Steiner on redress, Steiner, *An Essay on Rights*. p. 266, and Narveson on reparation, Narveson, "We Don't Owe Them a Thing!: A Tough-Minded but Soft-Hearted View of Aid to the Faraway Needy." I will say more about these principles when I go on to talk specifically about property rights over the self and over external resources in the chapters that follow.

<sup>167</sup> Nozick, *Anarchy, State and Utopia*. p. 152

<sup>168</sup> *Ibid.* p. 153

Difficult as it may be to identify how such a principle of rectification may be worked out (and Nozick considers an attempt to do so to be outwith the reach of his theory), it is nevertheless evident that Nozick supports the idea that one is not entitled to holdings that have been obtained by means other than just acquisition and just transfer, and that these holdings, when they have been so obtained, may be forcibly returned to their rightful owner.

Notably Nozick talks specifically with regard to holdings. In other words, his concern is specifically that the distribution is just and that no one may have been unjustly deprived of those things which he has justly acquired. Justice in holdings is, then, concerned with the distribution of property. It would take us too far from the matter at hand just now to embark on a full discussion of property rights, which will have to wait until the next chapter. However, let me just stipulate that this discussion of holdings is pertinent to a discussion of rights and duties more broadly construed. This applies particularly to positive duties to help those in need, since the current distribution of holdings influences whether or not there *are* any people in need. From Nozick's position (albeit one concerned exclusively with property rights) we can surmise libertarian support for a principle of rectification following past injustices, which need not stop at the wrongful distribution of property. Let me frame this in the terms of my debate: I believe we can view these rights to holdings as negative rights, in that they do not demand that people are provided with anything, rather that people's holdings are not interfered with when they have acquired them justly. This past injustice – the past violation of this negative right – warrants rectification. This rectification can be seen as a positive duty, a duty to put things right when there has been a past violation. Moreover, since this rectification is derived from rights, it is duty which can permissibly be enforced.

So here we have a libertarian justification for a positive duty in the face of a past violation of a negative right. As I noted, Nozick's argument is formulated specifically in the context of returning holdings to their rightful owner, and while this may play a large part in tackling many of the past injustices that contribute to

poverty, for example, this approach can be taken further. If a past violation of a negative right can give rise to such positive duties, then there are many instances in which such duties may be owed, and not just in the distribution of holdings. I outlined in chapter one the extent of libertarian negative rights – the archetypal rights against murder, assault, torture and so on, but also negative subsistence rights, such as a right not to be deprived of the means of subsistence or of a clean living environment. When there has been a past violation of any of these rights, then rectification is owed by the perpetrator. Of course, it is not clear what could be owed in the context of past violations of rights against murder and torture, but this does not affect the claim that there is some duty owed in these cases – perhaps to provide counselling for the victims of torture or financial support for the families of people who have been killed. These positive duties are more plainly apparent and more easily realisable in the context of past violations of negative subsistence rights. For example, if a company or institution has caused pollution in a particular area, perhaps polluting the water source and thereby preventing the local people from growing food for their own subsistence, then this company owes an enforceable positive duty to intervene to repair the damage – to clean up the pollution, and to return the community to their original subsistence levels.<sup>169</sup>

This duty of rectification plays an important role in the debate over the just distribution of worldly resources, a question which will be explored fully in Part III of the thesis when I will consider if every individual is entitled to a portion of worldly resources. For our purposes here it is sufficient to note that when property has not been acquired justly then there is a duty to return it to its rightful owner, or to compensate them for having been deprived of it.<sup>170</sup> So if there is such a right to a share of worldly resources then it is a negative right, the violation of which requires positive action in the form of an enforceable positive duty. This is based on the idea that being deprived of one's property constitutes a violation of a negative right, from

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<sup>169</sup> For a libertarian argument that pollution violates property rights see Murray Rothbard, "The Great Ecology Issue: Conservation and the Free Market," *The Individualist* 2, no. 2 (1970), quoted in Hospers, *Libertarianism*. p. 59-60, and Murray Rothbard, "Law, Property Rights and Air Pollution," *Cato Journal* 2, no. 1 (1982). p. 87

<sup>170</sup> It is not my suggestion that an individual can acquire property unjustly as long as she pays compensation, nor that one can choose to pay compensation rather than return the property in question. I shall say more on this point shortly.

which a positive duty of compensation can be derived. What is crucial is that a right to compensation in these circumstances is not a positive right, but is rather derived from the negative right not to have been deprived in the first place. As Steiner explains,

an entitlement to *compensation* no more signifies a foundational positive right than does any standard restitutorial claim against perpetrators of theft, personal injury or contractual default.<sup>171</sup>

In this way, then, previous violations of negative rights can lead to enforceable positive duties, for example: duties to repair damage done to the environment, or to provide resources when people have been unjustly deprived of resources, or of access to those resources, in the past.

Let us return now to Pogge and the institutional approach to rights. We saw that Pogge's institutional approach reveals dimensions to rights violations that a libertarian cannot ignore, even if she may not accept all the details of the institutional approach unreservedly. Pogge, though not a libertarian, aims to maintain wide-reaching appeal for his theory, including to a libertarian audience, and for this reason he concedes that causing poverty is different – in a morally significant way – from failing to reduce it. In this way he captures the distinction between actions and omissions (which I claimed was of great significance to libertarians) and distances himself from utilitarian thinkers who see no morally significant distinction if the outcome is the same.<sup>172</sup> It would appear, then, that Pogge supports the libertarian view that human rights are exclusively negative and entail only negative duties. In fact he contests this, stating, “By failing to deny this libertarian tenet, I am not asserting it”<sup>173</sup> indicating less than full endorsement for the libertarian theory of

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<sup>171</sup> Hillel Steiner, "Hard Borders, Compensation and Classical Liberalism," in *Boundaries and Justice: Diverse Ethical Perspectives*, ed. David Miller and Sohail H. Hashmi (Princeton, N.J. ; Oxford: Princeton University Press, 2001). p. 85

<sup>172</sup> Recall that it was this line of argument on which Singer's argument was founded: Singer, "Famine, Affluence, and Morality."; see also James Rachels, "Killing and Starving to Death," *Philosophy* 54, no. 208 (1979).; Peter K. Unger, *Living High and Letting Die: Our Illusion of Innocence* (Oxford: Oxford University Press, 1996).

<sup>173</sup> Thomas Winfried Menko Pogge, "Severe Poverty as a Violation of Negative Duties," *Ethics & International Affairs* 19, no. 1 (2005). p. 6, responding to Rowan Cruft, "Human Rights and Positive Duties," *Ethics & International Affairs* 19, no. 1 (2005).

justice. In any case, by staying neutral towards the issue of positive rights, and of the positive duties correlative to such rights, and by distancing himself from a utilitarian approach by maintaining a focus on the causal element, I argued that Pogge has indeed constructed an argument with libertarian appeal. On Pogge's institutional account, it is not only a violation of a negative right to harm others or to deprive them of the necessities of life directly; there is also a negative duty (correlating to this negative right) to refrain from upholding an unjust institutional order which violates these negative rights. Since I accept that his premises are sufficiently libertarian (with minor modifications), this led me to conclude in the earlier discussion that we can accept, on a libertarian account, a negative duty to refrain from supporting institutions that commit human rights violations. Now we must consider how this relates to positive duties of rectification.

Negative rights, Pogge points out, frequently demand positive duties, even from a libertarian perspective. In order to refrain from breaking one's promise, for example, one must take positive action to do what one has promised to do.<sup>174</sup> This, however, is more properly seen as a duty of the second type outlined above, which people incur voluntarily through entering into contracts with others. The positive duty derived from a previous failure to fulfil a negative duty correlating to a right is somewhat different. Though I am able to avoid incurring a positive duty of rectification by successfully fulfilling all of my negative duties, I do not have the option of avoiding both types of duty. The negative duty is universal, and failure to fulfil it gives rise to the positive duty. If someone has previously violated a negative right – and this includes supporting rights-violating institutions – then she owes a positive duty to compensate for the harms done.

Pogge identifies contributing to campaigning for institutional reform, or to measures to protect those who are harmed under the present institutional order, as compensatory duties which are owed by all those who are involved in harming. He

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<sup>174</sup> Narveson describes 'positive rights' of this kind, such as a right to have a promise kept, as rights that can "be justified by a procedure that 'hitches' them to the basic negative rights." Narveson, *The Libertarian Idea*, p. 59-60

claims that here he is “focusing on negative duties alone”<sup>175</sup> rather than any more general positive duty to help the badly off. This appeal to negative duties, he argues, generates

compensatory obligations that are tightly limited in *range* (to persons subject to an institutional order one cooperates in imposing) in *subject matter* (to the avoidance of human rights deficits), and *demandingness* (to compensation for one’s share of that part of the human rights deficit that foreseeably is reasonably avoidable through a feasible alternative institutional design).<sup>176</sup>

I have noted already that the language of the ‘underfulfillment’ of human rights is inappropriate to a libertarian theory of rights, and the same can be said of this ‘human rights deficit’. The libertarian concern is that institutions do not violate rights (which includes depriving) but not that the institutional order promotes, for example, a distribution where deprivation is minimal. Nonetheless, we can draw from this that, according to Pogge, negative duties generate ‘compensatory obligations’. It ought to be noted that Pogge and I use different terminology here. On Pogge’s terminology, negative duties are “any duty to ensure that others are not unduly harmed (or wronged) through one’s own conduct”, while positive duties are “any duty to benefit persons or to shield them from other harms.”<sup>177</sup> Pogge talks of the compensatory duties above as negative duties, rather than positive duties, since they are not derived from any positive right<sup>178</sup> though he has elsewhere referred to them as positive obligations.<sup>179</sup> I feel it is inappropriate to describe as negative a duty that actually requires people to *do* something, but I am in full agreement with Pogge that this duty stems entirely from the negative right. It is because it is derived from a right that I argue that it is a positive duty which can permissibly be enforced. Pogge clarifies the nature of these duties, stating:

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<sup>175</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 26

<sup>176</sup> Ibid.

<sup>177</sup> Ibid. p. 136

<sup>178</sup> This is also the approach adopted by Stemplowska, who states: “Duties will be called negative if they arise on account of negative rights (whether or not the duties require omission or positive action) and positive if they arise on account of positive rights.” Zofia Stemplowska, "On the Real World Duties Imposed on Us by Human Rights," *Journal of Social Philosophy* 40, no. 4 (2009). p. 467

<sup>179</sup> “These positive obligations are generated by a negative duty that is correlative to human rights. Failure to fulfil such positive obligations therefore violates human rights.” Pogge, "Severe Poverty as a Violation of Negative Duties." p. 69

They are positive insofar as they require the agent to do something and also negative insofar as this requirement is continuous with the duty to avoid causing harm to others.<sup>180</sup>

There is, then, no disagreement between Pogge and myself concerning the derivation of these duties, and of their enforceability, but I shall continue to use the terminology of positive duties for those duties which require positive action. These positive duties that are derived from negative human rights, I shall call positive duties of rectification.

In addition to claiming that *if* there have been previous rights violations *then* positive duties are owed as a matter of justice, Pogge makes the further claim that past injustices of this nature *have* taken place and that rectification therefore *is* owed.<sup>181</sup> Much of the poverty in the world is caused by human actions, he claims, meaning that poverty is (in many if not most cases) a violation of a negative right, and is brought into the realm of justice as I have defined it. This is not an uncontroversial claim.<sup>182</sup> Narveson, though endorsing the act of reparation following past injustice, dismisses this as having any relevance in the context of the global poor. He argues that reparation “is not in general the situation of distant peoples in need... Our distant sufferers aren’t so because we made them so.”<sup>183</sup> I do not attempt to engage in the empirical debate but assume for the purposes of this thesis that at least some of the poverty in the world has been caused by past actions, and that there are at least some instances where actions perpetrated by individuals or institutions from developed countries are causally responsible for the violations of negative human rights – including negative subsistence rights – of individuals in developing countries. The task now is to identify the past violators of these negative rights in order to ascertain who owes these positive duties of rectification.

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<sup>180</sup> Pogge, "Real World Justice." p. 34. This was written in response to criticism to the first edition of his book.

<sup>181</sup> For defence of the claim that the existing poverty should be seen as an injustice, see Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 205-210

<sup>182</sup> Recall that Mathias Risse, for example, questioned whether the institutional order has in fact harmed the global poor. See Risse, "Do We Owe the Global Poor Assistance or Rectification?." and Risse, "How Does the Global Order Harm the Poor?."

<sup>183</sup> Narveson, "We Don't Owe Them a Thing!: A Tough-Minded but Soft-Hearted View of Aid to the Faraway Needy." p. 420

When considering compensation for past injustices there is always the question (as Nozick acknowledged) of how far back we must go. If people are disadvantaged on account of wrongs perpetrated many years ago, who should be held responsible then? Pogge does not propose that the direct descendants of past violators should be held responsible, rather that the results of the past injustice must not be upheld.<sup>184</sup> It is unclear from this attitude precisely who must then fulfil the positive duty of rectification. For example: who must provide the means of subsistence to those who are without such means due to injustices committed in the distant past?<sup>185</sup> These problems are not easy to address, and it is not clear that it would be any less of an injustice to make the descendants of wrongdoers pay compensation than to permit the outcome of the original injustice to prevail. To simplify matters, then, and to provide examples where compensation is unquestionably owed by existing individuals, it is necessary to focus on more recent harms. Unfortunately (though perhaps fortunately for my argument) such modern injustices are not uncommon, and afford plenty of instances which demonstrate the positive duties owed following the violation of a negative right.

If the positive duty is owed by all those who have violated a negative right, and negative rights can be violated by individuals contributing to rights-violating institutions, then it follows that positive duties are owed by those institutions who violate rights, and by all the individuals who have supported those institutions. As Pogge argues,

human agents are not to collaborate in upholding a coercive institutional order that avoidably restricts the freedom of some so as to render their access to basic necessities insecure without compensating for their collaboration by protecting its victims or by working for its reform.<sup>186</sup>

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<sup>184</sup> On this subject see also Chandran Kukathas, who argues that it is institutions and not individuals who bear the responsibility for past injustices. Chandran Kukathas, "Responsibility for Past Injustice: How to Shift the Burden," *Politics, Philosophy, and Economics* 2, no. 2 (2003).

<sup>185</sup> Even more problematic is the contention that current people have not been disadvantaged by past injustices, since different people would have been born if past events had been different. This is commonly known as the non-identity problem. (See Derek Parfit, *Reasons and Persons*, Paperback ed. (Oxford: Clarendon Press, 1992).) For a discussion of this, and a defence of the claim that compensation *is* owed, see Andrew I. Cohen, "Compensation for Historic Injustices: Completing the Boxill and Sher Argument," *Philosophy and Public Affairs* 37, no. 1 (2009).

<sup>186</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p.76

I have already explained that people must refrain from contributing to unjust institutions but, additionally, if someone *does* behave in such a way then she has violated a negative right and therefore has a positive duty of rectification to pay compensation or to campaign for reform. These are positive duties that are incurred by the past violation of a negative right, and are owed by all those who support unjust institutions. This demonstrates that more culprits who are responsible for violating negative rights and therefore liable to paying compensation can be identified on the institutional account of rights (taken in conjunction with the interactional account) than can be identified on the interactional account alone.

So how do these positive duties of rectification manifest themselves? Pogge argues that those who are responsible for what he calls the ‘underfulfillment’ of rights

should either discontinue their involvement – often not a realistic option – or else compensate for it by working for the reform of institutions or for the protection of their victims.<sup>187</sup>

In other words, those individuals who are guilty of contributing to upholding a coercive institutional order must either cease to contribute in this way, or they can continue their support provided that they simultaneously compensate for so doing. I naturally support that claim that individuals should cease their involvement, but do not subscribe to the view that individuals should effectively be permitted to buy their way out of complicity. This deviation from Pogge’s theory stems from my libertarian focus on the *violation* of rights by unjust *institutions*, as opposed to the *underfulfillment* of rights under a coercive *institutional order*. In ordinary talk of rights violation it is not considered appropriate to permit the violation of a negative right as long as compensation is paid – it is not permissible to take someone’s car without their consent provided you pay them a competitive hire fee when you return it, nor is it permissible to poison someone’s water supply through pollution as long as you pay their healthcare bills and clean up the pollution eventually. In the event of rights violations, the only permissible course of action is to cease committing them –

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<sup>187</sup> Ibid. p. 56

or cease contributing to those institutions that are committing them on your behalf. Mitigating one's involvement through compensation payments and campaigning for reform is not enough.

While it may appear, then, that I take a harder line on this than does Pogge, this is not the case. Even when Pogge talks specifically of unjust institutions rather than of a coercive institutional order, he and I still have different interpretations of the notion of 'involvement' with those institutions. Pogge argues that the amount of compensation owed towards reforming unjust institutions "depends on how much one is contributing to, and benefiting from, their maintenance."<sup>188</sup> This statement reveals a fundamental difference between my libertarian position and Pogge's approach to institutions. For Pogge, merely 'benefiting from' the maintenance of unjust institutions is sufficient to incur positive duties to compensate and to campaign for reform, but I do not believe that this is a position that the libertarian would share. Benefiting from a state of affairs cannot make one liable to pay compensation, since there has been no causal contribution there. Equally, someone who contributes to unjust institutions but does not for whatever reason reap a benefit from so doing would not be absolved of any responsibility and the duty to compensate. It is the causal link that is important. Someone who has contributed to unjust institutions that have violated rights must pay compensation for contribution to these violations and also has a duty of rectification to campaign for reform of those institutions. But it is more than the libertarian is committed to, to accept that these duties must be met by all those who even benefit from the maintenance of these institutions (not to mention benefiting from the global institutional order as a whole) without making any direct contribution. As I argued earlier in the chapter, a libertarian cannot assent to the view that someone supports institutions merely by benefiting from their existence. This would suggest that people could violate the negative rights of others merely by omission of action, which I have stated is not compatible with the libertarian position. In the same way, then, if someone merely benefits from the maintenance of institutions while doing nothing actively to uphold

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<sup>188</sup> Ibid.

them, then she does not incur a duty either to pay compensation or to campaign for reform.

It is because Pogge believes that someone would have to cease benefiting in order to rid themselves of these positive duties that he sees it as unrealistic that people will cease their ‘involvement’, making it more appropriate to continue the involvement while carrying out the positive duties. Pogge argues that it is ‘more plausible’ to honour one’s negative duty,

by working with others toward shielding the victims of injustice from the harms I help produce or, if this is possible, toward establishing secure access [to the objects of their human rights] through institutional reform.<sup>189</sup>

In other words, it is more likely that people will continue to engage with the global order, rather than remove themselves from it, but can justify doing this providing they also campaign for its reform. Admittedly, this may be a more usual response to one’s negative duties; people may find it easier to continue engaging in current practices while simultaneously doing something to mitigate these practices, rather than alter their way of life. But this, I maintain, is not the libertarian position. If one is contributing to harm then one must cease doing so, rather than simply continuing one’s support while simultaneously carrying out positive duties to offset the harm. In contrast, one need not attempt to remove themselves from modern society altogether in order to avoid incurring such positive duties, since I have argued that benefiting from the maintenance of unjust institutions does not count as contributing to the cause of that poverty oneself. If there is generally a duty to work towards institutional reform, even if we do not contribute to unjust institutions, then I suggest that this takes the form of a non-correlative charitable obligation, which is not enforceable in the way that correlative duties are. Refraining from contributing to unjust institutions is sufficient in order to avoid incurring positive duties, including the duty to campaign for institutional reform.

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<sup>189</sup> Ibid. p.72

## ***Conclusion***

The negative human rights that are justified by a libertarian rights framework confer duties on others to refrain from harming (for example, murdering and torturing) and from depriving people of the means of subsistence. What is more, with reference to Pogge's institutional approach to rights I argued that these negative duties include duties to refrain from harming or from depriving people of the means of subsistence *via institutions*, by actively supporting institutions that carry out such rights violations. This would include a negative libertarian duty to refrain from purchasing products from companies that violate rights. These duties are more far-reaching than libertarianism is generally thought to justify, but they are still (archetypal libertarian) *negative* duties. I have also attempted to show in this chapter that despite the libertarian claim that human rights are exclusively negative, there are many ways in which a libertarian can support positive duties. Firstly there are charitable obligations (though not properly 'duties' since they are non-enforceable) which many libertarians subscribe to, albeit not by necessity. Then there are positive duties which are voluntarily incurred through entering into a contractual agreement, which would include a system of legal rights or a welfare state. These duties, once incurred, cannot be opted out of and can permissibly be enforced. Both these types of duties may be thought to be relatively weak, since there is a voluntary aspect to each. Most important, then, are those positive duties which can be derived from libertarian negative human rights. These are duties which arise following the past violation of a negative right, and which every individual guilty of such a violation can permissibly be coerced into fulfilling. Moreover, since (I have argued) it is appropriate to be deemed the violator of a negative right when one contributes to supporting unjust institutions that carry out such rights violations, there will be a great number of people guilty of violating negative rights, and therefore a great number of people who hold such positive duties of rectification.

Undeniably the libertarian approach to positive rights means that there are no enforceable positive duties to help those who are in need for reasons that are not the fault of either institutions or individuals. On my account, positive duties derived

from human rights apply only in the instance of a past injustice. There are no positive duties (beyond relatively weak charitable obligations) to help people in poverty if they have *not* been harmed by either individuals or institutions. Where no such past injustice exists – for example, if the poverty is the cause of a natural disaster<sup>190</sup> – there are no enforceable duties to come to their aid. This will be enough for some people to reject not just my libertarian argument but also Pogge's approach, at least as being exhaustive of our enforceable positive duties.<sup>191</sup> Nonetheless, despite inevitable criticisms that my libertarian approach does not go far enough in defending an extensive range of positive duties, I have shown that libertarianism is *compatible* with positive duties of the first two kinds, but more importantly that some positive duties – duties of rectification – are a necessary component of a libertarian rights framework, the observance of which (in conjunction with our negative duties to refrain from supporting rights-violating institutions) will radically alter the way in which people are permitted to behave, and the legitimate interference which people may face.

To conclude Part I, the duties that a libertarian must accept even while maintaining that human rights are exclusively negative include duties to refrain from harming and to refrain from depriving people of the substance of their social and economic rights, either directly or via institutions. I argue that this prohibits behaviour that is ordinarily thought permissible from a libertarian point of view, such as supporting institutions or companies that violate rights, either by harming directly or by depriving people of the means of subsistence, a clean environment and so on. Furthermore, if people do support these institutions in any way, then they incur positive duties to pay compensation and/or to campaign for institutional reform. So while it is accurate to argue<sup>192</sup> that socio-economic rights cannot be dismissed as positive rights, and that causal responsibility is more complex in the context of the modern interdependent global order, this does not provide sufficient reason to

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<sup>190</sup> Assuming the natural disaster cannot plausibly be attributed to climate change caused by over-consumption by richer nations (an eventuality I shall not attempt to address). Eruption of a volcano may qualify as an appropriate example.

<sup>191</sup> See for example Robert Huseby, "Duties and Responsibilities Towards the Poor," *Res Publica* 14, no. 1 (2008).

<sup>192</sup> In the way that Shue and Lichtenberg do, for example.

abandon the libertarian claim that human rights are exclusively negative.

## **Part II: Self-Ownership**

## Chapter 3: Defining Self-Ownership

### *Introduction*

In chapter one I mentioned that some libertarians believe that all human rights are ultimately property rights. I also indicated that this is not a position I share. However, I do support what is the fundamental foundation for many libertarian rights: self-ownership. I do not go quite as far as Narveson in this respect, who claims that “it is plausible to suggest that ... the libertarian thesis is really the thesis that *a right to our persons as our property is the sole fundamental right there is*”.<sup>193</sup> But I do maintain that the rights of self-ownership are of paramount importance and are among our most fundamental human rights. These self-ownership rights are property rights, and I shall attempt to provide in this chapter a definition of the content of these rights and demonstrate how this definition is in-keeping with how libertarians over the years have made use of the term. This chapter is concerned primarily with defining self-ownership, and defining it in such a way that is coherent and internally consistent. A defence of self-ownership against more substantial objections – objections to the consequences of affirming self-ownership, for example – will follow in the next chapter.

I adopt a conception of self-ownership which encompasses three property rights: over the body, the faculties (including labour, talents and abilities), and over what can be produced through combining the body with the faculties. Before I set out my definition fully I will consider how others use the term self-ownership, in order to provide the context in which I arrive at my definition. I will then explain what it means to have a property right in something and then address objections to the notion of property rights over those things I have identified.

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<sup>193</sup> Narveson, *The Libertarian Idea*. p. 66 (emphasis in original).

Before I begin I wish to clarify a couple of points. Firstly, some writers write about a ‘thesis’ of self-ownership, while others write about the ‘principle of’ or the ‘right to’ self-ownership. I view self-ownership as a bundle of rights, but I do not consider self-ownership to be something that we have a right ‘to’ as such. Rather, we *are* self-owners, and this means that we have certain rights. (In the same way that a human right is a right in virtue of being human, not a right to be human). I propose that the ‘principle’ and the ‘thesis’ of self-ownership can be used interchangeably to refer to this bundle of rights which collectively constitute self-ownership.

Secondly, it is worth saying a brief word about what constitutes the ‘self’. In discussions of self-ownership, as we will see, some people talk about ownership of the self while others talk of ownership of the person or the body. These ideas are distinct, as noted by Fabre, who states, “In the prevailing liberal ethos, if there is one thing that is beyond the reach of others, it is our body in particular, and our person in general.”<sup>194</sup> It is not justifiable, then, to use these terms interchangeably. On my definition of self-ownership, ownership of the ‘self’ consists of the three property rights listed above, one of which is a property right over the body. I shall avoid talking of the ‘person’. Questions of personal identity, including what constitutes the same person over time, are complex and are not pertinent (I believe) to the matter of such property rights.<sup>195</sup> Mention of the ‘person’ complicates the matter unnecessarily and is therefore best avoided. Some others (including Locke, for example, and Narveson, in the above quotation) do talk of property rights over the ‘person’, but I will aim to show that this terminology can be substituted without losing anything of value.

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<sup>194</sup> Cécile Fabre, *Whose Body Is It Anyway?* (Oxford: Oxford University Press, 2006). p. 1

<sup>195</sup> For discussion of personal identity see Parfit, *Reasons and Persons.*, part 3, and Fabre, *Whose Body Is It Anyway?* p. 12-16. Feser denies that discussions of self-ownership need not address questions of the nature of the self, arguing that some theories of personal identity (including Parfit’s) are incompatible with self-ownership. He claims that “a commitment to self-ownership must entail a commitment to an Aristotelian-Thomistic hylemorphic conception of persons.” E. Feser, “Personal Identity and Self-Ownership,” *Social Philosophy & Policy* 22, no. 2 (2005). p. 122. I do not believe it is necessary to engage with this for the purposes of my argument here.

## ***Origins of Self-Ownership***

The thesis of self-ownership is most commonly attributed to John Locke. Writing in the late 17<sup>th</sup> century, he claimed “every man has a *Property* in his own *Person*”.<sup>196</sup> Though Locke never uses the term ‘self-ownership’, many consider him the founder of the concept<sup>197</sup> but in fact what he supports is not really self-ownership in the sense used today, as I will show.<sup>198</sup> In addition, it may date back even earlier than Locke. Richard Overton, for example, wrote in 1646:

To every individuall in nature is given an individual property by nature, not to be invaded, or usurped by any: for every one as he is himselfe, so he hath a selfe propriety.<sup>199</sup>

These ideas of self-proprietty and property in one’s person are rather vague and ambiguous in precisely the way that I hope to avoid with my definition of self-ownership. Nonetheless they give the impression of the idea conveyed by what I am calling self-ownership to a sufficient extent in order to justify considering them to be the origins of this concept. These ideas were then left undeveloped until the late 19<sup>th</sup> century, when they were revisited by Henry George. In asking what the rightful basis of property is, George says:

Is it not, primarily, the right of a man to himself, to the use of his own powers, to the enjoyment of the fruits of his own exertions? ... As a man belongs to himself, so his labour when put in concrete form belongs to him.<sup>200</sup>

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<sup>196</sup> Locke, *Two Treatises of Government*. Second Treatise § 27

<sup>197</sup> Narveson, for example, states that “Locke, as everyone knows, grounded the institution of property on self-ownership”, Narveson, *The Libertarian Idea*. p. 79. For this common misconception see also James W. Harris, *Property and Justice* (Oxford: Oxford University Press, 2002). p. 189, J. P. Day, “Locke on Property,” *The Philosophical Quarterly* 16, no. 64 (1966).; Charles W. Baird, “The Varieties of ‘Right to Work’. An Essay in Honor of W. H. Hutt,” *Managerial and Decision Economics* 9 (1988). p. 33; Diana Belevsky, “Liberty as Property,” *The University of Toronto Law Journal* 45, no. 3 (1995). p. 220

<sup>198</sup> Christman maintains that “It is debatable whether Locke himself held to the Lockean view of self-ownership.” John Christman, *The Myth of Property : Toward an Egalitarian Theory of Ownership* (New York: Oxford University Press, 1994). p. 149

<sup>199</sup> Richard Overton, *An Arrow Against All Tyrants and Tyranny* (1646), quoted in Steiner, *An Essay on Rights*. p. 231

<sup>200</sup> Henry George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy* (New York, N.Y.: Robert Schalkenbach Foundation, 1971). p. 236

Again, George seems to convey a sense of self-ownership without actually making use of the term. The precise terminology of self-ownership started to appear a few years later, however, in the work of Herbert Spencer and in literature associated with the Voluntarist movement, including pamphlets issued by the Anti-Compulsory Taxation League.<sup>201</sup>

‘Self-ownership’ remained a seldom-used expression, however, even with the advent of modern libertarians such as John Hospers, Robert Nozick, Murray Rothbard and Jan Narveson in the 1970s and 1980s.<sup>202</sup> In the same way that the concept is often attributed to Locke, many consider Nozick to be one of its key proponents.<sup>203</sup> However, in *Anarchy, State and Utopia* Nozick uses the word just once, referring simply to the “classical liberals’ notion of self-ownership”<sup>204</sup> as if it represented nothing more than an uncontroversial value shared by all liberal thinkers. The thesis of self-ownership as set out in Nozick has been characterised as “the view that only you have the right to decide what is to happen to your life, your liberty and your body, for they belong to no one but you.”<sup>205</sup> This captures the prohibition against interference which is the focus of Nozick’s work, but as a definition of self-ownership it is rather imprecise. A more clearly outlined definition is needed.

The term self-ownership also does not appear in Hospers’ key work *Libertarianism*, and Narveson in his earlier work likewise tended to refrain from using it, referring to

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<sup>201</sup> Herbert Spencer, *The Principles of Sociology* (London ; New York: Appleton, 1893).; Leonard Hall, "Land, Labour, and Liberty; or, the A B C of Reform," (1898).; Auberon Edward William Molyneux Herbert, "Some Reasons Why We Object to Compulsory Taxation in All Its Forms," (1893), Auberon Edward William Molyneux (ed) Herbert, "International Voluntarism," (1893), Auberon Edward William Molyneux (ed) Herbert, "What Does a Voluntarist or Self-Ruler, the Man Who Wishes to Govern Himself and Not His Neighbour, Believe?," *The Free Life* (1894).

<sup>202</sup> See Hospers, *Libertarianism.*, Nozick, *Anarchy, State and Utopia.*, Rothbard, *For a New Liberty: The Libertarian Manifesto.*, Narveson, *The Libertarian Idea.*

<sup>203</sup> See for example Will Kymlicka, *Contemporary Political Philosophy : An Introduction* (Oxford: Clarendon Press, 1990). p. 101; Louis P. Pojman, "Are Human Rights Based on Equal Human Worth?," *Philosophy and Phenomenological Research* 52, no. 3 (1992). p. 610; James W. Child, "Can Libertarianism Sustain a Fraud Standard?," *Ethics* 104, no. 4 (1994). p. 726

<sup>204</sup> Nozick, *Anarchy, State and Utopia.* p. 172

<sup>205</sup> Wolff, *Robert Nozick : Property, Justice and the Minimal State.* p. 7

it in just two places, one of which is simply to attribute it unequivocally to Locke.<sup>206</sup> Rather than ‘self-ownership’, Narveson refers more commonly to “property in oneself” and “a right to our persons as our property”.<sup>207</sup> Evidently, this uses the language of property of the *person*, which I have suggested is best avoided. Moreover, he argues that “Calling for property in oneself simply is calling for being allowed to do as one pleases”.<sup>208</sup> I find these definitions unhelpfully vague, and believe that they fail to get across what is fundamental to a libertarian theory of justice that is not shared by other liberal theories.

In more recent years Narveson speaks more explicitly in the language of ‘self-ownership’, stating:

To ‘own oneself’ is simply to be the person who gets to use the self in question, while others, if they wish to use it, must clear it with the owner. Self-ownership is not another thing, prior to and the foundation of, the right to do things; it is instead just another way of stating the general right of liberty.<sup>209</sup>

But even this definition, as with Narveson’s earlier ones, provides a rather imprecise definition of what self-ownership actually amounts to, and as such is a conception of self-ownership that I wish to distance myself from. The danger here is that if self-ownership is understood in this broad sense then it attracts the criticism that it does not in fact convey anything significant in addition to rights incursions on one’s bodily integrity<sup>210</sup> and interference in the pursuit of one’s goals, which most people who would not be proponents of self-ownership would readily accept. Stated so simply, self-ownership does indeed sound like the ‘classical liberal notion’ mentioned by Nozick, but to understand self-ownership in these vague terms by

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<sup>206</sup> Narveson, *The Libertarian Idea*. p. 79. I have already noted that this view is misleading. For the other mention of the term see p. 306.

<sup>207</sup> Ibid. p. 66

<sup>208</sup> Jan Narveson, "Self-Ownership and the Ethics of Suicide," *Suicide and Life-Threatening Behavior* 13, no. 4 (1983). p. 73

<sup>209</sup> Narveson, "The Right to Liberty Is Incompatible with the Right to Equality." p. 155. Narveson is not alone in believing self-ownership to be synonymous with liberty (see Herbert, "International Voluntarism.") or that freedom could be defined as self-ownership (see Hall, "Land, Labour, and Liberty; or, the A B C of Reform.") but (given the context of those who share this view) these are perhaps rather old-fashioned interpretations of self-ownership.

<sup>210</sup> See for example Andrew Williams, "Cohen on Locke, Land and Labour," *Political Studies* 40, no. 1 (1992).

which it can have such wide appeal is to lose something significant. This is why I believe it is so important to propose a single clear definition of what self-ownership means.

This broad understanding is also what comes across in Rothbard's work. Rothbard was one of the first libertarians to discuss 'self-ownership' directly, stating:

Since each individual must think, learn, value, and choose his or her ends and means in order to survive and flourish, the right to self-ownership gives man the right to perform these vital activities without being hampered and restricted by coercive molestation.<sup>211</sup>

We can infer from this statement a definition of self-ownership such that a self-owner has a right to act in any way she chooses to achieve whichever ends she chooses without interference from others (subject to respecting the self-ownership of others). But like the definitions considered already, this is still rather vague and does not delineate any sort of viewpoint that would represent a significant departure from other liberal theories. I do not believe this can be Rothbard's intention – since he is a more radical libertarian than most (including Nozick), it is unlikely that he intended to advocate a watered down version of self-ownership – but in this current formulation it is hard to see what makes self-ownership specifically the domain of the libertarian. In order to establish what *does* distinguish self-ownership from other liberal commitments, we must find a workable definition which identifies more clearly its key features.

The understanding of self-ownership suggested by Rothbard's quotation above is similar to what is called 'control self-ownership'. Christman compares control self-ownership with self-ownership as non-interference, and it is more likely that Rothbard subscribes to the latter. Non-interference is the classical libertarian focus; control self-ownership, on the other hand, goes beyond mere non-interference. On this view,

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<sup>211</sup> Rothbard, *For a New Liberty: The Libertarian Manifesto*. p. 28-9

one is self-owning when only oneself, acting in a way that is free and autonomous, decides where and how one's talents and body are used, within the parameters set by others' enjoying similar control.<sup>212</sup>

This approach to self-ownership goes beyond mere interference for this reason:

if one sees self-ownership as self-control, and one thinks this should be granted and protected, then one must favor directing resources in such a way that allows the conditions of such control to manifest themselves. ... Seeing the value of self-control as the basis for the postulate of self-ownership entails... a positive duty on the part of society to supply people with those resources necessary for the establishment of such self-control.<sup>213</sup>

It is certain that Rothbard would not want to commit himself to positive duties like these, so clearly control self-ownership cannot be what he had in mind, and yet the definition he provides does not set out clearly how it differs from this.<sup>214</sup>

Subsequent writing on self-ownership has attempted to address more directly what the term is intended to convey and yet, I maintain, this has remained fairly indefinite in setting out the specifically libertarian position, and has persisted in suggesting self-control as the focus rather than non-interference. I maintain that self-ownership must be conceived of in terms of property rights, which is a more controversial understanding of self-ownership. It is more controversial not merely on the supposition that property is of lesser importance than bodily integrity – a supposition which would arguably render interference permissible with regard to property in a way it is not with regard to bodily integrity. There is the additional (and more salient) point that a right against interference with one's bodily integrity does not imply,

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<sup>212</sup> Christman, *The Myth of Property : Toward an Egalitarian Theory of Ownership*. p. 149-50

<sup>213</sup> Ibid. p. 150

<sup>214</sup> Control self-ownership is the type attributed to Philippe Van Parijs by Peter Vallentyne (though he does not himself identify it as such) along with so-called 'leisure self-ownership' and 'non-brute luck income self-ownership'. Peter Vallentyne, "Review: Self-Ownership and Equality: Brute Luck, Gifts, Universal Dominance, and Leximin," *Ethics* 107, no. 2 (1997). p. 325. I shall not dwell on the complex interpretations of self-ownership from Van Parijs, since his commitment to self-ownership is of a weaker form than is acceptable on my libertarian framework. He argues: "mild restrictions of self-ownership... can be incorporated into the institutional framework of a free society if a good case can be made to the effect that a major improvement would result in terms of leximin opportunity." Philippe Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (Oxford: Oxford University Press, 1997). p. 26. Since I do not share the view that such 'mild restrictions' are permissible, I shall disregard this understanding of self-ownership.

much less necessitate, rights to property. It may be asked what the terminology of ownership and property rights really adds.<sup>215</sup> If we support rights against incursions on bodily integrity is this not enough to ensure that certain harms are prohibited, without needing to resort to talk of property rights over the self (however the ‘self’ is conceived)? When I go on to explain my definition in more detail, I will explain what is gained by talking in terms of property rights.

One of the earliest – and clearest – definitions of self-ownership actually comes from one of its critics: G.A. Cohen. Cohen’s *Self-Ownership, Freedom and Equality* helped to bring self-ownership into common parlance, and his earlier paper on a similar theme<sup>216</sup> influenced the conception of self-ownership adopted by Steiner.<sup>217</sup> Cohen’s definition is this:

The libertarian principle of self-ownership says that each person enjoys, over herself and her powers, full and exclusive rights of control and use, and therefore owes no service or product to anyone else that she has not contracted to supply.<sup>218</sup>

This definition offers a much clearer idea of what self-ownership really means, and it is this final clause, referring to service and product, which has the potential to set self-ownership apart from other liberal values. Cohen makes no mention of property rights, however, something that Steiner remedies, claiming that “our respective bundles of original property rights must include at least ourselves. We must each be self-owners.”<sup>219</sup> Steiner also makes specific mention of a property right over the body: “Self-ownership gives us... ‘full liberal ownership’ of our bodies”.<sup>220</sup> It is

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<sup>215</sup> Ryan, for example, believes we can drop all talk of property without losing anything significant. See A. Ryan, "Self-Ownership, Autonomy, and Property-Rights," *Social Philosophy & Policy* 11, no. 2 (1994).

<sup>216</sup> G. A. Cohen, "Self-Ownership, World-Ownership and Equality," in *Justice and Equality Here and Now*, ed. Frank Lucash (Ithaca: Cornell University Press, 1986).

<sup>217</sup> See Steiner, *An Essay on Rights*. p. 232

<sup>218</sup> G. A. Cohen, *Self-Ownership, Freedom, and Equality, Studies in Marxism and Social Theory* (Cambridge Cambridge University Press, 1995). p. 12. I do not believe that the use of the word ‘person’ here is problematic – it could be substituted for ‘individual’ without detracting in any way from Cohen’s point.

<sup>219</sup> Steiner, *An Essay on Rights*. p. 231. This question of ‘original’ property rights concerns property rights as natural rights – something I shall elaborate on shortly.

<sup>220</sup> *Ibid.* p. 232

significant that we have moved away now from broader definitions into the realm of ownership and property rights. In a more recent work, Steiner elaborates:

an important implication of persons being self-owners is that, in the absence of any wrongdoing, they must not be subjected to any involuntary servitude. So their abilities and, for that matter, their body-parts must not be *conscripted* into the service of others.<sup>221</sup>

We have now moved away from a principle endorsing simply a right of self-control and more towards the Nozickian idea that it is an injustice to force some to work for the benefit of others. This approach is shared by fellow left-libertarian Peter Vallentyne, who states that full self-ownership holds

that in general agents have no enforceable non-contractual obligation to provide personal services to others – even when the others are desperately needy and the cost of helping is small.<sup>222</sup>

Furthermore, drawing comparisons between self-ownership and archetypal property rights over things, he argues that, “Agents are full self-owners just in case they own themselves in just the same way that they can fully own inanimate objects.”<sup>223</sup> These definitions of self-ownership are much more along the lines that I will be adopting.

One final definition I shall look at comes from Michael Otsuka. In addition to the fact that Otsuka helpfully identifies distinct rights within the concept of self-ownership, his approach is particularly relevant in terms of the relationship between self-ownership and world ownership, as we shall see in chapter five. He adopts a definition of self-ownership that encompasses two rights:

1. A very stringent right of control over and use of one’s mind and body that bars others from intentionally using one as a means by forcing one to sacrifice life, limb, or labour, where such force operates by

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<sup>221</sup> Hillel Steiner, "Silver Spoons and Golden Genes: Talent Differentials and Distributive Justice," in *The Moral and Political Status of Children*, ed. David Archard and C MacLeod (Oxford: Oxford University Press, 2002). p. 184-5 (emphasis in original).

<sup>222</sup> Vallentyne, "Left-Libertarianism: A Primer." p. 4. The inclusion of ‘in general’ allows that people may be conscripted into the service of others to fulfil positive duties of rectification, when they have committed injustices previously.

<sup>223</sup> Vallentyne, "Libertarianism and the State." p. 190

- means of incursions or threats of incursions upon one's mind and body [...]
2. A very stringent right to all of the income that one can gain from one's mind and body (including one's labour) either on one's own or through unregulated and untaxed voluntary exchanges with other individuals.<sup>224</sup>

This is one of the first definitions we have seen that identifies specific rights within self-ownership, and has outlined them in terms of property rights, and which resembles most closely the definition of self-ownership that I adopt.

I have presented here some of the existing literature on self-ownership, going back to some of the earliest thinkers from whom libertarians draw inspiration, and considering the views of some contemporary theorists, including left-libertarians. We have seen that, although the concept may go back several centuries, the terminology is still relatively new. We have also seen that there is little consensus in the use of the term, but also that it has not really been adequately recognised that any such consensus is required, and relatively few attempts have been made to provide a definitive conceptualisation of self-ownership to capture the common themes running through these different uses of the term. I will now outline what I take self-ownership to mean, and shall demonstrate how it ties in with the views presented here, before considering and addressing the objections that could be made against it.

### ***The Three Property Rights of Self-Ownership***

My definition of self-ownership constitutes three property rights. These are property rights over the body, over the faculties (including labour, talents and abilities) and over what one can produce through exercising those faculties in conjunction with the body. This definition is a version of 'full' self-ownership, in contrast to 'partial' self-ownership. Someone would support partial self-ownership if they supported some but not all of these rights. These three rights are the intertwined facets of the property

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<sup>224</sup> Otsuka, *Libertarianism without Inequality*. p. 15

rights of self-ownership and are perhaps so inextricably linked that it is unhelpful to consider each one in isolation. I will examine each of these property rights in turn, however, not only to demonstrate the different element each of them brings to my definition of self-ownership, but also better to show how my definition compares with those of the other theorists I have considered so far. But first I shall explain what precisely is meant by a property right in order to provide context for what property rights over these three things consist of.

## Property Rights

When discussing property rights it is important to be clear on terminology. We may say that something is my property, that I have a property right in that thing, that I own it, or that it is in my possession, but these terms all convey different ideas. As I shall be using it, a property right is the same as a right of full ownership, which is distinct from possession. Ryan sums up this distinction nicely:

Possession of a good is a physical relationship, while ownership is a normative one involving the rights an individual has over a thing; to say that a good is someone's private property is to say not merely (or not even) that he possesses it but that he owns it. The mere fact that one has come to possess a good does not imply that one has acquired the rights of ownership in it.<sup>225</sup>

This understanding of property rights simply as “the rights of ownership” is a classic interpretation.<sup>226</sup> It differs from views which maintain that *all* rights are property rights, or that property rights extend to more than just ownership rights over things.<sup>227</sup> As I mentioned in chapter one, it is the view of many libertarians, including

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<sup>225</sup> Cheyney C. Ryan, "Yours, Mine and Ours: Property Rights and Individual Liberty," in *Reading Nozick : Essays on Anarchy, State and Utopia*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1982). p. 333

<sup>226</sup> Lawrence C. Becker, *Property Rights : Philosophic Foundations* (London: Routledge and Kegan Paul, 1977). p. 18. Munzer describes this as the ‘popular conception’ of property. Stephen R. Munzer, *A Theory of Property, Cambridge Studies in Philosophy and Law* (Cambridge: Cambridge University Press, 1990). p. 17

<sup>227</sup> Munzer describes the idea that property is about relations between people in respect of things as the ‘sophisticated conception’ of property. Munzer, *A Theory of Property*. p. 17

Rothbard, Narveson and Steiner, that all rights are property rights, and that they can convey considerably more than just ownership. According to Narveson, for example, "Private property is, then, literally a domain of individual freedom."<sup>228</sup> Clearly, the language of property in these contexts goes beyond mere ownership. I shall be using the term 'property rights' to mean the rights of ownership, thus distinguishing myself from many libertarian thinkers. But in outlining what 'things' we have property rights over as self-owners I will show that these property rights – though not exhaustive of all the relations of justice between individuals – comprise some of our most important human rights, as well as providing a fundamental basis for others.

If property rights are rights of ownership, we must now identify what those rights of ownership are. A simple definition of ownership, provided by Reeve, states that if we say that 'A owns P' this means that,

1. A has a right to use P
2. Others may use P if, and only if, A consents
3. A may permanently transfer the rights under rules 1 and 2 to specific other persons by consent.<sup>229</sup>

This is a fairly basic definition, but describes the fundamental rights of ownership: rights to use that thing, to exclude others from using it, and to transfer it. The recurring theme of consent in this definition brings us back to the libertarian focus on non-interference. For a libertarian, property rights are distinctly negative: having a right to property does not mean a right to take property from others, but rather a right to work towards obtaining property for oneself.<sup>230</sup> The simple definition above conveys the fundamental rights of ownership, but these have been provided in far greater detail in an extensive characterization of ownership given by Honoré.<sup>231</sup> In the interests of precision, I shall present this at length.

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<sup>228</sup> Jan Narveson, "Libertarianism, Postlibertarianism, and the Welfare State," *Critical Review* 6, no. 1 (1992). p. 73

<sup>229</sup> Andrew Reeve, *Property, Issues in Political Theory* (London: Macmillan, 1986). p. 11

<sup>230</sup> See Hospers, *Libertarianism*. p. 61

<sup>231</sup> A. M. Honoré, "Ownership," in *Oxford Essays in Jurisprudence : A Collaborative Work*, ed. A. G. Guest (Oxford: Oxford University Press, 1961). p. 112

Honoré identifies eleven ‘incidents’ of ownership, which he considers to be the ‘necessary ingredients’ in any conception of ownership but which are not individually required in order for someone to be the ‘owner’ of something. In other words, they are all necessary for a full understanding of the term ‘ownership’ but they need not all be present for something to be owned. According to Honoré, if someone is the owner of object X then some or all of the following incidents must apply:

- (1) A right to possess X
- (2) A right to use X
- (3) A right to manage X (that is, a right to decide how and by whom X shall be used)
- (4) A right to the income from X (to the reward from allowing others to use X)
- (5) A right to the capital of X (including a power to alienate X and the liberty to consume, waste or destroy X)
- (6) A right to security (immunity from the expropriation of X)
- (7) The incident of transmissibility (a power to transmit X by sale, gift, or bequest to another)
- (8) The incident of absence of term (the lack of any term on the possession of these rights over X)
- (9) The prohibition of harmful use of X
- (10) A liability to execution (that is, certain judgements against him may be executed on X)
- (11) Residuary character (that is, an expectation that when rights that other people have in X terminate, those rights will revert back to him)

As noted above, Honoré does not believe that every incident must apply in order for someone to be said to ‘own’ something. I shall use this point to distinguish between full property rights and partial property rights. If each of the above incidents applies

then this is a case of a full property right.<sup>232</sup> If an individual enjoys only some of the above rights over a good, then they may still be said to own it but they will have only a partial property right in it. So, for example, if an individual has a right to possess something and to use it, but not to destroy it or sell it to others, then they have only a partial property right over it. I will argue that our self-ownership rights are full property rights.<sup>233</sup> This is in contrast to our rights over natural resources which I shall address in Part III, arguing that our individual property rights over these can only ever be partial.

The literature on property rights tends (perhaps unsurprisingly) to be concerned with legal rights rather than moral or natural rights. Arguably it is nonsensical to think of property rights as natural rights, since they rely on conventional arrangements set out and enforced by law.<sup>234</sup> This would exclude them from being human rights as I have defined them. Melden, for example, argues against Locke, claiming that,

[w]hen Locke attempts to sever the conceptual connection of property with legal statutes, by ascribing the right to property to men in the state of nature, the concept of property has been so far emasculated that to say that an object is someone's property borders on saying that it is at his hand or in his physical possession.<sup>235</sup>

I reject this claim. Even without a legally recognised property structure, it is not hard to conceive of a situation where one person has a greater moral entitlement over

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<sup>232</sup> Harris calls this 'full-blooded ownership' according to which "the person is entirely free to do what he will with his own, whether by way of use, abuse, or transfer." Harris, *Property and Justice*. p. 29

<sup>233</sup> Vallentyne, Steiner and Otsuka maintain that "full ownership is *not* the strongest set of ownership rights that a person can have in a thing. It is rather the strongest set of such rights *that is compatible with other people having the same rights over things*." Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried," *Philosophy and Public Affairs* 33, no. 2 (2005). p. 205 (emphasis in original). I acknowledge and accept this clarification.

<sup>234</sup> See Liam B. Murphy and Thomas Nagel, *The Myth of Ownership : Taxes and Justice* (Oxford: Oxford University Press, 2002)., quoted in Gerald Gaus, "Coercion, Ownership, and the Redistributive State: Justificatory Liberalism's Classical Tilt," *Social Philosophy and Policy* 27, no. 01 (2010). p. 260. Though Gaus does not support this view he provides a clear account of the argument that a government cannot (by definition) violate property rights through compulsory taxation, since it is the government that determines what property we have rights to in the first place.

<sup>235</sup> Abraham Irving Melden, *Rights and Persons, Values and Philosophical Inquiry* (Oxford: Blackwell, 1977). p. 179. See also Ellen Frankel Paul, who claims that "Locke's deduction of a right to property certainly suffered from lapses in logic", Ellen Frankel Paul, *Property Rights and Eminent Domain* (New Brunswick, N.J.: Transaction Books, 1987). p. 224

something than does another.<sup>236</sup> Simmons acknowledges that Locke may not have provided an exceptionally compelling defence of his view, but maintains that there is an enduring intuition that in labouring to create or improve something one acquires a special claim to it. Moreover, he argues,

It is not just law or convention or agreement that gives labourers special claim to the fruits of their labours. There is something natural about this claim, something it would be somehow wrong for law to contradict.<sup>237</sup>

Indeed, it is important for Locke, Simmons notes, that property is a natural right rather than one created in law, since anything created in law can be changed. This would mean that our property would not in fact be secure, which would clearly not be acceptable to Locke.

According to Wenar, however, the fact that there may be some morally compelling reason for believing it to be wrong to deprive someone of something they have worked for does not necessarily entail a property right. He argues,

There may well be a natural right to non-interference with resources that resembles a property right in many respects. ... Yet this natural right of non-interference falls short of being a strong property right.<sup>238</sup>

The intuition that we ought to refrain from interfering with someone's resources in a state of nature no longer holds, he explains, if they fail to use that resource, or waste it, or if they use it against others, or when it constitutes more than they need when other people go without. So, what we recognise as a moral entitlement may not be strong enough to be understood as a full property right.

If property rights were 'only' legal rights and not human rights, then they lose the overriding force that is the special province of human rights. Since libertarians reject positive human rights, the danger is not that that legal property rights could be

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<sup>236</sup> For support of the view that property rights can be moral rather than legal rights see Vallentyne, "Libertarianism and the State," p. 190

<sup>237</sup> A. John Simmons, *The Lockean Theory of Rights, Studies in Moral, Political, and Legal Philosophy* (Princeton: Princeton University Press, 1992). p. 223

<sup>238</sup> Leif Wenar, "Original Acquisition of Private Property," *Mind* 107, no. 428 (1998). p. 817

overridden by positive human rights. Rather, property rights that are founded only in law and do not have some wider moral basis that would make them human rights do not have the same priority as human rights. They could be overridden by other *legal* rights, for example, if they were to come into conflict. Indeed it has often been contended that property rights, though they perhaps fulfil a useful social function, cannot be absolute, and can justifiably be overridden in order to promote the wellbeing of others. Scanlon, for example, in responding to Nozick's claim that we have property rights over what we have received through contracting with others or through inheritance, argues that

there is no strong intuitive ground for thinking that these rights are absolute, and little ground for surprise at the suggestion that the pursuit of equality might call for their infringement.<sup>239</sup>

And yet if property rights are human rights, then they do carry the stringent prohibition against infringement held by other human rights, such as the right against murder and torture. I will argue that there are at least some property rights which are sufficiently morally compelling to be understood as (what Wenar calls) 'strong property rights'. If a property right over something is a natural right, grounded in morality, shared by all individuals universally – in short, if it observes all the criteria I set out at the beginning of the thesis, including compossibility – then such a property right would indeed be a human right. What remains to be seen is what items we can have a property right over, such that to deprive someone of that item would be to violate his human right.

To summarise, I am arguing that property rights can be natural rights and therefore that they can be human rights with the overriding force that that entails. If an individual has all of Honoré's incidents in respect of a good, then they have a full property right in that good. This, I shall argue, is precisely the nature of our property rights constituting self-ownership.

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<sup>239</sup> Thomas Scanlon, "Nozick on Rights, Liberty, and Property," *Philosophy and Public Affairs* 6, no. 1 (1976). p. 7

## A Property Right over the Body

Having property rights over the body is different from simply having rights concerning bodily integrity. I aim to show that seeing the rights regarding the body to be property rights adds something that is not covered by other rights.<sup>240</sup> Let us consider then how Honoré's incidents of ownership can be applied to the body. A right to possess one's body (incident 1), may appear to be a fairly empty statement, being as one cannot fail physically to have possession of one's body, but importantly Honoré talks of a *right* to possess the body. In other words, one has a right to possess the body that excludes all others from having this right.<sup>241</sup> It may be thought that this amounts to nothing more than prohibitions against others acting on my body without my consent – prohibitions that do not require the language of property. But the real contrast between someone with a full property right in their body, and someone with rights against others relating to the body but which are not property rights, is more readily seen with regard to some of the other incidents. On Honoré's characterisation, someone with full ownership over their body can use that body as they see fit (2), providing they do not use it in a harmful way against others (9), and this extends to a right to use their body in a way detrimental to it (5) – for example, committing suicide or taking harmful drugs; they have a right to decide how their body is to be used and whether or not others are permitted to use it (3), and they have a right to the income from allowing others to use their body if they decide to permit this (4); they have a right against being expropriated by others (6), and are permitted to sell themselves into slavery if they so wish, or to donate their organs after their death (7); there is no limit to the length of time for which one has a right to possess one's body (8), and if one does sell it to another for a fixed term, on expiration of this term ownership of the body will revert back to the individual with the original property right (11); finally, judgements against that individual may be executed on their body (10).

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<sup>240</sup> I will not be arguing, however, that body rights in themselves necessitate substantial property rights over external goods. See Samuel Wheeler, "Natural Property Rights as Body Rights," *Noûs* 14, no. 2 (1980).

<sup>241</sup> At least until this right is transferred. I shall say more on this point shortly.

If an individual has full property rights over their body, then all of Honoré's incidents of ownership must apply. Some of these are relatively uncontroversial, for example, the right to be able to use one's body as one wishes and the right not to have that body used by others. Rights to donate one's organs or to engage in activities harmful to one's body (such as smoking) are also rights that are readily recognised in many societies. A right to transmit the body by sale, however, is rather more controversial. Honoré believed that it was undesirable for someone to alienate his body, and Alexandra George has called into question whether a society would want to grant people "legally enforceable decision-making authority", partly for this reason.<sup>242</sup> Property rights over the body, she argues, are recognised in only a few cases, where it is deemed necessary to protect individual autonomy. But, arguably, refusing people property rights over their bodies is in itself an affront to autonomy. Otsuka, for example, argues that having the right to alienate one's basic liberties is more in-keeping with being treated as an autonomous agent than is denying people this right. Discussing what he calls a right 'not to be sacrificed' he says,

having the right to alienate this right enhances one's status, since it endows one with a power to bind oneself in the future in a manner that others must respect through noninterference. ... On the other hand, deprivation of one's right to alienate this right strikes me as a paternalistic curtailment of one's autonomy.<sup>243</sup>

So while Honoré may have a point about the undesirability of an individual alienating his body, and the negative consequences that may prevail following recognition of a right to alienate this right, preventing people from alienating their rights is arguably even more undesirable since this represents a restriction of autonomy. Regardless of its desirability, some argue that it is not even coherent to have a right to alienate one's body (I shall address this objection in due course), but such a right is necessary if people are to have (as I have argued they must) full property rights over their bodies. The alleged absence of some of the incidents with relation to the body – for example, "Restrictions on transfer and the absence of a

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<sup>242</sup> Alexandra George, "Is 'Property' Necessary? On Owning the Human Body and Its Parts" *Res Publica* 10, no. 1 (2004). p. 23

<sup>243</sup> Michael Otsuka, "Review: Kamm on the Morality of Killing," *Ethics* 108, no. 1 (1997). p. 206

liberty to consume or destroy’<sup>244</sup> – have led some to conclude that people have only limited property rights in their bodies rather than full ownership. It is accurate to state that full property rights in the body are rarely if ever recognised in law<sup>245</sup> but this does not alter the fact that the libertarian position is such that full property rights in the body ought to be respected. Full property right over one’s body offer more protection than if we were to stipulate merely that people’s bodies are not the sort of thing that can be owned. This latter status, for example, would do nothing to safeguard the income one can gain by allowing others to use one’s body. This demonstrates what can be gained by considering people to have a property right over the body.

## **A Property Right over the Faculties**

The three property rights that I propose constitute a right of self-ownership are naturally inextricably linked, but I believe it is worthwhile to spell them out individually in order to identify the separate components of self-ownership. Property rights over the body may be less controversial than may at first be thought, to the extent that some of Honoré’s incidents are taken for granted in most societies (such as a right to use one’s body) which would give at least a partial property right in the body. Property rights over one’s faculties (including labour, talents and abilities) may be more controversial, though, for while the body is often seen as inviolable, it is not uncommon to see faculties as common assets, rather than the rightful property of those people in whom those faculties reside, (especially when their residing within some people rather than others is often entirely arbitrary).<sup>246</sup> This would justify forcing some to provide a service to others, which self-ownership would not permit.

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<sup>244</sup> Munzer, *A Theory of Property*. p. 43. An individual would not have a liberty to destroy her body if the state would interfere with an attempt to commit suicide.

<sup>245</sup> The United States, for example, does not permit people to sell themselves into slavery, nor to transmit any of their vital organs while alive. See *Ibid*.

<sup>246</sup> See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999)., Andrew Kernohan, "Rawls and the Collective Ownership of Natural Abilities," *Canadian Journal of Philosophy* 20, no. 1 (1990)., Attracta Ingram, *A Political Theory of Rights* (Oxford: Clarendon Press, 1994) p. 209, Nagel, *Equality and Partiality*. p. 113

It may be proposed that seizing someone's labour is tantamount either to forcing them to use their body in ways they have not chosen, or that it involves being forced to give up that which one has produced through labouring. This would suggest that a right over one's labour is nothing more than a right over the body or over the labour product. I dispute this. While these ideas are certainly linked, it is possible to violate someone's property right over their labour without violating either of the other two property rights. Being forced to provide labour is separate from providing labour product. For example, an able-bodied person may be forced to care for a disabled one, providing a service which they have not contracted to supply, but this does not involve providing any product. Likewise, if one seizes the income that someone has earned through providing a service, then the service is provided willingly, so there has been no violation of rights over the body<sup>247</sup> and since no labour product was ever produced then this right has not been violated either. We can see, then, that it is coherent to think of a right over the faculties, including labour, to be distinct from the other two property rights constituting self-ownership.

It is important to distinguish the right to the faculties (including labour) from one of the incidents of a property right over the body that was considered earlier – the right to the income one can get from allowing others to use one's body. This is not the same as selling one's labour, as the income does not reflect the provision of any service (nor, for that matter, of any product). For example, I could rent my body to a novice beautician in order that she might practice her spray-tanning skills. The fact that my body is being used does merit an income, but as I need expend no effort in engaging in such a task (indeed, I may even permit her to practice these skills on my body when I am asleep), it would not be appropriate to consider this to be payment for labour. In contrast, if I demand an income as a reward for reading someone's palm, or for braiding their hair, then this is an income generated not through renting the body but through providing a service. Clearly, then the two rewards are distinct, as indeed are the property rights over the body and over the faculties.

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<sup>247</sup> Note that the income is from selling labour, not from allowing others to use the body.

## A Property Right over Labour Product

A property right over labour product is, for some, the archetypal right associated with use of the term self-ownership, much more so than the more broadly construed ‘control self-ownership’ (which I have argued in any case does not capture a truly libertarian understanding of self-ownership), or property rights over one’s body. Cohen considers “the right not to (be forced to) supply product or service to anyone” to be the “polemically crucial right of self-ownership”.<sup>248</sup> But here we have, in one breath, the ideas of product and service being merged together. These ideas have also been conflated previously by Nozick, who made the argument most vehemently against being forced to provide for others:

Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a property right in you.<sup>249</sup>

Tying together the ideas of forced work, unrewarded work and seizing the results of labour suggests equivalence between the faculties and the product which I do not believe is justified. No product can be created through labour alone. The product over which I am including a property right as a constituent of self-ownership is restricted only to those external objects that one can produce purely through exercising one’s faculties in conjunction with one’s body. While this undoubtedly represents the ‘fruit of one’s labour’ to some extent, this phrase is generally applied to that which one produces through labouring on external worldly resources (hence the literal ‘fruit’ analogy). I shall distinguish then between ‘labour product *simpliciter*’, which I shall define as that which is produced through exercising one’s faculties in conjunction with one’s body, and ‘the product of labouring on external worldly resources’. The consideration of property rights over worldly resources goes

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<sup>248</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 215

<sup>249</sup> Nozick, *Anarchy, State and Utopia*. p. 172

beyond the current assessment of the property rights which I claim constitute self-ownership.<sup>250</sup> A full discussion of property rights over external worldly resources and the products obtained through mixing labour with them is very pertinent to the question of self-ownership, since access to worldly resources is a requirement in order for self-ownership to be robust, as I shall explain in chapter five. However, for our present purposes it is not necessary to address this yet, so I will return to this matter in Part III of the thesis.

An example of the sort of labour product I am talking about here as a component of self-ownership is provided by Otsuka. He suggests the (admittedly fairly bizarre) example of a particularly hirsute individual weaving clothes out of her own hair.<sup>251</sup> Although examples of this kind are uncommon at best and improbable at worst, conceiving of such an example enables us to see the distinction between seizing one's labour, and seizing one's labour product. Forcing an adept weaver to weave hair belonging to another individual (for example) would be to seize labour, while to seize the clothes which that individual has woven with her own hair is to seize her labour product, since this has also involved the use of her bodily resources. The significance of this distinction will become plain when we come to consider world ownership and the permissibility (or otherwise) of various types of taxation.

These three property rights that constitute self-ownership are natural rights that are held by all universally. The self-ownership rights of all individuals can be upheld simultaneously, meaning that they represent a compossible set of rights. All that remains, then, for these rights to be human rights on the libertarian framework I set out in chapter one is that they fulfil the criteria of paramount importance. I maintain that to violate any of the property rights over the body, the faculties, or the labour product is either to invade bodily integrity or to deny people autonomous choice,

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<sup>250</sup> Note that my examples given above of providing a service to others (palm-reading and hair-braiding) in return for payment make no use of external worldly resources. When selling one's labour involves labouring on external resources there is generally the additional assumption that this means relinquishing not just one's labour but also what is produced from labouring on those external resources. For example, when the owner of an orchard hires people to pick apples, he pays for their labour on the understanding that they do not keep the apples that they pick.

<sup>251</sup> Otsuka, *Libertarianism without Inequality*. p. 17

both of which would be a great injustice. Hence these rights of self-ownership are human rights, which must be upheld as a matter of priority.

### ***Definitions: a comparison***

As I stated earlier, part of my aim in setting out my definition of self-ownership in three separate parts is in order to make it easier to see how it compares with the definitions of self-ownership given by others. This is worthwhile not only in the interests of situating my approach in the existing literature, but is also necessary in order to demonstrate how my definition is suitably similar to those of certain libertarians which justifies me in proclaiming my definition as one which libertarians can and ought to accept. In other words, I intend to show that my definition, rather than providing any real departure from existing definitions of self-ownership, serves more to clarify what current use of the term is already intended to convey.

Beginning with Locke, I suggested earlier that his reference to ‘property in his own person’ denotes an unhelpful approach to self-ownership which leaves its meaning fairly ambiguous. Locke defends a right over one’s labour, and over what one can produce with that labour, stating: “this *Labour* being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to”.<sup>252</sup> Setting aside for the moment (since that is the subject of future chapters) the fact that Locke thought that a right to labour conferred a right of ownership over *all* types of labour product – including that produced from labouring on external worldly resources – his approach is significantly similar to mine in that it advocates property rights over labour (though he says nothing specifically about other faculties such as talents and physical abilities) and over labour product. Where he and I differ significantly, however, is in the property right over the body.

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<sup>252</sup> Locke, *Two Treatises of Government*. Second Treatise, § 27

There is good reason to suppose that Locke did not support a property right over one's body. According to Leon Kass:

The 'property in his own person' is less a metaphysical statement declaring self-ownership, more a political statement denying ownership by another. This right removes each and every human being from the commons available to all human beings for appropriation and use. My body and my life are my property *only in the limited sense* that they are *not yours*. They are different from my alienable property – my house, my car, my shoes. My body and my life, while mine to use, are not mine to dispose of. In the deepest sense, my body is nobody's body, not even mine.<sup>253</sup>

This reading stems from Locke's claim that we are all owned by God.<sup>254</sup> Locke explicitly states that we do not have the right to sell ourselves into slavery, nor to commit suicide<sup>255</sup> which lends credibility to Kass's interpretation.<sup>256</sup> We can see then that my definition differs from what we can attribute to Locke, who would appear to support only partial self-ownership as I have defined it.<sup>257</sup>

My definition has distinct similarities with that proposed by Cohen:

each person enjoys, over herself and her powers, full and exclusive rights of control and use, and therefore owes no service or product to anyone else that she has not contracted to supply.<sup>258</sup>

What Cohen refers to as 'powers' captures what I have called 'faculties'. My definition also has strong similarities with that of Henry George, who referred to "the right of a man to himself, to the use of his own powers, [and] to the enjoyment of the

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<sup>253</sup> Leon R. Kass, "Is There a Right to Die?," *The Hastings Center Report* 23, no. 1 (1993). p. 38-9 (emphasis in original)

<sup>254</sup> See Locke, *Two Treatises of Government*. First Treatise § 53, Second Treatise § 6

<sup>255</sup> Ibid. §23. For the opposing view that we *are* permitted to enslave ourselves or to commit suicide, see Steiner, *An Essay on Rights*. p. 233

<sup>256</sup> This view is also reinforced by Kramer. Matthew H. Kramer, *John Locke and the Origins of Private Property : Philosophical Explorations of Individualism, Community, and Equality* (Cambridge: Cambridge University Press, 1997). p. 133

<sup>257</sup> While it is accurate to say that Locke would endorse only partial self-ownership I do not accept the unconventional communitarian approach attributed to Locke by Kramer, under which people have an obligation to promote the wellbeing of mankind, to an extent that may even confer an obligation to consent to being tortured or assaulted. See Peter Vallentyne, "Matthew H. Kramer, John Locke and the Origins of Private Property: Philosophical Explorations of Individualism, Community, and Equality," *Ethics* 109, no. 1 (1998). p. 202

<sup>258</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 12

fruits of his own exertions”.<sup>259</sup> This supports my view that an individual is a self-owner when they have property rights over the body, the faculties and labour product – what can be produced purely through exercising those faculties in conjunction with the body. My definition also picks up the themes identified by Otsuka of both the body and mind, and the income achieved from utilising the body and mind together. Though there are similarities between my definition and these definitions provided by others, it is necessary to have set out my definition in such detail, in order to see more clearly what each right amounts to and which specific property relations are involved when we talk of a right of self-ownership.

Before turning to address objections to my proposed definition of self-ownership I shall say a few words about self-ownership and autonomy. I discussed autonomy in the context of rights and justice in chapter one. I shall now briefly say a few words about its relationship specifically with the rights of self-ownership. This will in part inform my response to some of the objections levelled against the internal consistency of self-ownership which I shall address shortly. It will also form a point of reference for the next chapter when I turn to address the more substantial objections against self-ownership, one of which is grounded on the proposed link between autonomy and self-ownership.

Although self-ownership and autonomy are often considered to be inextricably linked libertarian concepts<sup>260</sup> this claim comes more often from opponents to libertarianism than from libertarians themselves. Let us first consider so-called ‘control self-ownership’, set out earlier, in which a self-owner is someone who simply has control over her body and powers, but in which there is no mention of property rights. This type of self-ownership I suggest *is* synonymous with autonomy, but I argued that this is not a definition that adequately captures the specifically libertarian values that ought to be incorporated within self-ownership, namely,

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<sup>259</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 236

<sup>260</sup> See for example Cohen, *Self-Ownership, Freedom, and Equality*. p. 236; Ingram: “libertarianism appeals to a background agreement on the importance of autonomy.” Attracta Ingram, *A Political Theory of Rights* (Oxford: Clarendon Press, 1994). p.85; Crisp: “Autonomy does involve certain rights of self-ownership”. Roger Crisp, "Autonomy, Welfare and the Treatment of Aids," *Journal of Medical Ethics* 15, no. 2 (1989). p. 72

property rights, especially property rights over labour product. It is not the case that self-ownership *is* autonomy, rather that self-ownership supports autonomy in the particular way in which autonomy is important to libertarians – in the way that is relevant in terms of a libertarian theory of justice – that is: in terms of non-interference.<sup>261</sup> Autonomy is the ability to control one’s life; self-ownership prohibits interference with the *exercise* of autonomy, but this is not the same as saying that it *provides protection* of or *promotes* one’s autonomy.

## **Objections**

### **Self-Ownership Is Incoherent: one cannot enslave oneself**

One common criticism of self-ownership is that if we are to have full ownership of the body and fulfil all of Honoré’s incidents of ownership then we must have the right to transmit it by sale, gift or bequest. While the right to sell or give away one’s labour is relatively straightforward, as is the right to sell, give away or bequeath the product of labour, problems arise concerning these rights in respect of the body – specifically with the act of selling it. It is not so difficult to conceive of selling or giving away individual body parts, and bequeathing is perhaps even easier to conceive, bearing in mind a general acceptance in many countries of the permissibility of donating one’s body parts and even one’s entire body after one’s death. To transmit one’s entire body while still alive, however, is more problematic, and even more so when done by sale rather than by gift. To transmit one’s body by sale is effectively to sell one’s self into slavery.<sup>262</sup> One cannot sell one’s body and at

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<sup>261</sup> Recall Rothbard’s claim that “self-ownership gives man the right to perform these vital activities without being hampered and restricted by coercive molestation.” Rothbard, *For a New Liberty: The Libertarian Manifesto*. p. 28-9

<sup>262</sup> The issue of selling oneself into slavery has been touched upon already in the context of Locke, who believed we belonged to God and so in fact were not ours to sell. He also believed that we do not have the right to commit suicide. This is in contrast to Nozick and Steiner, neither of whom shrink from admitting that one is permitted to enslave oneself. See Nozick, *Anarchy, State and Utopia*. p. 331; Steiner, *An Essay on Rights*. p. 232

the same time maintain property rights over labour and labour product, since there is no longer any body in which these rights may reside. Transferring a property right over the body in fact transfers all property rights, and this means that once someone has sold themselves into slavery, they become unable to receive the payment. In the words of one opponent, selling oneself into slavery “would extinguish the owner whose ownership was the ground of the transaction.”<sup>263</sup>

According to Honoré, the right to alienate something is one of the ‘cardinal features’ of the institution of property,<sup>264</sup> so even if I was advocating only partial ownership of the body, it is still important to identify how one can alienate one’s body in this way. I do not feel, however, that this criticism that one cannot sell one’s self into slavery need be so damning – a view that is shared by Narveson. He admits that to sell one’s self would be a “peculiar transaction”, since the person selling himself would not be able to collect the payment, but he maintains that this is not inconceivable. He cites slavery as a historical example of the literal treatment of bodies and minds as property, and argues that we could not identify anything wrong with the ownership of one individual by another if we did not support original ownership of one’s self.<sup>265</sup> It may be the case that the original self-owner cannot take payment for the sale of herself but, I suggest, this payment could go to a nominated third party. For example, a soldier may sign up to go to war knowing that he faces certain death but in order that a payment will be made to his family or loved ones. It is not inconceivable, then, that someone could sell themselves entirely (and permanently).

One recent libertarian thinker who, in contrast to Nozick and Steiner, does not permit the act of selling one’s self into slavery is Murray Rothbard. He argues:

a man can alienate his labor service, but he cannot sell the capitalized future value of that service. In short, he cannot, in nature, sell himself into slavery and have this sale enforced – for this would mean that his future will over his own person was being surrendered in advance. ... The concept of "voluntary slavery" is indeed a contradictory one, for so long as a laborer remains totally subservient to his master's will voluntarily, he is not yet a slave since his

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<sup>263</sup> Ryan, "Self-Ownership, Autonomy, and Property-Rights." p. 254

<sup>264</sup> Honoré, "Ownership." p. 113

<sup>265</sup> Narveson, *The Libertarian Idea*. p. 67-8

submission is voluntary; whereas, if he later changed his mind and the master enforced his slavery by violence, the slavery would not then be voluntary.<sup>266</sup>

But this appears to be an argument against ever being able to force an individual to do something that she has previously contracted to do. As I discussed in the previous chapter, duties to fulfil contracts are enforceable, though the duties themselves have been incurred voluntarily. Likewise, ‘voluntary slavery’ is voluntary to the extent that it was entered into voluntarily, but there is nothing contradictory in enforcing that contract once it has been voluntarily entered into. Rather, it appears that a greater affront to one’s autonomy consists in being forbidden, for the sake of one’s future will, from voluntarily entering into such a contract. Rothbard’s position is therefore contradictory.

To transmit one’s self entirely by sale is taking self-ownership rights to the very extreme but there are many other more limited ways in which we can conceive of selling one’s body to others. Nozick, for example, believes that it is unlikely that people will sell themselves completely into slavery, but maintains that they may sell some of the rights in themselves to others.<sup>267</sup> I also find this eventuality plausible. Consider this example: I have a right to decide whether or not to take drugs, but if I volunteer for clinical trials and make a contract with a pharmaceutical company by which I must take certain drugs not of my choosing, then this right is no longer mine but belongs to the company to which I have sold it. In this way domination may arise of some people over others. But, Nozick argues, since it arises “by a series of legitimate steps, via voluntary exchanges from an initial situation that is not unjust, it itself is not unjust.”<sup>268</sup> This claim of Nozick’s is by no means without its critics<sup>269</sup> but it is not implausible that such a contractual agreement could be acceptable to many – perhaps more so than other practices that proper recognition of self-ownership would permit, such as prostitution or the sale of a kidney. Some people may find these examples troubling, for the reason that an individual would arguably not engage in prostitution, sell a kidney, or sign up for clinical trials unless their financial situation

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<sup>266</sup> Murray Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998). p. 40-1

<sup>267</sup> Nozick, *Anarchy, State and Utopia*. p. 282

<sup>268</sup> *Ibid.* p. 283

<sup>269</sup> See Cohen, *Self-Ownership, Freedom, and Equality*. p. 23, E Quest, "Whatever Arises from a Just Distribution by Just Steps Is Itself Just," *Analysis* 37 (1977).

had become so desperate that their only alternative is destitution or worse. An analogous situation which does not have the same bleak undertones is one in which an individual agrees to be a model for a hairdresser on the understanding that she will have no influence on the hairstyle she is given. She has contracted to give up her rights to determine what is to happen with her body – permitting a relation of domination of one individual over another – albeit only in the trivial matter of hairstyles.

The libertarian position of full property rights over the body that I am advocating must permit an individual to sell herself into slavery, since a prohibition on this would amount to an unjust curtailment of her autonomy for entirely paternalistic reasons. In the words of Vallentyne, Steiner and Otsuka: “the affirmation of this right of transfer is more in keeping with our status as autonomous, rational choosers than its denial.”<sup>270</sup> That is not to say that this practice is necessarily condoned even by libertarians who grant its permissibility, but I have attempted to show that – while it might be undesirable for people to become slaves voluntarily – it is not inconceivable.

### **Self-Ownership Is Inconsistent: conflict between the right over the body and the right over the labour product**

A second objection arises when we consider the right to the body together with the right to the labour product. Arguably these rights conflict with one another, in a way that has come to be known as the Paradox of Self-ownership. The paradox is this: we cannot own ourselves if we also own the product of our labour, as each person is the product of another’s labour. This argument was initially made by Okin, who criticised the self-ownership basis of Nozick’s entitlement theory on account of what she considered to be a significant oversight:

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<sup>270</sup> Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried." p. 212, n.21

persons are not only producers but also the products of human labor and human capacities. Anyone who subscribes to Nozick's principle of acquisition must explain how and why it is that persons come to own themselves, rather than being owned, as other things are, by whoever made them.<sup>271</sup>

If I want to maintain the status of people as self-owners, rather than accept simply that people are not the sort of thing that can be owned – either by themselves or anyone else – then I will need to find some way of rescuing the thesis of self-ownership from this apparently fatal blow. Locke avoided the paradox by insisting that men did not own their bodies, which are in fact the property of God – God is the true creator of man, not the parents.<sup>272</sup> However, Nozick rightly observes that if we cannot own something that has been made by God then this will extend to everything else in the world as well, prohibiting ownership of anything at all.<sup>273</sup> Nozick refers to a few avenues by which the paradox could be escaped<sup>274</sup> none of which he finds very persuasive. So, having touched on the problem of the paradox, he then fails (as Okin rightly points out) to explain why it is not sufficient to undermine the entire thesis of self-ownership. Rothbard responds to the paradox by biting the bullet and admitting that parents own their children, but with the caveat that “the parental ownership is not absolute, but of a ‘trustee’ or guardianship kind”.<sup>275</sup> Nonetheless he concludes that “the parent should have the legal right not to feed the child, i.e. to allow it to die”.<sup>276</sup> I share Ryan's position, as I should think do most people, that this “is a view with little to be said for it”<sup>277</sup> and in any case this does not help to explain how children which are the property of the parents ultimately become self-owners in their own right.

A more engaging attempt to defeat the question of the paradox of self-ownership is offered by Steiner, who maintains that there is a significant difference in the way that

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<sup>271</sup> Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989). p. 79. Note that Okin refers to ‘persons’ owning themselves, although I do not think this needs to cloud the issue here.

<sup>272</sup> See Locke, *Two Treatises of Government*. First Treatise § 53, Second Treatise § 6

<sup>273</sup> Nozick, *Anarchy, State and Utopia*. p. 288

<sup>274</sup> *Ibid.* p. 288-9

<sup>275</sup> Murray Rothbard, *The Ethics of Liberty* (New York: New York University Press, 2003). p. 100

<sup>276</sup> *Ibid.*

<sup>277</sup> Ryan, "Self-Ownership, Autonomy, and Property-Rights." p. 244

people are produced in contrast to other things, which justifies distinguishing between them when it comes to determining property rights over them. He attempts to avoid the paradox by introducing the notion of germ-line genetic information. According to Steiner, when parents produce a child it is not accurate to say that they have produced him through labour alone. Rather, “his production required them to mix their labour with natural resources in the form of *germ-line genetic information transmitted from his grandparents.*”<sup>278</sup> Steiner argues that germ-line genetic information should be seen as a natural resource, in the same way as external worldly resources, rather than as something which is owned as part of the body. Self-ownership as I have defined it does not entail property rights over external worldly resources, therefore neither does it entail a property right over Steiner’s conceptualisation of germ-line genetic information.<sup>279</sup> Producing a child is therefore different from producing (as in the example given earlier) clothes woven from one’s own hair because the germ-line genetic information upon which the faculties are exercised is not – unlike the hair – something over which people have rights as part of their self-ownership. Ownership of a child is therefore limited, as not all the factors entering into its production were owned by the producer. Steiner calls this ‘an encumbered title’, rather than an instance of full ownership.<sup>280</sup> However, I do not believe this has really helped us to avoid the paradox. The same could be said of all labour products which involve the use of external worldly resources. This problem has been identified by Curchin, according to whom Steiner

fails to give a satisfactory account of why the encumbrances on parental ownership of children should be different in character from the encumbrances on ownership of all other products (including animals) created by mixing labour with natural resources.<sup>281</sup>

In the end Steiner has shown merely that the extent of the ownership of the labour product is determined by the status of external worldly resources. The problem being

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<sup>278</sup> Steiner, *An Essay on Rights*. p. 248 (emphasis in original.)

<sup>279</sup> For self-ownership to be effective, however, it is necessary for people to have *access* to external worldly resources but not necessarily that they have *property rights* over them. I shall address this issue fully, including a discussion on what is meant by ‘natural resources’ in chapters 5 and 6.

<sup>280</sup> Steiner, *An Essay on Rights*. p. 275

<sup>281</sup> Katherine Curchin, "Debate: Evading the Paradox of Universal Self-Ownership," *Journal of Political Philosophy* 15, no. 4 (2007). p. 487

addressed here is how someone can be a self-owner when their parents have *any* title over them at all – encumbered or otherwise. So the appeal to germ-line genetic information as a natural resource has not in fact addressed the crux of the problem, and not enabled us to avoid the paradox. Steiner responds that the right over children, unlike the right over other products (including livestock), expires when a child reaches majority.<sup>282</sup> Children *become* self-owners, but other products do not. However, it now appears that what makes children different from other products is not that they have been produced with the use of germ-line genetic information, but some other factor. This is the idea that I shall develop now – that it is not a difference in the *production* of children that is significant, but that there is something special about people which means that those who make them cannot own them.

To say that there is something special about people that means that they cannot be the property of those who produce them is not the same as saying that people cannot be owned. Indeed, I have argued that it is one of the rights of self-ownership that an individual *can* be (and *is*) owned – by himself. Nor is it the same as saying that people cannot be owned by others – again, it is a requisite of self-ownership that people are able to sell themselves and to become (with their consent) the property of others. Rather, the claim is that producing something by mixing one's labour with one's body is not enough to confer a property right to that product when that product is a human being. So what is it that distinguishes people from other labour products? The primary difference is the presence of something which I have already identified as a recurring theme throughout this thesis: autonomy. Having autonomy, I argue, is a sufficient condition for exempting one from being seen as a labour product and which instead confers the rights of self-ownership. Having autonomy distinguishes people from (for example) hair-woven clothes in a morally significant way which justifies relinquishing the right to labour product in the first case but not the second. For this reason I believe it is appropriate to reformulate the conception of a right to the product of labour thus: we have a property right over what we can produce through exercising our faculties in conjunction with our body *except* in the instance where that product is itself an autonomous being. In other words, people

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<sup>282</sup> Hillel Steiner, "Debate: Universal Self-Ownership and the Fruits of One's Labour: A Reply to Curchin," *Journal of Political Philosophy* 16, no. 3 (2008). p. 154

have the right to the produce of their labour *only if* that product does not itself have claims to self-ownership on account of having autonomy.

The assertion that having autonomy is sufficient to exempt something (or indeed *someone*) from being the property of its producers amounts to the claim that having autonomy confers rights of self-ownership over an individual which override the self-ownership rights of the producer. The producer does not have a right to that particular product of exercising their faculties in conjunction with their body. However, this is not the same as saying that the right to the produce of labour can be always or routinely overridden by considerations of autonomy. Curchin denies that libertarians can consistently uphold autonomy as an overriding consideration when it comes to avoiding the paradox but then reject it as a consideration when it would entitle, for example, a starving individual to some of another person's surplus food. She maintains that this would be a slippery slope – if some entitlements can be overridden in the interests of autonomy then surely all entitlements could be called into question.<sup>283</sup> However, these cases are not analogous, since only the former involves interference. On the libertarian account, self-owners must be permitted to exercise their autonomy, and not interfered with in their attempt to do so, but it is not a requirement that their autonomy ought to be *promoted*. The right over the produce of labour cannot be overridden in order to promote autonomy generally (whether the autonomy of others or that of the producer), but only to recognise the autonomous nature of that so-called product.

It may be queried whether children ought to be seen as autonomous beings, at least at a very young age. If young children are not sufficiently autonomous then they would become self-owners and cease to be the property of their parents only once they achieve autonomy. This approach manages to avoid the paradox, as a child would not simultaneously be a self-owner and the property of someone else in the capacity of that person's labour product. However, this would mean that, until they achieve autonomy, children are the rightful property of their parents, and if parents have full property rights over them then this would include rights to sell, rent out, destroy, and

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<sup>283</sup> Curchin, "Debate: Evading the Paradox of Universal Self-Ownership." p. 493-4

so on. Needless to say, this conclusion must be avoided. We could go some way towards doing this by altering the sufficient condition to having the *potential* for autonomy, which would make children self-owners upon birth, but this would still not extend to individuals who may never achieve autonomy, having been brain damaged at birth, for example. This raises the question whether autonomy is a *necessary* condition for self-ownership, as well as being a *sufficient* condition. Can someone or something be a self-owner without being autonomous? I am inclined to say that they cannot. This stems from the claim I have made that having autonomy is a necessary condition for something to cease being the labour product of others. Ceasing to be the labour product of others is a necessary condition of being a self-owner, and therefore, to this extent, being autonomous is also a necessary condition. And yet, if a producer voluntarily relinquished her property title over a product, this would obviously not be sufficient to confer self-ownership on that thing, just as abandoned garments of hair-woven clothes would not be self-owners. This leaves the status of non-autonomous humans rather nebulous. While it may be implausible to confer self-ownership in the absence of autonomy, it is certainly objectionable for people such as these to be considered to be mere property. Arguments could be made to the effect that something particular about humans means that ownership of them does not include rights to destroy, kill and so on<sup>284</sup> but in the absence of appealing to some common characteristic such as autonomy, this response is rather unsatisfactory. This is a matter, then, which will require further thought, but I am unable to give it any further attention here.

Making an exception of people such that they do not count as labour products in the same way as non-autonomous objects, and that they are therefore not the property of those who ‘produced’ them, could be seen as an arbitrary stipulation, and not one that can be derived from libertarian first principles. This may seem to be the case in Nozick’s work, if you consider property rights and his entitlement theory to be the

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<sup>284</sup> This is similar to Nozick’s position, that something specific about belonging to the human race enables us to treat severely handicapped humans differently from animals or inanimate objects, even if they do not have the characteristics (such as autonomy or rationality) which traditionally determine our treatment of humans. See Nozick, “About Mammals and People”, quoted in Daniel Dombrowski, *Babies and Beasts: The Argument from Marginal Cases* (Illinois: University of Illinois Press, 1997). p. 158-9

foundation of his theory. However, MacIntosh argues that the foundation for Nozick is in fact liberty, and we *can* derive from this – non-arbitrarily – a right of self-ownership for the ‘produced’ individual which overrides the property right of the ‘producer’. He claims:

Nozick defends negative liberty first, property second. People are not owed liberty because they may own things; they may own things because they are owed liberty, and so may own anything – and only things – their ownership of which does not interfere with another’s liberty. ... So a person is the one thing the mere making of which cannot *ever* – because of what it is – entitle the maker to its use, for that would deprive it of its own liberty.<sup>285</sup>

On my account, the foundation is the non-interference of autonomous beings. It is this that grounds the property rights, not the other way around, so there is nothing arbitrary about the property rights being determined by these criteria.

## **Conclusion**

In this chapter I proposed a definition of self-ownership whereby self-ownership amounts to three property rights – over the body, over the faculties, and over what one can produce through exercising those faculties in conjunction with the body (what I have called the labour product). This definition captures the predominant impression conveyed in the libertarian literature while clarifying precisely the property rights that concern self-ownership. I have also attempted to defend self-ownership as a coherent and internally consistent concept, including stipulating that autonomy is a sufficient condition of being a self-owner, which overrides the right of the producer to the labour product, in order to avoid the paradox of self-ownership. As yet I have only attempted to defend my definition against criticisms concerning its coherence and consistency. What follows in the next chapter is a defence against more substantial objections to self-ownership, and what it would mean to uphold it.

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<sup>285</sup> Duncan MacIntosh, "Who Owns Me: Me or My Mother?," in *Liberty, Games and Contracts: Jan Narveson and the Defence of Libertarianism*, ed. Malcolm Murray (Aldershot: Ashgate Press, 2007). p. 168

## Chapter 4: Defending Self-Ownership

### *Introduction*

In the previous chapter I defined full self-ownership as constituting three property rights – over one’s body, one’s faculties, and the product of exercising those faculties in conjunction with the body. I defended it as a coherent concept that makes a significant contribution to protecting people and their rights. The aim of this chapter is to defend it against more substantial objections, which have been posed most forcefully by G.A. Cohen. Cohen initially saw a great attraction in the idea that every individual is what he described as “the morally rightful owner of himself”<sup>286</sup> but he later detected a clash between the principle of self-ownership and the substantial egalitarianism that he advocates. He came to believe the best way to undermine libertarianism is to criticise self-ownership. While he does not feel that the principle of self-ownership can be refuted (and so does not attempt to do so), he believes he can say enough to diminish its appeal.<sup>287</sup> In this defence I will attempt to show that Cohen’s criticisms are overstated and that self-ownership can maintain its appeal.

### *Cohen’s Criticisms of Self-Ownership*

Recall that Cohen’s definition of self-ownership is one which I believe captures the key libertarian values, even though it does not use the language of property rights.

His definition is this:

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<sup>286</sup> Cohen, "Self-Ownership, World-Ownership and Equality." p. 109

<sup>287</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 18, 230. Fox-Decent formulates a conceptual attack which he believes is superior to Cohen’s since it *does* attempt actually to refute self-ownership. He argues: “people can legitimately claim to be harmed if they are not in that outcome in which they are doing as well as they could.” E. Fox-Decent, "Why Self-Ownership Is Prescriptively Impotent " *Journal of Value Inquiry* 32, no. 4 (1998). p. 501. According to Fox-Decent, the claim that self-ownership protects against harm is ineffective since it doesn’t protect against being harmed in this way. However, by appealing to the doctrine of actions and omissions, libertarians would simply reject that this counts as harm in the relevant sense of interference.

The libertarian principle of self-ownership says that each person enjoys, over herself and her powers, full and exclusive rights of control and use, and therefore owes no service or product to anyone else that she has not contracted to supply.<sup>288</sup>

Cohen outlines what he considers the libertarian position to be regarding the dangers of rejecting self-ownership and the benefits of affirming it, and then proceeds to argue against it. He states,

that forthright denial of self-ownership does not mean endorsing slavery, nullifying human autonomy, and treating people as means rather than as ends, and that affirming self-ownership threatens autonomy and provides no guarantee at all against a utilitarian use of people.<sup>289</sup>

I will concede that Cohen has a point about the dangers of denying self-ownership – those listed above are over-stated. However, I will reject the claim that affirming self-ownership threatens autonomy on any sort of understanding of autonomy that a libertarian would accept. I will also argue that affirming self-ownership *does* provide a guarantee against a utilitarian use of people, and it is precisely this that represents the greatest danger of denying self-ownership, which Cohen has not fully addressed. The main body of this chapter will be constituted of four parts, concerning the three issues Cohen raises above – slavery, autonomy, and the coercive use of people for the benefit of others – and an additional objection he makes on the basis of the claim that self-ownership conflicts with equality. In each of these parts I will demonstrate where Cohen’s objections may be sustained, but more importantly where they fail to undermine self-ownership and therefore fail to pose an adequate threat to libertarianism.

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<sup>288</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 12

<sup>289</sup> *Ibid.* p. 18

## Self-Ownership and the Endorsement of Slavery

The issue of slavery was touched upon in the previous chapter with reference to the property right over the body and whether it is permissible to alienate that property, for example, by selling one's self into slavery. The concern here is not whether self-ownership can permit slavery, or whether the voluntary enslavement of oneself is a coherent concept. Rather, what is at issue is whether the *absence* of self-ownership necessitates the *presence* of slavery.

Steiner claims that each individual's bundle of original property rights must include at least himself. For if someone is part of the bundle belonging to another then that first individual can have no rights at all.<sup>290</sup> The implication is that self-ownership is the only alternative to slavery: if we do not belong to ourselves then we must belong to someone else; either we are self-owners or we are slaves. As slavery is not to be tolerated, the argument goes, we must therefore be self-owners.

Cohen rejects this explicitly, stating "absences of self-ownership need not be presences *pro tanto* of slavery".<sup>291</sup> This position is shared by Harris, who states, "From the fact that nobody owns me if I am not a slave, it simply does not follow that I must own myself. Nobody at all owns me, not even me."<sup>292</sup> He refers to this as the 'spectacular *non sequitur*' of self-ownership. According to this position, it is not necessary that I must own myself if I am to avoid being the property of others. In fact it is not necessary to think that the self ought to be owned by anyone at all. Rather, one could adopt the view that people are simply not the sort of thing that can be owned, by oneself or by anyone else. If part of the appeal of self-ownership is that it is the only or the best way to protect against enslavement, then undermining this premise will help to undermine its appeal. In the last chapter I rejected the idea that people are not the type of thing that can be owned, arguing that we can make sense of property rights over the self. I concede, though, that it is implausible to claim that slavery and self-ownership are exhaustive of the status of human beings. Even if

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<sup>290</sup> Steiner, *An Essay on Rights*. p. 231

<sup>291</sup> See Cohen, *Self-Ownership, Freedom, and Equality*. p. 233.

<sup>292</sup> Harris, *Property and Justice*. p. 196

people are the sorts of things that *can* be owned, it does not follow that they *must* be owned, any more than any other thing must be owned at any given time.

Cohen also addresses Nozick's claim that "Taxation of earnings from labour is on a par with forced labour"<sup>293</sup> by arguing that "a limited dose of forced labour is massively different, normatively, from the lifelong forced labour that characterises a slave."<sup>294</sup> Again, I concede that these cases are not morally equivalent, but that is not to say that they are not on the same spectrum. While it is an overstatement to say that taxation is tantamount to slavery, this does not in itself demonstrate that there is no unjust coercion in depriving people of the property that constitutes their self-ownership rights.<sup>295</sup> Cohen counters that Nozick cannot maintain that taxation to support the minimal state is permissible while redistributive taxation is not, as both will surely involve coercion in precisely the same way.<sup>296</sup> However, this is a point I have already happily conceded in chapter one: in the interests of consistency a libertarian must reject positive human rights to the provision of security, for example, including a police force, law courts and so on, to precisely the same extent as she rejects positive human rights to provision of welfare. From my perspective, then, Cohen's criticism does nothing to undermine the claim that taxation for provision of services (at least where people have not had the option of opting out) is an unjust affront to self-ownership. I maintain that property rights over the self do provide people with greater protection than is afforded by other rights, since they cover a wide variety of claims, powers and immunities, and they have the overriding priority that is the special feature of human rights. While lacking self-ownership need not make one a slave, I maintain that having self-ownership is the most effective way of avoiding being *treated as* a slave. This is a theme we will return to in the third part of this chapter, on the coercive use of people for the benefit of others.

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<sup>293</sup> Nozick, *Anarchy, State and Utopia*. p. 169

<sup>294</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 231

<sup>295</sup> For the time being, this argument extends only to a prohibition on taxing people of their labour product (that which is produced through exercising faculties in conjunction with the body alone), but not taxing the product of labouring on external worldly resources, which is a separate issue. This discussion will be taken up in Part III.

<sup>296</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 235

## Self-Ownership and Autonomy

Cohen attributes to libertarians (as supporters of self-ownership) the claim that denying self-ownership would mean nullifying human autonomy. Cohen not only rejects this claim, but also aims to show that affirming self-ownership actually threatens autonomy.<sup>297</sup> The success of this attack will depend largely on whether Cohen is referring to autonomy in the way in which I have argued a libertarian understands autonomy. If so then he will have shown that there is an inconsistency between the two concepts and that self-ownership undermines the very values it is meant to protect. This would rob libertarianism of one of its fundamental bases of appeal. But if not, then he will have done nothing more than to demonstrate a clash of basic principles between the libertarian and the non-libertarian. I argue that he has done the latter.

The relationship between self-ownership and autonomy is not self-evident, but Cohen appears to take such a relationship for granted. He argues: “Many libertarians say that people control their own lives, or enjoy autonomy, if and only if they possess the rights constitutive of self-ownership”.<sup>298</sup> In other words, only with the rights of self-ownership can people enjoy autonomy. Seeing as it is his aim to call into question the wisdom of drawing such a close connection between the two (self-ownership and autonomy), it is fair to question first whether Cohen is justified in attributing this view to libertarians.

I have previously provided a definition of autonomy as being in control of one’s own life. I further stipulated that (on a libertarian account) the free exercise of autonomy – that is: the ability to control one’s life without interference from others – is a concern in terms of justice, but that the protection of autonomy (providing measures to prevent others from interfering) and promotion of autonomy (enabling people to control their lives, perhaps by providing them with the necessary resources or opportunities) is not. In order to avoid the paradox of self-ownership I also claimed

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<sup>297</sup> Attracta Ingram also makes this objection. See Ingram, *A Political Theory of Rights*. p. 158-60, 219-20

<sup>298</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 236

that having autonomy was a sufficient condition for being a self-owner and that this overrides the right over labour product. One does not have a property right over one's labour product if that product is itself autonomous. However, this does not amount to the claim that the property right over labour product can generally be overridden by concerns of autonomy. From a libertarian perspective, then, it is not permissible to violate any of the property rights of self-ownership in order to promote the autonomy of others.

My approach to autonomy is the same as Cohen's only to the extent that we both understand autonomy to mean the ability to control one's life. We then diverge, however, in what it means to 'control one's life', or what manner of being able to control one's life is important for a theory of justice. Only what is important as a matter of justice is the concern of rights, and only that which concerns rights is relevant to self-ownership. Self-ownership, as I have explained previously, supports autonomy only in the way that autonomy is relevant (according to libertarians) in terms of justice. In other words, self-ownership supports the exercise of autonomy without interference. This is markedly different from saying that self-ownership supports the promotion of autonomy, or the provision of protective measures. The relationship between self-ownership and autonomy is then not as straightforward as Cohen suggests. Let us see now, then, how Cohen talks about autonomy, and how his arguments can be countered.

According to Cohen, autonomy is a matter of degree, and it is implausible to consider someone to be entirely lacking in autonomy if their self-ownership is incomplete in any way. Likewise, it is implausible to suggest that autonomy cannot be improved once self-ownership rights are upheld. (In fact, he considers these proposals "preposterous"<sup>299</sup>). For this reason, Cohen takes the proposed link for libertarians between self-ownership and autonomy to be "that there is more autonomy under universal complete self-ownership than under any alternative

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<sup>299</sup> Ibid. p. 237

dispensation”.<sup>300</sup> In response to the claim (that he attributes to libertarians) that there is more autonomy when there is self-ownership, Cohen argues,

there is good reason to suppose that, at least in a world of people with different measures of talent, self-ownership is hostile to autonomy, for, in such a world... the self-seeking authorized by self-ownership generates propertyless proletarians whose life prospects are too confined for them to enjoy the control of a substantial kind over their own lives that answers to the idea of autonomy. Accordingly, if everyone is to enjoy a reasonable degree of autonomy, it is necessary, at least in some circumstances, to impose restrictions on self-ownership.<sup>301</sup>

In other words, a person’s faculties (including talents, physical (in)capabilities and ability to labour) affect the options available to him. Self-ownership as I have defined it assures to each self-owner the product of exercising their faculties in conjunction with their body<sup>302</sup> and this reinforces the natural inequalities in these faculties (and in the body). This will mean that those with inferior abilities could be left without substantial control over their lives, and therefore they do not have a reasonable degree of autonomy. From this argument, Cohen concludes that self-ownership can be hostile to autonomy. Furthermore, even when natural talents are equal, according to Cohen, self-ownership may not bring about the most autonomy:

For autonomy, the range of choice you have in leading your life, is a function of two things: the scope of your rights over yourself, with which it varies positively; and the rights of others over themselves and over things, with which it varies variously.<sup>303</sup>

In other words, according to Cohen, one’s autonomy is affected not only by changes in one’s own rights, but also by changes in the rights of others. So my autonomy could be improved either by having more rights myself, or by restricting the rights of others. It is for this reason that Cohen states: “We can all benefit in terms of autonomy if none of us has the right to do certain things.”<sup>304</sup>

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<sup>300</sup> Ibid. p. 236-7

<sup>301</sup> Ibid. p. 237

<sup>302</sup> The extent to which people have property rights over the products of exercising their labour over external worldly resources is something I consider in the following chapters.

<sup>303</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 237

<sup>304</sup> Ibid. p. 237

Firstly, I dispute Cohen's assessment of the libertarian declaration of the relationship between self-ownership and autonomy. Libertarians do not argue that there is 'more' autonomy under self-ownership than without it, but rather that autonomy is most effectively respected under self-ownership in the sense that is relevant to justice. In other words, it is not accurate to say that libertarians claim that self-ownership is the best way to promote autonomy. In fact libertarians do not support the *promotion* of autonomy at all. Cohen's talk of confined life prospects – the idea that the options available to someone are insufficient in quantity or range – goes beyond the more limited libertarian understanding of how autonomy must be handled, on which it is a matter exclusively of non-interference. Only when these life prospects are confined *on account of* human interference can this be a relevant way of looking at autonomy for the libertarian. Moreover, the argument that everyone will benefit in terms of autonomy if we are not allowed to do certain things is not something I or any libertarian would dispute. People have more control over their lives if others are prevented from behaving in certain ways. Self-ownership itself prevents people from behaving in ways that would violate others' self-ownership rights, for example by harming their body or depriving them of the product of labouring on their personal resources. One person is only able to exercise autonomy if others are prohibited from interfering with his exercise of that autonomy. Cohen's point above is therefore not necessarily a controversial one, even among libertarians. People *should* be prevented from doing 'certain things', but in a way that would *uphold* self-ownership, not restrict it. The view that libertarians do not share is the suggestion that we ought to prevent people from doing certain things that do not directly interfere with others, in order to *enable* others in some way, rather than simply to remove the cause of interference. Cohen has given no reason to suppose that those 'certain things' which none of us has the right to do are the things associated with affirming self-ownership rights, rather than activities that are directly harmful to others and which self-ownership rules out already.

Cohen makes two further arguments to the effect that self-ownership should be abandoned in favour of autonomy, one following Raz and one from Green. These

arguments are presented very briefly and with considerable quotation from the author in question (as will become apparent in the exposition below) but I shall attempt to elaborate on the main points. The first begins with Raz's argument that:

some collective goods are intrinsically desirable if personal autonomy is intrinsically desirable. If this is so then right-based theories cannot account for the desirability of autonomy.<sup>305</sup>

From this, Cohen reasons that self-ownership – “a paradigm case of a rights-based theory” – cannot account for the desirability of autonomy, and therefore cannot cater adequately to it.<sup>306</sup> Quoting again from Raz:

A person is autonomous only if he has a variety of acceptable options available to him to choose from, and his life became as it is through his choice of some of these options.<sup>307</sup>

Furthermore, Cohen accepts Raz's claim that “the existence of many options consists in part in the existence of certain social conditions”<sup>308</sup> and he reasons that these social conditions include “the availability of collective goods such as educational and welfare institutions.”<sup>309</sup> As these social conditions are necessary for the existence of many options, and the existence of many options is necessary for autonomy, Cohen concludes that “provision of such [collective] goods must be assured for autonomy to prevail”<sup>310</sup> and that the provision of those goods, being (in Raz's words)

constitutive of the very possibility of autonomy... cannot be relegated to a subordinate role, compared with some alleged right against coercion, in the name of autonomy.<sup>311</sup>

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<sup>305</sup> Raz, *The Morality of Freedom*. p. 203, quoted in Cohen, *Self-Ownership, Freedom, and Equality*. p.237-8

<sup>306</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 238

<sup>307</sup> Raz, *The Morality of Freedom*. p. 204, quoted in Cohen, *Self-Ownership, Freedom, and Equality*. p.238

<sup>308</sup> Raz, *The Morality of Freedom*. p. 205, quoted in Cohen, *Self-Ownership, Freedom, and Equality*. p.238

<sup>309</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 238

<sup>310</sup> *Ibid.* p. 238

<sup>311</sup> Raz, *The Morality of Freedom*. p. 207, quoted in Cohen, *Self-Ownership, Freedom, and Equality*. p.238

In other words, autonomy requires the provision of certain goods such as educational and welfare institutions since this is the only way to ensure that everyone has a sufficient range of acceptable options, which is constitutive of autonomy. This cannot be sidelined by mere rights against interference from others. Self-ownership rights safeguard the ownership of labour product and so would not permit the sort of taxation which would be required to ensure the provision of such goods as educational and welfare institutions. Therefore, Cohen claims, self-ownership is hostile to autonomy.

Firstly, it must be noted that the only type of labour product that is safeguarded by self-ownership as I have defined it is the product of labouring on personal resources – the product of exercising one’s faculties in conjunction with the body. We have not yet considered the nature of the rights over the products of labouring on external resources, and it remains to be seen whether self-ownership can permit the taxation necessary for the provision of collective goods on the basis of less-than-full ownership rights over worldly resources and what can be produced from labouring on them. Moreover, from a libertarian perspective collective goods are not so tied up with autonomy, because justice does not require the promotion of autonomy; all that the libertarian position would sanction is non-interference. There is no contradiction here, since the libertarian does not believe that the mere fact that people have less than a sufficient range of acceptable alternatives is problematic in terms of justice.<sup>312</sup>

The second argument from Cohen that self-ownership cannot be justified on the grounds of autonomy comes from Green.<sup>313</sup> Using the example of an artist, he argues that for an artist to be autonomous he must have opportunities to pursue his art. This will impose obligations on others. However, for the artist to be autonomous it is not a requisite, he claims, that he must have a property right in what he can produce with his talents. This property right *is* a requisite of self-ownership, so, argues Cohen, if an artist can be autonomous without having a right to their art, then clearly an artist

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<sup>312</sup> This is with the exception of instances in which that range has been reduced *by* interference, which would in any case be covered by the rights of self-ownership and the prohibition on interference.

<sup>313</sup> S. J. D. Green, "Competitive Equality of Opportunity: A Defense," *Ethics* 100, no. 1 (1989),, referenced in Cohen, *Self-Ownership, Freedom, and Equality*. p. 238

can be autonomous without being a self-owner. Bringing these two points together: autonomy does not require self-ownership, but since autonomy *does* require opportunities, this will sometimes mean restricting the self-ownership of some in order to provide these opportunities. Cohen states, “to promote the autonomy of artists, we do not have to confer self-ownership on them, and we do have to restrict the self-ownership of others.”<sup>314</sup> However, this is again only the case if we think that autonomy ought to be *promoted*, which the libertarian theory of justice is not committed to. As the rights of self-ownership underpin the libertarian theory of justice, there is no contradiction in these rights failing to promote autonomy. If the failure of libertarianism to promote autonomy is intended in itself to be sufficient to reduce its appeal, then this relies on an unargued premise that the promotion of autonomy is superior to non- interference.

It is worth noting a final similar challenge to libertarian self-ownership from Zutlevics, who contends that an individual requires access to resources in order to have substantial control over their life, and therefore to have autonomy. Unless an individual has the funds with which to carry out those wishes which are fundamental to controlling his life as he would wish, he arguably does not have control over his life, and therefore lacks autonomy.<sup>315</sup> The libertarian position is inconsistent, she claims, because of the rejection of positive human rights to resources.<sup>316</sup> She states:

those concerned with protecting and enabling the capacity for personal autonomy must endorse positive rights, for it is positive rights that allow for redistribution to provide those in need with basic resources to both develop and maintain their capacity for personal autonomy – the cornerstone of libertarian thought.<sup>317</sup>

I have already argued that a libertarian is concerned with non-interference of the exercise of autonomy, not with ‘protecting and enabling’. A lack of autonomy in this

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<sup>314</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 238

<sup>315</sup> T. L. Zutlevics, "Libertarianism and Personal Autonomy," *Southern Journal of Philosophy* 39, no. 3 (2001). p.465. For discussion of this position as the ‘comprehensive liberal’ view, see Chambers and Parvin, "Coercive Redistribution and Public Agreement: Re-Evaluating the Libertarian Challenge of Charity." p. 98

<sup>316</sup> Except in instances of rectification, as explained in chapter two.

<sup>317</sup> Zutlevics, "Libertarianism and Personal Autonomy." p. 469

sense is not an injustice, and therefore not something that the libertarian need be concerned about, so there is no contradiction here on libertarian terms. The reason I draw attention to this additional challenge is that Zutlevics believes she has found this understanding of personal autonomy in Nozick. However, Zutlevics has shown merely that Nozick's side-constraints are justified on the basis that an individual's autonomy ought not to be interfered with, not that it ought to be promoted. This additional condition is something she has attributed to Nozick unfairly, and without which there is no contradiction in the libertarian position on autonomy, self-ownership and the rejection of positive rights, as I have already argued.<sup>318</sup>

Cohen argued that self-ownership is hostile to autonomy and as such we ought to reject it. I have aimed to show that self-ownership is hostile to autonomy only if we adopt a particular approach to autonomy, and a particular understanding of what is important about autonomy in terms of justice, neither of which the libertarian is committed to accept. The libertarian and her opponent can agree that a person with less control over their lives has less autonomy than someone with more control. What the libertarian will reject, however, is the claim that this is an injustice. If we go by the libertarian interpretation of how to support autonomy – namely, by refraining from interfering with people's control over their own lives – then it is the restriction of the rights of self-ownership that would be hostile to autonomy. The only sense in which autonomy is relevant for justice on a libertarian point of view is in the sense of non-interference. The *promotion* of autonomy is not a requirement on a libertarian theory of justice, and as the rights of self-ownership underpin the libertarian theory of justice, then the promotion of autonomy is likewise not a requirement of self-ownership. In contrast, it *is* an injustice to violate people's rights of self-ownership. While the promotion of autonomy may be a good thing (there may even be charitable obligations to promote autonomy), a libertarian must argue that

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<sup>318</sup> A similar challenge has been made to the effect that the libertarian tenet that people must be respected as self-governing individuals can entail the conclusion that need can take priority over property claims, from a libertarian point of view. See Adrian Bardon, "From Nozick to Welfare Rights: Self-Ownership, Property, and Moral Desert," *Critical Review* 14, no. 4 (2000). The focus on causal responsibility that I have emphasised in Part I, however, means that libertarianism is only concerned with need when it has been brought about through the interference of other moral agents.

upholding self-ownership rights is a requirement of justice, whereas the promotion of autonomy is not. Self-ownership rights must therefore take priority.

I have argued that self-ownership is not self-defeating, since the rights of self-ownership support autonomy in the sense that is relevant on a libertarian theory of justice. But arguably it is precisely this failure of libertarianism and self-ownership to recognise the lack of the promotion of autonomy as an injustice that undermines their appeal. I have said that the promotion of autonomy is not a requisite of the rights of self-ownership, but have not provided reasons for preferring to adopt self-ownership rights and the libertarian theory of justice rather than a theory of justice which *does* promote autonomy. We have therefore reached a stalemate, in that the argument here is a conflict of principles at such a basic intuitive level that each side is unlikely ever to persuade the other. I maintain, however, that the rights of self-ownership offer the best way to ensure that autonomy is respected in the appropriate way (namely, exercising control without interference from others), and the best way to avoid being treated as a slave. This is because only self-ownership can protect against the coercive use of people for the benefit of others, as I will now explain.

## **Self-Ownership and the Utilitarian Use of People**

Cohen claims that denying self-ownership does not mean treating people as means rather than as ends, and that affirming self-ownership provides no guarantee against a utilitarian use of people. Again, I concede some truth in the former claim, but reject the latter. According to Cohen, Nozick claims Kantian foundations for the rights that he proposes, arguing that those rights

reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent.<sup>319</sup>

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<sup>319</sup> Nozick, *Anarchy, State and Utopia*. p. 30-1, quoted in Cohen, *Self-Ownership, Freedom, and Equality*. p. 238

Cohen draws a distinction between the first part of this quotation – the Kantian principle that individuals should be treated as ends and not means – and what he calls Nozick’s consent principle – that individuals may not be used without their consent. Cohen does this in order to show that Nozick’s consent principle differs significantly from Kant’s principle, in the way that the two principles relate to self-ownership.<sup>320</sup> Beginning with the Kantian principle, Cohen argues that this does not entail, nor is it entailed by, the thesis of self-ownership. All that the Kantian principle requires is that if you treat people as a means you must *also* treat them as an end. Cohen gives the example of a ticket-seller: though he admits that he undoubtedly treats the ticket seller as a means when he buys a ticket from him, he claims that he may also treat him as an end in himself – for example, by helping the ticket seller if he were to suffer a sudden fit. Using someone as a means is consistent with treating them with the appropriate dignity befitting an individual who is an end in himself.

This argument can be applied, according to Cohen, to the issue of redistributive taxation. Cohen supposes,

that able-bodied people have a duty, which the state should enforce through taxation, to produce a surplus over what they need to support themselves, to sustain people who would otherwise die.<sup>321</sup>

This clearly contradicts the principle of self-ownership, which demands that people not be forced into the service of others or deprived of the product of their labour. And yet, as with the ticket seller, Cohen believes it is possible to treat someone as a means (taking labour product from them in order to benefit others) while simultaneously treating them also as an end. He argues,

although I believe that the labour of the able-bodied should be used as a means and, if necessary, against their will, in order that the unfortunate may be supported, it does not follow that I am unconcerned about the able-bodied

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<sup>320</sup> Taylor believes, in opposition to Cohen, that a Kantian defence of self-ownership is possible, even though Nozick does not provide one, but it is not necessary for my argument to go into this here. See Robert S. Taylor, "A Kantian Defense of Self-Ownership," *Journal of Political Philosophy* 12, no. 1 (2004).

<sup>321</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 240. Cohen claims that this position was even supported by Kant.

themselves: among other things, I may believe that they should provide the indicated service only because I also believe that giving it will not blight their lives.<sup>322</sup>

Giving sufficient consideration to the able-bodied such that they would perhaps not be forced to provide a service to others if this would 'blight their lives' evidently gives Cohen reason to believe that he is treating the able-bodied as ends and not as means only. In addition, Cohen argues that self-ownership can be upheld while treating people entirely as means and not as ends at all. For instance, in the aforementioned example of the ticket seller, if I did nothing to assist him when he collapsed then, Cohen argues, I would show that I only ever saw him as a means to getting a ticket, and not also as an end. Moreover, an individual's right of self-ownership can be violated without using that individual to achieve an end – for example, by assaulting them when one gains nothing from doing so. According to Cohen, then, denying self-ownership does not mean treating people as means. Nor is it the case that people are necessarily treated as ends when we respect their self-ownership rights.

Admittedly, Nozick may be unjustified in claiming Kantian foundations, and the use of the terms of 'means' and 'ends' does perhaps cloud the issue here. Clearly what is at stake is something separate from the issue of means and ends and Cohen has successfully drawn this out, and demonstrated that Kant's principle differs from Nozick's consent principle in a significant way. He claims, "the state which taxes the able-bodied violates Nozick's consent requirement but may nevertheless respect their humanity"<sup>323</sup> (and therefore treat them as ends and not merely means). He has also shown that self-ownership cannot be defended on the basis of Nozick's consent principle, since that principle refers to using people for the achieving of others' ends without their consent. The fact that self-ownership rights can be violated without achieving any end (for example, by hitting someone) shows that these are also separate ideas. So, the consent principle does not entail self-ownership but, conversely, Cohen believes that self-ownership *can* entail the consent principle. Self-ownership requires that others do not use you without your consent (when this would

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<sup>322</sup> Ibid. p. 240

<sup>323</sup> Ibid. p. 241

require you to do something you would not otherwise do<sup>324</sup>) even if it cannot be justified on the grounds that it is wrong to do things involving other people without their consent.

But even if we do not treat someone as a means only but also treat them at the same time as an end, it surely *does* matter whether or not we do this with their consent. When I buy a ticket from a ticket seller I am treating him as a means and – assuming I would help him if he were to suffer a sudden fit – also an end. Likewise, when I force someone to provide a service to someone against his will I am treating him as a means and (assuming the same willingness to help him should he need it) as an end. But there is unquestionably a difference between these two examples which surely must come down to the question of consent – the ticket seller has consented to his role as a means, the other individual has not. Moreover, he is being used as a means not only in the manner of harmless parasitism – in which his behaviour would be no different if he were not being used as a means (for example if people were using his body to shade behind) – but in a way in which he is forced to provide service to others. There is something wrong with treating someone as a means without their consent. It also matters whether I do something to someone with or without his consent even when that thing achieves no end at all. In all this discussion, Cohen has not shown that there is nothing important that we fail to do – nothing important we fail to protect – when we deny self-ownership. He fundamentally understates the importance of consent.

Cohen has shown that the thesis of self-ownership cannot be inferred from either the Kantian principle or Nozick's consent principle, as you can violate self-ownership without achieving any end, and you can also use someone without their consent without violating their self-ownership (for example, by shading yourself behind them). But none of this helps him to support his claim that self-ownership “provides

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<sup>324</sup> This final clause is necessary, Cohen points out, as it is permissible under self-ownership to use someone to achieve an end if they were doing that thing anyway – for example, if someone positioned himself behind someone else in order to keep the sun out of his eyes. See also Richard Arneson on such acts of ‘harmless parasitism’. Richard Arneson, “Lockean Self-Ownership: Towards a Demolition,” *Political Studies* 39, no. 1 (1991). p. 41

no guarantee at all against a utilitarian use of people.”<sup>325</sup> To argue that we must never treat someone as a means only, but always as an end also does not provide any guarantee against a utilitarian use of people, since – Cohen would have us believe – we can force people into the service of others without treating them merely as means. But, as Cohen has pointed out, self-ownership cannot be inferred from this Kantian principle. I have defined self-ownership as natural property rights over the body, the faculties and over the product of exercising those faculties in conjunction with the body. These rights, unlike the Kantian principle, *do* provide a guarantee against a utilitarian use of people, since they cannot permissibly be infringed on the justification of some other competing – for example, utilitarian – considerations. Indeed, in light of what Cohen claims is permissible on other accounts, self-ownership appears to be the only thing that *can* guarantee against a utilitarian use of people.

## **Self-Ownership, Equality and Luck**

I shall now outline one final criticism of self-ownership, also levelled against it by Cohen: that it permits inequalities resulting from brute luck. This is a criticism that Cohen dismisses rather quickly as having little impact on the libertarian position, as the clash of principles is too basic to ground any real debate. This is why he does not develop it fully in the way he has developed the objections considered above. I believe it is both necessary and rewarding, though, to address the question of inequality and luck and I suggest that Cohen may have abandoned this objection too readily. Self-ownership and equality are often considered antithetical.<sup>326</sup> When self-ownership is respected, the three property rights over body, faculties and labour product are upheld, meaning that no one can be forced to supply a service or product

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<sup>325</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 18

<sup>326</sup> See for example Rothbard, *For a New Liberty: The Libertarian Manifesto*. p. 42. For a full discussion of the relationship between equality and libertarianism see Jan Narveson and James P. Sterba, *Are Liberty and Equality Compatible?* (Cambridge: Cambridge University Press, 2010). See also G. A. Cohen, "Are Freedom and Equality Compatible?," in *Alternatives to Capitalism*, ed. Jon Elster and Karl Ove Moene, *Studies in Marxism and Social Theory* (Cambridge: Cambridge University Press, 1989).

to anyone without having agreed to do so. Demanding that people must be allowed to keep their labour product, and not be forced to use their faculties to help the less able, will mean that some people will fare much better than others. So, if self-ownership rights are upheld, inequality will result. For Cohen, this is reason enough to find fault with the thesis of self-ownership. He argues,

it is, in my opinion, a considerable objection to the thesis of self-ownership that no one should fare worse than others do because of bad brute luck, for no luck is bruter than that of how one is born, raised and circumstanced, the good and bad results of which adhere firmly to individuals under the self-ownership principle.<sup>327</sup>

Cohen considers the idea that self-owners have a property right over their labour product – what he calls ‘reward for contribution’ – to be unjust. He argues that “it preserves the income injustice caused by differential ownership of endowment of personal capacity.”<sup>328</sup> In other words, people have different natural endowments – different faculties – for which they can claim no responsibility, and permitting people to maintain the rewards of these natural endowments will result in great inequalities of income, which cannot be defended as just. But Cohen notes that we have reached a stalemate here. He states, “the fact that [the self-ownership principle] sanctions the results of luck will not move a moderately sophisticated believer in self-ownership.”<sup>329</sup> The libertarian will not waver from the position that self-ownership holds the trump card, and the egalitarian cannot offer a reason why she should that does not appeal to some basic intuitive principle that she does not accept. It is for this reason that Cohen turns to what he believes will prove to be a more fruitful attack on self-ownership – by demonstrating that its appeal is based only on its confusion with other conditions, which I have discussed above. Equality of condition is not a goal to which a libertarian is committed. The same cannot be said, Cohen claimed, with regard to autonomy, leading him to suppose that he could undermine the appeal of self-ownership by showing that it is hostile to autonomy. However, I argued that the *promotion* of autonomy is not a goal to which a libertarian is committed, and that the libertarian has no reason to abandon self-ownership and the emphasis on non-

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<sup>327</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 229

<sup>328</sup> G. A. Cohen, "Is There Still a Case for Socialism?," *Social Scientist* 20, no. 12 (1992). p. 8

<sup>329</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 229

interference in favour of the promotion of autonomy; this is likewise a clash of basic principles.

The criticism that self-ownership permits inequality does not undermine any libertarian principles, but it is an objection that certainly deters people from subscribing to the thesis of self-ownership, and a response to it would greatly strengthen the appeal of the libertarian position. In the previous section I argued that we must refrain from promoting autonomy in favour of upholding self-ownership. Any lack of autonomy that results from respecting the rights of self-ownership does not count as an injustice from a libertarian point of view, whereas violating the rights of self-ownership *would* be an injustice. Likewise, inequalities that result from upholding self-ownership rights also do not represent an injustice, and in fact if justice is to be served the rights must be upheld, and with them any resulting inequalities. The question of inequalities that pre-exist the exercise of self-ownership rights on account of limited natural abilities is a slightly different matter, however. If inequalities are to be permitted on the basis of the argument that allowing people to exercise their autonomy is more important than promoting their autonomy, this same argument cannot be made with regard to inequalities resulting from natural differences. In line with my earlier claim that we should only be concerned with a loss of autonomy caused by human interference as a matter of justice, I do not claim here that the inequalities arising from bad brute luck are unjust. I merely recognise that they cannot be seen as the result of freely made autonomous choices, unlike many of the inequalities that might result from the exercise of self-ownership.

For those who are keen to preserve the outcome of people's free choices, but reluctant to allow brute luck to influence the distribution, there is the option of luck egalitarianism.<sup>330</sup> This is a form of egalitarianism which incorporates what Cohen describes as "the most powerful idea in the arsenal of the anti-egalitarian right: the

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<sup>330</sup> The term was initially coined by Elizabeth S. Anderson, "What Is the Point of Equality?," *Ethics* 109, no. 2 (1999). p. 289. See also Carl Knight, "In Defence of Luck Egalitarianism," *Res Publica* 11, no. 1 (2005), Carl Knight, *Luck Egalitarianism: Equality, Responsibility, and Justice* (Edinburgh: Edinburgh University Press, 2009).

idea of choice and responsibility."<sup>331</sup> In other words, it proposes that people bear the costs of their choices but not their unchosen (natural) circumstances. Certainly this approach has appeal. And yet, on the basis of self-ownership, it is not permissible to take from the able-bodied to provide for the disabled (for example), as this would require violating our property rights over our bodies and our faculties. Forcing someone to work against her wishes would violate the right of self-ownership, and cannot be permitted even if it is to assist someone whose limited life prospects are a result of unchosen circumstances. The option of luck egalitarianism is therefore not open for someone who wants to uphold the rights of self-ownership.<sup>332</sup> It would seem that the only way to address natural inequalities is to force the able-bodied either to work for the less-able, or to relinquish part of the product of their labour, neither of which is permissible from the perspective of self-ownership.

Fortunately, there is another way in which the natural inequalities arising from self-ownership can be mitigated somewhat without violating the rights of self-ownership. This can be done by declaring egalitarian ownership of worldly resources. Cohen dismisses this possibility, believing that a successful account of egalitarian world ownership cannot be found.<sup>333</sup> It is from this he concludes that egalitarians wishing to undermine libertarianism must go about it by attacking self-ownership. However, I will argue in the following chapters that we *can* find a successful account of egalitarian world ownership under which it is possible to promote equality and uphold the rights of self-ownership. We can see external worldly resources as owned equally by all, and the use of them to be subject to a payment from those who use them (in practice, the able-bodied), which can be used to benefit those unable to make use of the resources for themselves. In this way there would be a flow of compensation from the naturally advantaged to the naturally disadvantaged, but the basis for this is not that the promotion of equality can be allowed to override self-ownership. Rather, there is a requirement to redistribute and promote equality which

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<sup>331</sup> G. A. Cohen, "On the Currency of Egalitarian Justice," *Ethics* 99, no. 4 (1989), p. 933 Cohen was attributing this 'incorporation' to Ronald Dworkin, "What Is Equality? Part 2: Equality of Resources," *Philosophy and Public Affairs* 10, no. 4 (1981).

<sup>332</sup> For an account of the incompatibility of self-ownership and luck-egalitarianism, see Jonathan Quong, "Left-Libertarianism: Rawlsian Not Luck Egalitarian," *Journal of Political Philosophy* 19, no. 1 (2011).

<sup>333</sup> Cohen, *Self-Ownership, Freedom, and Equality*, p. 229

is compatible with self-ownership, based on egalitarian ownership of worldly resources. The rights of self-ownership safeguard the product of exercising the faculties in conjunction with the body but they cannot do the same for the product of labouring on external worldly resources. This will be the focus of the following chapters.

## ***Conclusion***

I have upheld Cohen's objections that denying self-ownership does not mean endorsing slavery or nullifying autonomy. I have also accepted that denying self-ownership does not mean treating people as means only rather than as ends. However, I have shown that self-ownership is only hostile to autonomy if 'enjoying autonomy' is understood as having the exercise of autonomy protected or promoted. This, however, is not the libertarian approach to autonomy. All Cohen has done here is to point out a clash of basic principles between libertarians and their opponents, concerning the competing values of non-interference and the promotion of autonomy. I also argued that Cohen has not shown that self-ownership does not provide a guarantee against a utilitarian use of people, and have suggested that in fact it appears to be the only thing that can provide such a guarantee, given what Cohen believes to be permissible in the absence of self-ownership. The challenge of inequality represents perhaps the greatest challenge to the appeal of self-ownership, but I will now aim to show that the inegalitarian outcome sanctioned by upholding self-ownership rights can be mitigated somewhat by our approach to world ownership.

## **Part III: World Ownership**

## Chapter 5: Libertarian Appropriation

### *Introduction*

In Part II I offered a defence of self-ownership and argued that anyone who calls themselves a libertarian must demonstrate a commitment to self-ownership. I defined self-ownership as a collection of three property rights – over the body, over the faculties and over what one can produce through exercising those faculties in conjunction with their body – and maintained that these rights fulfil the criteria of human rights by being a compossible set of universal natural rights of paramount importance. I also noted that criticisms against upholding self-ownership frequently stem from the belief that inequality will result if we permit people to reap the benefits of their natural faculties, given variations in people’s abilities. This inequality, though not something libertarians object to as such, detracts from the appeal of libertarianism and the self-ownership thesis, and I suggested that the libertarian approach would be strengthened if some way could be found to counter such inequalities. Such a way can be found, I argue, in the form of an egalitarian understanding of world ownership.

While a libertarian commitment to self-ownership is fixed – that is to say, no one calling themselves a libertarian can consistently propose to violate self-ownership rights – a libertarian approach to world ownership, in contrast, is open to different interpretations.<sup>334</sup> The suggestion that libertarianism involves no necessary commitment to the acquisition of private property in natural resources is not uncontroversial, with some theorists arguing that libertarianism consists not only of self-ownership but also of a right to appropriate private property from external resources.<sup>335</sup> Levey states: “it is certainly the libertarian view that from the

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<sup>334</sup> As Vallentyne notes: “any assumption about the ownership of natural resources is compatible with full self-ownership”. Peter Vallentyne, “Critical Notice of G. A. Cohen: Self-Ownership, Freedom, and Equality,” *Canadian Journal of Philosophy* 28, no. 4 (1998). p. 622

<sup>335</sup> See Edward Feser, “There Is No Such Thing as an Unjust Initial Acquisition,” *Social Philosophy and Policy* 22, no. 01 (2005).

perspective of liberty there would be something wrong with not allowing such acquisitions [of private property]”.<sup>336</sup> Then again, we should recall Narveson’s suggestion that “the libertarian thesis is really the thesis that *a right to our persons as our property is the sole fundamental right there is*”.<sup>337</sup> I will maintain that self-ownership is the only fundamental tenet of libertarianism, leaving the ownership of worldly resources and their just acquisition up for discussion.

Although a right to labour product – to what one can produce through exercising labour in conjunction with the body – is one of the rights of self-ownership, self-ownership itself (as I have defined it) says nothing about property rights over external worldly resources, or over what can be produced through labouring on them. There is however a crucial link between self-ownership and worldly resources. Undeniably every individual must occupy space in order to be free to move her body, and the majority of what is required for survival cannot be produced through labouring on personal resources (if indeed anything useful can be produced in such a way). So although self-ownership is not *violated* by the absence of rights to worldly resources (since no attempt has been made to harm the body, coerce into forced labour, seize the labour product and so on), without worldly resources self-ownership is not *robust*. I draw this terminology from left-libertarian Michael Otsuka, who states,

I shall define a libertarian right of self-ownership as ‘robust’ if and only if, in addition to having the libertarian right itself, one also has rights over enough worldly resources to ensure that one will not be forced by necessity to come to the assistance of others in a manner involving the sacrifice of one’s life, limb, or labour.<sup>338</sup>

‘Robust’ self-ownership is also known as ‘effective’ or ‘substantive’ self-ownership, in contrast to self-ownership that is merely formal.<sup>339</sup> This feature of self-ownership has not been addressed in Part II because the distinction between effective and

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<sup>336</sup> Levey, "Liberty, Property and the Libertarian Idea." p. 154

<sup>337</sup> Narveson, *The Libertarian Idea*. p. 66 (emphasis in original)

<sup>338</sup> Otsuka, *Libertarianism without Inequality*. p. 32

<sup>339</sup> See Cohen, *Self-Ownership, Freedom, and Equality*., p. 98, 100; Otsuka, *Libertarianism without Inequality*. p. 16, 32; Kymlicka, *Contemporary Political Philosophy : An Introduction*. p. 119-25

formal self-ownership is only intelligible in the context of access to external worldly resources.<sup>340</sup>

If someone does not have access to external worldly resources then he will not be able to exercise his property rights over his body and his faculties, and will be unable to exercise his self-ownership. This is not a practical distinction but a conceptual one. To say that self-ownership is effective is to say that all the rights are able to be fulfilled, but this is not the same as saying that the rights *are* fulfilled. If someone has one of their self-ownership rights violated this does not mean that their rights of self-ownership are no longer effective, though it may mean that they are not enforced. Likewise, a person may have none of her self-ownership rights violated, and yet still not have self-ownership that is robust. To illustrate: when a person is forced to provide a service for another, this is a violation of a self-ownership right; when a person has *no choice but* to sell her labour this is not a violation since she *does* receive payment in return, but the fact that she could not choose *not* to sell her labour means that her self-ownership is not robust. Unless we have access to external resources on which to labour, the protection that self-ownership affords can only be formal. I suggest, then, that any proponent of self-ownership (and therefore any libertarian) will want to develop an approach to world ownership that is compatible with the effective exercise of the rights of self-ownership.

This notion of robust self-ownership has similarities with a solution proposed by Eric Mack: the Self-Ownership Proviso. This proviso

requires that persons not deploy their legitimate holdings i.e. their extra-personal property, in ways that severely, albeit non-invasively, disable any person's world-interactive powers.<sup>341</sup>

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<sup>340</sup> See Christman: "A strictly formal sense of self-ownership is one where individuals retain rights over their bodies and talents but have no rights over those things that enable them to lead a meaningful life – external resources". Christman, *The Myth of Property : Toward an Egalitarian Theory of Ownership*. p. 149-50

<sup>341</sup> Eric Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy and Policy* 12, no. 1 (1995). p. 187

In other words, self-ownership requires not only direct non-interference, but must also prohibit behaviour that would prevent others from exercising their self-ownership. So, in addition to the requirement of access to sufficient worldly resources, the rights of self-ownership are only effective if others refrain from using their property in ways which prevent the exercise of that self-ownership.

The requirement that self-ownership must be robust relates only to *natural* resources<sup>342</sup> and not to resources *per se*, since things that are the product of labour are protected by self-ownership rights (as I shall explain), and so to deprive some people of these in order to promote the robust self-ownership of others would be self-defeating. It is only with regard to those things which are not the product of anyone's labour – such as land – to which people are entitled to have access in order to have robust self-ownership. Moreover, I should stipulate that a right to access these worldly resources is only an original right, since people may choose to trade it away. If someone has rights to access land but decides to sell these rights (assuming they had the choice *not* to sell them) then their self-ownership is no longer robust, but this is no more a problem for self-ownership than when someone no longer has a right to their body parts, having contracted to sell them.

In this chapter I will compare right-wing libertarianism with left-libertarianism, the primary difference between them being their approach to the ownership and original acquisition of worldly resources.<sup>343</sup> The right-wing position, broadly speaking, permits appropriation of worldly resources on a first-come first-served basis, while left-libertarianism takes a far more egalitarian approach to world ownership, meaning that what may justly be appropriated is more limited. Egalitarian ownership of worldly resources is essentially “the symmetry of claims to original resources”,<sup>344</sup> that is to say: the idea that everyone has an equal claim to those resources. Left-libertarians, unlike their right-wing counterparts, do not see natural resources as

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<sup>342</sup> I shall say more about how these should be conceptualised in the next chapter.

<sup>343</sup> See Vallentyne: “All forms of libertarianism endorse full self-ownership. They differ with respect to the moral powers that individuals have to acquire ownership of external things”. Vallentyne, "Libertarianism and the State." p. 191

<sup>344</sup> Michael Blake and Mathias Risse, "Immigration and Original Ownership of the Earth," *Notre Dame Journal of Law, Ethics, and Public Policy (special issue on immigration)* 23, no. 1 (2009). p. 140

unowned in the sense of being up for grabs but rather as owned by all in some egalitarian manner. Hillel Steiner, Michael Otsuka and Peter Vallentyne are united in rejecting such ‘first-grabbing’, arguing: “being the first person to claim, discover, or mix labor with an unappropriated natural resource does not... generate a full private property right in that natural resource.”<sup>345</sup> Left-libertarians therefore avoid the radically inegalitarian appropriation that is associated with right-wing libertarianism, and assure to each individual a portion of worldly resources.

The extent to which it is permissible to appropriate worldly resources affects the ownership of products produced through labouring on worldly resources. Self-ownership itself confers a property right only over those products produced through labouring on personal resources (products such as clothes woven from one’s own hair), not over products produced through labouring on worldly resources. But if self-ownership is to be effective then this does require *access* to worldly resources. Having a property right in one’s labour and a right of access to external resources makes the production of external goods possible through labouring on external resources. I shall argue over the course of the next three chapters that ownership of the natural resources themselves can only ever be common or joint ownership, but that we can have full property rights over what we can produce through labouring on external resources, provided we observe certain conditions, namely, the payment of rent on land, and the payment of a tax on the extraction of other resources such as oil. These property rights are human rights, because once the rent and the tax on the natural resources component have been paid the only remaining component is the reward of labour, which is protected by self-ownership rights.<sup>346</sup>

Self-ownership can only be effective if one has access to sufficient worldly resources to be able to exercise the rights associated with it. So the key question for this

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<sup>345</sup> Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried." p. 201

<sup>346</sup> The Georgist libertarianism I advocate is supported by Tideman and Vallentyne, who maintain that “agents fully own the artifacts that they produce with their labour, as long as they pay rent on the underlying natural resources they own and the owners of any other labor, natural resources, or artifacts involved in the production have consented (e.g., in return for payment) to the use of these resources and have renounced any claim to the product.” Nicolaus Tideman and Peter Vallentyne, "Left-Libertarianism and Global Justice," in *Human Rights in Philosophy and Practice*, ed. Burton M Leiser and Tom Campbell (Aldershot: Ashgate, 2001). p. 452

chapter is: is self-ownership more robust on a right- or left-wing understanding of libertarianism? Since full property rights in the natural world are not necessary for robust self-ownership, it is not something that the libertarian must support. In fact, many competing conceptions of egalitarian world ownership are available to the libertarian. The version that I propose follows that of Henry George, and I shall begin by setting out his position, along with important elements of Locke's position which bear on the subsequent discussion. I will then proceed to address opposition to the Georgist approach from radical right-wing libertarians like Rothbard, arguing that the unlimited appropriation that they permit is incompatible with robust self-ownership, and creates a set of rights that is not compossible. The only way to ensure that self-ownership is robust is to impose a substantial proviso on appropriation, so that everyone will have access to sufficient worldly resources. Since radical right-wing accounts deny the need for a proviso, they cannot support robust self-ownership, and so they must be rejected. I shall then consider alternative approaches from a Lockean perspective, including that of Nozick. These involve the application of a proviso, thereby preventing unlimited appropriation, but I shall argue that they are considerably less egalitarian than it is possible to be while still upholding self-ownership. I shall then consider left-libertarian accounts, defending briefly the coherence of the overall thesis of the joint premises of self-ownership and egalitarian world ownership, before going on in the following chapters to look at individual left-libertarian accounts in more detail. Specifically, I shall explore in the next chapter how my Georgist conception compares with Steiner's account of egalitarian world ownership, and then in the final chapter I shall then address how my Georgist conception affects distribution and its implications for a basic income, with reference to arguments from Otsuka and Vallentyne.

### ***George, Locke and Just Acquisition***

There are significant similarities between the theories of Henry George and John Locke. Locke claimed that God has “given the World to Men in common”<sup>347</sup>, while

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<sup>347</sup> Locke, *Two Treatises of Government*. § 26

George believed it to be a natural law that all men had an equal right “to the use and enjoyment of nature”.<sup>348</sup> This is self-evident to George, just as it is self-evident that men have an equal right to breathe the air. To believe otherwise would be to give some the right to live in the world while denying it to others. I previously considered George and Locke in chapter three in the context of self-ownership and what I proposed was an evident commitment on the part of both of them to relevant aspects of my own conceptualisation of self-ownership. George, in particular, had an understanding of self-ownership which I argued closely resembled my own, stating that a man has a right to “himself, to the use of his own powers, [and] to the enjoyment of the fruits of his own exertions”.<sup>349</sup> In addition, he argued that these things were the rightful basis of property, claiming, “As a man belongs to himself, so his labour when put in concrete form belongs to him.”<sup>350</sup> This commitment to the right to the product of labouring on natural worldly resources is also something that is shared by Locke, who argued that each man owns his own labour and “no Man but he can have a right to what that is once joynd to.”<sup>351</sup> There is a distinction here, though, between what one has produced by mixing one’s labour with natural resources (such as a crop grown on a field) and what one has mixed labour with but not actually produced (namely: the cultivated field itself). This important difference concerning labour-mixing and production is where Locke and George diverge.

For Locke, labour-mixing confers a private property right in something, whereas for George, in contrast, the only thing that can create full private property rights over something is the act of production. He claims that “property in land differs essentially from property in things of human production”.<sup>352</sup> Production is the only thing that can give rise to full ownership, so there can be no private property in land,

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<sup>348</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 237

<sup>349</sup> Ibid. p. 236

<sup>350</sup> Ibid.

<sup>351</sup> Locke, *Two Treatises of Government*. § 27

<sup>352</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 254. This position is queried by Van Parijs who argues that “When the guiding notion is a concern with people’s real freedom, not the respect of their (so-called) natural rights, there is no ground for making a sharp distinction between produced and unproduced assets.” Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* p. 262, n.20. This is another reason (see n. 214 above) why I do not dwell on the work of Van Parijs, since our underlying intuitions contrast to such a great extent.

since it is not the product of anyone's labour. He argues, "the rightfulness which attaches to individual property in the produce of labour implies the wrongfulness of individual property in land."<sup>353</sup> This is based on the idea that a private landowner, for example, could deprive labourers of access to the land or, if access were granted, the landowner would be able to demand the produce of their labour as payment for the use of that land. In either case, the right of workers to the produce of their labour would be threatened. George states that "If chattel slavery be unjust, then is private property in land unjust" as "the ownership of land will always give the ownership of men".<sup>354</sup> George means by this that an individual entering a world entirely under the control of others is open to enslavement to the extent that he has no choice but to sell his labour. As payment is made in return for labour this is not a genuine case of slavery, but the self-ownership of this individual is not robust. George therefore takes into account the need for access to land if self-ownership is to be effective, and he believes that in order to achieve this and to assure to people a right to the product of their labour, individual full property in land must be rejected.

George proposes that we should substitute individual ownership of the land with common ownership<sup>355</sup> whereby land would never cease to be owned by all, but private *use* of it would be permissible subject to the payment of rent. Private use is all that is required to ensure that self-ownership is robust, since this will ensure that people have the access to worldly resources that they need. This is the basis of George's proposal for land rent, which is the foundation of the modern Single Tax movement.<sup>356</sup> According to George's approach, land should be let out "to the highest bidders in lots to suit, under such conditions as would sacredly guard the private right to improvements".<sup>357</sup> Every person must be permitted to benefit from the resources

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<sup>353</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 239

<sup>354</sup> Ibid. p. 245

<sup>355</sup> Ibid. p. 233

<sup>356</sup> See the Henry George Foundation of Great Britain ([www.henrygeorge.org.uk](http://www.henrygeorge.org.uk)); the Land Value Taxation Campaign ([www.landvaluetax.org](http://www.landvaluetax.org)); and the International Union for Land Value Taxation and Free Trade (International Georgist Union) ([www.interunion.org.uk](http://www.interunion.org.uk)). See also Backhaus, who identifies 25 different applications of what he calls George's 'Single Tax instrument', including a tax on air pollution and on use of the internet. Jürgen G. Backhaus, "Henry George's Ingenious Tax: A Contemporary Restatement," *American Journal of Economics and Sociology* 56, no. 4 (1997).

<sup>357</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 287

that nature has provided, but it is clearly impractical and inefficient for each person to occupy and labour on a share of land, as some will be more capable than others and will be able to use the land more effectively. It is expedient, therefore, but not contrary to the concept of common ownership, he argues, to allow some people to occupy more than their share, on the condition that they compensate those who now have less than an equal share. This compensation takes the form of rent, paid on land, where the rent “expresses the exact amount which the individual should pay to the community to satisfy the equal rights of all other members of the community”.<sup>358</sup>

In this way, the Georgist common ownership model can operate in such a way as to maintain the incentives more traditionally associated with private property (increased efficiency, productivity and so on). Arguably with the development of agriculture it is necessary to recognise exclusive possession of land (rather than mere common use, under which anyone can use something but not prevent others from using it) in order for someone to reap fully the benefits of cultivating it. However it is a delusion, George claims, to think that this necessarily means full private property in land.<sup>359</sup> We often understand use as separate from ownership and it is not uncommon for people who improve the land to be tenants on that land rather than owners. People who use the land but do not own it typically pay a rent to the landowners. Under George’s proposal of common ownership the same system applies, but rent would be payable to the state or some sort of common fund<sup>360</sup> rather than to private individuals. It is therefore important to remind ourselves that private possession of an object is not the same as private property in it. Rather, the right to possess something is just one of the incidents of ownership, as are the rights to use it and to exclude others from its use. These rights do not constitute full ownership – full private property in something – unless they are accompanied by all the other incidents of ownership, including rights to transmit by sale or bequest, and rights to destroy. George does in fact incorporate the incidents of transmission, arguing that we can

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<sup>358</sup> Ibid. p. 243

<sup>359</sup> Ibid. p. 263, 282.

<sup>360</sup> The collection and distribution of rent payable on natural resources is the subject of the next chapters.

keep these archetypal ownership rights even while recognising common ownership of the earth. He proposes:

Let the individuals who now hold it still retain, if they want to, possession of what they are pleased to call *their* land. Let them continue to call it their land. Let them buy and sell, and bequeath and devise it. We may safely leave them the shell, if we take the kernel. *It is not necessary to confiscate land; it is only necessary to confiscate rent.*<sup>361</sup>

Although individuals may refer to it as ‘their’ land, it has not really ceased to be the common property of all. It is merely theirs to use exclusively of others, but such private appropriation is subject to the payment of the rent. If they sell or bequeath the land, then the new recipient will be liable to pay the rent, and they are not permitted to destroy the land or to decrease its value. George continues:

In form, the ownership of land would remain just as now. No owner of land need be dispossessed, and no restriction need be placed upon the amount of land anyone could hold. For, rent being taken by the State in taxes, land, no matter in whose name it stood, or in what parcels it was held, would be really common property, and every member of the community would participate in the advantages of its ownership.<sup>362</sup>

Common ownership of land, which ensures that everyone benefits from the natural resources to which everyone is equally entitled, need not detract from the benefits associated with libertarian appropriation.

A question that would doubtless arise if attempts were made to charge rent on land which people currently consider to be their own private property is that of compensation. George recognises that some people will object to the seizing of rent when people have acquired their property justly according to current laws, and may claim that it is a great wrong to those who have made decisions based on the permanence of private property. These people will therefore demand that the present possessors of the land deserve, at the very least, compensation for no longer having full property rights over the land in their possession. This is based on the proposed

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<sup>361</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 288 (emphasis in original)

<sup>362</sup> Ibid.

objection that “if we abolish private property in land, justice requires that we should fully compensate those who now possess it”.<sup>363</sup> However, George replies that this would in fact fail to correct the injustice of private property in land. Considering the interests of landholders, he argues, means in effect disregarding the interests of everyone else: “if landholders are to lose nothing of their special privileges, the people at large can gain nothing”.<sup>364</sup> Therefore by preserving the unjust advantage of the current landholders we will also be preserving the unjust disadvantage of non-landholders. After all, compensation is not generally given when someone is found to possess something that is in fact the rightful property of someone else. George does concede, however, that landowners may still be permitted to retain the personal property they have obtained through labouring on the earth, since labour product must be assured to the labourer. I have argued that labour product must only be assured to the labourer when they produce using personal resources, or external resources on which they have paid the relevant rent or tax, so this is more than my position would allow, but some people may still deem it too harsh that landholders will be able to keep only what they have been able to reap from the land, never mind being deprived of this also. Arguably, if people had known that the rules would be changed then they would have made different choices, and it is unjust to hold them to choices that they made under circumstances that no longer hold. George would counter that these current landowners have at least had the *opportunity* to amass this added value in the first place; an opportunity that others have not had, having not had access to the land. This will already have given them the advantage compared to others, even if they are to be charged rent on what they had previously considered to be their private property, and are not to be awarded compensation. For George, compensation would be an injustice, as it would effectively allow the current landowners to benefit twice from the current state of affairs. However, since my position would not even allow the current landowners to keep the product of labouring on resources on which they have not been paying rent, I have sympathy with the suggestion that people ought not to be penalised for choices they have made under a previous set of rules. Some form of compensation could be paid, then, or

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<sup>363</sup> Ibid. p. 255

<sup>364</sup> Ibid. p. 256

some phase-out period activated – such as the nationalisation of land in small annual increments – that would help to avoid this problem.<sup>365</sup>

George was not alone in his rejection of private property in land, which was a popular idea among writers in the 18<sup>th</sup> and 19<sup>th</sup> centuries. Paine, for example, rejects private ownership of land, arguing that:

Men did not make the earth. It is the value of the improvement, only, and not the earth itself, that is individual property. Every proprietor, therefore, of cultivated lands, owes to the community a ground-rent (for I know of no better term to express the idea) for the land which he holds.<sup>366</sup>

Spencer (in his earlier work) similarly argued that “it is impossible to discover any mode in which land can become private property”,<sup>367</sup> and Mill stated:

The essential principle of property being to assure to all persons what they have produced by their labour and accumulated by their abstinence, this principle cannot apply to what is not the produce of labour, the raw material of the earth.<sup>368</sup>

Nor is this view the peculiar province of early theorists. Robert Andelson, a modern supporter of George, argues:

The moral case for land-value taxation is clear enough. It represents an indemnity to the rest of society for the privilege of monopolizing something the owner did nothing to create, and the market worth of which is a social, not an individual, product.<sup>369</sup>

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<sup>365</sup> See for example Leon Walras. Walras supported the nationalisation of land, but believed that the injustice of private ownership of land would be aggravated by the additional injustice of expropriating it from its current owners. Rather, he argued that land must be repurchased by the state. Leon Walras, "The Theory of Property," in *The Origins of Left-Libertarianism : An Anthology of Historical Writings*, ed. Peter Vallentyne and Hillel Steiner (Basingstoke: Palgrave, 2000).

<sup>366</sup> Thomas Paine, "Agrarian Justice," in *The Origins of Left-Libertarianism : An Anthology of Historical Writings*, ed. Peter Vallentyne and Hillel Steiner (Basingstoke: Palgrave, 2000).

<sup>367</sup> Herbert Spencer, *Social Statics : Abridged and Revised ; Together with the Man Versus the State* (London and ; Oxford: Williams and Morgate, 1902). quoted in Hillel Steiner, "Land, Liberty and the Early Herbert Spencer," *History of Political Thought* 3 (1982). p. 527

<sup>368</sup> John Stuart Mill, "On Property and the General Principles of Taxation," in *The Origins of Left-Libertarianism : An Anthology of Historical Writings*, ed. Peter Vallentyne and Hillel Steiner (Basingstoke: Palgrave, 2000). p. 161

<sup>369</sup> Robert V. Andelson, "Land-Value Taxation around the World," *American Journal of Economics and Sociology* 59, no. 5 (2000). p. xxvi

He draws attention here to the fact that individuals do not create land, the value of which is not dependent on individuals' hard work. A similar point is also noted by Rolf Sartorius: that "the principle that one is entitled to the fruits of one's labours is not sufficient to explain the origin of private property rights in scarce natural resources".<sup>370</sup> He further argues:

*If one has a right to appropriate and work upon previously unowned land, for instance, the labor theory of entitlement implies only that one has a right to the harvest from the crops that one might plant on it.*<sup>371</sup>

This reinforces the point that production alone, and not labour-mixing, can create property rights.

All these views, like George's, differ significantly from Locke, because Locke does not believe that worldly resources must remain in common ownership, or that exclusive use is the only form of private ownership that is permitted. Locke argues that "there must of necessity be a means to *appropriate* them some way or other before they can be of any use, or at all beneficial to any particular Man".<sup>372</sup> For this reason he argues that people may take things out of their original common ownership, without the need to compensate others or to seek their consent beforehand, as long as they observe a proviso of leaving 'enough and as good' for others, in order to ensure that others are not disadvantaged by their appropriation. This appropriation takes the form of labour-mixing, which is based on the idea that mixing something we own (the labour) with something that is unowned (the unappropriated natural resource initially held in common), gives the labourer private ownership of the previously unowned object. This differs significantly to the approach advocated by George since Locke defends not merely the claim that one is entitled to own something that one produces from mixing his labour (either with personal resources such as hair or with external worldly resources), but rather that

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<sup>370</sup> Rolf Sartorius, "Persons and Property," in *Utility and Rights*, ed. R. G. Frey (Oxford: Blackwell, 1985). p. 205

<sup>371</sup> *Ibid.* (emphasis in original)

<sup>372</sup> Locke, *Two Treatises of Government*. § 26

mixing his labour with natural resources held in common also confers ownership of *that thing*. How many of these unowned external worldly resources may be used by each person is limited by the proviso: only as many as would leave enough and as good resources for others to work on.

The shared premise between Locke and George, in addition to the claim that natural resources belong (at least initially) to all men in common, is that production confers a property right. That is not to say that the idea that an individual has a right to her labour product is without its critics. A common criticism of this right stems from the fact that people rarely produce alone – the product is very often the result of several individuals cooperating together. But this is surely a practical objection rather than a principled one, and is not insuperable. Writing at the end of the 19<sup>th</sup> century, Anton Menger addresses this point:

A commodity should belong only to the individual by whose labour it was produced. If, however, it be the result of the contemporary or successive co-operation of many persons, as is the preponderating rule under a system of division of labour, each worker should receive such a share of its exchange value as was contributed by his work.<sup>373</sup>

There may be problems associated with separating one man's product from another's, and determining what amounts to each person's just share of the product<sup>374</sup> but this does not alter the fact that on this view justice requires that the product must go to the producers (rather than to those who have played no part in its production), however this is to be calculated.<sup>375</sup>

Both the Georgist and Lockean approaches are far more egalitarian than the radical right-wing libertarians I shall consider in a moment, but it should be apparent that the Georgist approach has the potential to be far more egalitarian even than the Lockean model. If we take production to be the sole justification for private property –

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<sup>373</sup> Anton Menger, *The Right to the Whole Produce of Labour : The Origin and Development of the Theory of Labour's Claim to the Whole Product of Industry* (London: Macmillan, 1899). p. 7

<sup>374</sup> See for example David Miller, *Social Justice* (Oxford: Oxford University Press, 1976). p. 102-114

<sup>375</sup> See Tully, who does not believe this to be an "insurmountable difficulty". James Tully, *A Discourse on Property : John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980). p. 145

excluding labour-mixing or first occupancy – then we must reject full private ownership of natural resources. Moreover, I argue that we *should* take production to be the sole justification for private property since it is the only justification that can be derived from self-ownership.

### ***Radical Right-wing Libertarianism***

Radical right-wing libertarians are by no means alone in rejecting the claim that land and other natural resources cannot be fully privately owned, but since they reject even the claim that people have equal rights to *use* natural resources, they are perhaps the most vehement opponents to the Georgist account that I have just set out. According to radical right-wing libertarians, no one is entitled *not* to be disadvantaged by others' appropriation of natural resources, so there is no injustice when some people *are* disadvantaged in this way, and therefore no requirement for a proviso placing a limit on such appropriation. I shall focus here on Israel Kirzner and Murray Rothbard.

Kirzner is perhaps a little more moderate than Rothbard, despite his unforgiving conclusions. He claims that it is the discovery of the opportunities offered by a given resource that confer on the discoverer a right of private ownership and he argues that the person who discovers a valuable resource is effectively its creator, because – in terms of human awareness – a resource has “no *existence* prior to its discovery.”<sup>376</sup> This is the ‘entrepreneurial view of production’, which follows the finders-keepers rule, whereby “The man... that first discovers and claims title to natural resources thereby gains ownership.”<sup>377</sup> Kirzner believes that when an individual takes advantage of an opportunity this confers what he calls ‘ethical deservingness’. Moreover, he claims that an individual deserves to enjoy this gain “despite the

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<sup>376</sup> Israel M. Kirzner, *Discovery, Capitalism, and Distributive Justice* (Oxford: Basil Blackwell, 1989), p. 17

<sup>377</sup> Israel M. Kirzner, *Perception, Opportunity and Profit : Studies in the Theory of Entrepreneurship* (Chicago: University of Chicago Press, 1979). p. 196, quoting Oliver, ‘Critique of Socio-economic Goals’.

possibility or even the likelihood that others might have perceived the same opportunity seconds later.”<sup>378</sup> Kirzner is more moderate than Rothbard, as he concedes, for the sake of argument, a proviso such that acquisition is only unjust if it worsens the situation of others. However, he denies that such a proviso does in fact impose any restriction on appropriation. According to Kirzner, we do not make others worse off by appropriating a resource when they were unaware of its existence or its uses. Without the discovery there would be no resource for others to be compensated for, hence no such compensation is required. So any inclusion of a proviso is ultimately redundant.

Kirzner appears here to conflate the issues of creation and discovery. While he is correct to argue that we have a right to what we have created, he is not justified in claiming that the discoverer of a resource is effectively its creator, and therefore has the same rights to it as if he had created it.<sup>379</sup> This does not mean that the discoverer may not have an entitlement to some sort of finder’s fee – a reward for bringing that resource to the attention of the world at large – but since they have not produced the resource in question, they cannot claim full property rights over it.

Rothbard goes even further than Kirzner, denying the need for any sort of proviso and maintaining that there is nothing objectionable to being the first to appropriate even if it does deny opportunities to future people. Rothbard insists that individual ownership of land is a requirement of being able to own the produce of one’s labour, and believes that the first person to bring what he calls a ‘valueless’ thing into production and social use is the rightful owner of that thing.<sup>380</sup> For Rothbard, the simple act of first appropriation is sufficient to confer a right of ownership over something and means that people who have done nothing to realise the potential of that resource, and who may even be unaware of its existence, have no claim to it, nor to compensation for having been deprived of it.

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<sup>378</sup> Ibid. p. 197

<sup>379</sup> See Peter Vallentyne, "On Original Appropriation," in *Liberty, Games and Contracts: Jan Narveson and the Defence of Libertarianism*, ed. Malcolm Murray (Aldershot: Ashgate Press, 2007). p. 174

<sup>380</sup> Rothbard, *For a New Liberty: The Libertarian Manifesto*. p. 35

Rothbard states that private ownership of land is a requisite of producing anything, as no man can produce through labour alone. Ownership of the land is required, he claims, in order to be fully entitled to the fruits of one's labour since, according to Rothbard: "The farmer cannot own his wheat crop if he cannot own the land on which the wheat grows".<sup>381</sup> This position is of course in stark contrast to George, who held that a right to use the land was sufficient to be able to reap the reward of cultivating it, and that private property in land would actually prevent people from being able to realise their rights over the product of labouring on land.

It is far from clear why Rothbard thinks it is necessary to own the land before one can own the wheat, or why he believes that it is not possible to deny private property in land without simultaneously denying one's right to their labour product, and infringing one's right of self-ownership. In order to ascertain precisely where the confusion arises in Rothbard's argument, I shall present his position at length. He claims:

If a man has the right to self-ownership, to the control of his life, then in the real world he must also have the right to sustain his life by grappling with and transforming resources; he must be able to own the ground and the resources on which he stands and which he must use. In short, to sustain his 'human right' – or his property rights in his own person – he must also have the property right in the material world, in the objects which he produces.<sup>382</sup>

Rothbard is correct to claim that in order for an individual to exercise his rights of self-ownership he must be permitted to make use of external worldly resources. This has been acknowledged at the beginning of this chapter as a requisite of robust self-ownership, and is something which George states explicitly. Rothbard is unjustified, however, in making a jump to the claim that he must be able to 'own the ground'. The requisite of being permitted to use resources does not warrant full ownership of them. In fact, conversely, George argued that the fact that we must all be able to use resources is precisely why these resources cannot be held in the private ownership of the few. Rothbard suggests in the final line of the above quotation that having a property right in the material world is the same as having a property right in the

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<sup>381</sup> Ibid. p.35

<sup>382</sup> Ibid. p.43. See also p.31-35

objects which he produces through labouring on the material world. Conflating these different things in this way is not justified. When George argues for private property in the objects one produces through labouring on land he does not argue for full property rights over the land itself, but rather just a right to *use* the land, in return for the payment of rent. This is sufficient to ground a private property right in the product resulting from labouring on that resource. Rothbard does not acknowledge that to have a right to the product of labouring on external worldly resources is entirely compatible with a system of common ownership or common use, or a system of private property which imposes a limit on the quantity of external resources that one is permitted to acquire. (Nor does he realise that it is in fact *incompatible* with allowing people to take private ownership of unlimited quantities of these resources, as I shall explain shortly). The argument that people must be able to have a property right over that which they produce through labouring on natural resources is not sufficient, as Rothbard believes, to ground the claim that these natural resources themselves must be owned, and it certainly cannot justify the claim that self-ownership rights can only be safeguarded by permitting unlimited private appropriation of external worldly resources, as Rothbard suggests.

Thus far I have attempted to show simply that Rothbard's conclusions need not follow from his premises, namely a commitment to self-ownership and a recognition that self-owners must make use of the natural world. George shared these premises and arrived at entirely different conclusions. To this extent, the disagreement between radical right-wing libertarian accounts and Georgist accounts like my own may appear to rest on intuitive principles. George argues that land cannot be private property since it is not the product of anyone's labour, and only production can confer a property right. Rothbard, in contrast, believes that first occupancy is sufficient to confer a property right, just as Kirzner believed that discovery conferred the same rights as creation. However, even acknowledging this disagreement of basic principles, there are other reasons why the radical right-wing libertarian position can be rejected.

Firstly, on an account such as Rothbard's that permits unlimited acquisition, there is a high probability that self-ownership will not be robust. If no proviso is imposed whatsoever, then there is no limit to how much an individual can appropriate. Admittedly it is possible that some resources could remain unappropriated even after everyone has taken as much as they want, in which case each individual might have access to sufficient resources to have robust self-ownership. But if there is no limit on the quantity that people may appropriate then there is a high probability that all resources *would* have been appropriated, meaning that some people would be left without access to any resources at all, not even standing room. So although the absence of a proviso does not by necessity rule out robust self-ownership, the probability that self-ownership will not be robust for many people is high enough (and without a proviso there is no safeguard against this) for this to undermine the claim that a proviso is not required.

In response to the argument that the approach to world ownership advocated by radical right-wing libertarianism renders self-ownership merely formal, it could be countered that support for self-ownership does not necessarily entail support for the principle that self-ownership must be robust, any more than support for autonomy need entail support for the principle that autonomy must be promoted. If self-ownership is rendered ineffective then this could be deemed a shame but not an injustice, and so does not contradict the libertarian position. I have suggested that anyone who takes self-ownership seriously will want to provide an approach to world ownership that would make self-ownership as robust as possible, but nonetheless this objection still holds. For those who are unconvinced that self-ownership must be robust, there is a second argument against unlimited appropriation, concerning compossibility. This argument is proposed by Steiner:

In a world completely owned by you, there is nothing I 'own' over which you may not exercise legitimate control. I am – that is, each part of my body is – unavoidably encroaching on your property. And you may consequently treat *it* (my body) as you might treat any other adventitiously appearing natural

object such as a weed or a meteorite; you may appropriate it. In short, rights of first possession are impossible with rights of self-ownership.<sup>383</sup>

In other words, when the entire world has been fully appropriated by first-grabbers then those first-grabbers are entitled to exercise control over any natural object that appears on their property, much in the same way that a tree that begins to grow on my land would be my property, even if it was the result of a seed blown over my neighbour's fence (rather than something I planted myself and which was therefore partly the result of my labour). This leaves even a person open to appropriation, which would violate the rights of self-ownership, thereby demonstrating the incompatibility of a first come first served approach with self-ownership. I am not fully committed to this view of Steiner's, since I have argued that if an individual has autonomy then this overrides any ownership rights over that individual that may be held by others (unless the individual in question has transferred his property rights over the self). However, the essence of Steiner's argument can be maintained even while upholding my autonomy condition. Anyone who has not been left with sufficient resources – not even standing room – will be forced to encroach on the resources of others. Any attempt to make use of external worldly resources will involve using resources that are the private property of someone else. Even by the simple fact of existing, people would be violating the property rights of others. Even if one can deny that it is a problem for justice that self-ownership is not robust, they cannot deny that to advocate such a situation would be to advocate a set of rights that are not compossible. In a world where all resources are held in the private property of a few, a landowner cannot force an individual off his land without forcing him onto the land of another. Alternatively, rather than forcing him to vacate the land, he could force him to work. But in either case, these rights are not compossible. In every eventuality either the property rights of one of the landowners or the self-ownership rights of the individual must be violated. The rights cannot all be fulfilled simultaneously, and thus they are impossible. If the self-ownership rights of one individual are not compossible with the property rights of another (or if the property rights of one landowner are impossible with the property rights of another) then they cannot both be human rights, as explained in chapter one. Every libertarian must

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<sup>383</sup> Hillel Steiner, "Capitalism, Justice and Equal Starts," *Social Philosophy & Policy*, no. 5 (1987). p. 63

subscribe first and foremost to the rights of self-ownership, and this means that we must abandon human rights to unlimited quantities of worldly resources.

An idea that is unsubstantiated in the radical right-wing libertarian literature is that natural resources are unowned and up for grabs. It is this that leads them to conclude that there is nothing wrong with being the first to appropriate, thereby disadvantaging individuals who come later. I find it far more plausible that natural resources are owned by all equally, since they are not the produce of labour, but I concede that this is not something that a libertarian is obliged to accept. We *can* conclude, however, that a libertarian *is* obliged to accept that effective self-ownership and a compossible set of rights over the self and over worldly resources are incompatible with *unlimited* appropriation. While libertarians need not subscribe to egalitarian ownership, their commitment to self-ownership and a compossible set of rights demands, at the least, the imposition of a proviso.

### ***Lockean Libertarianism***

I use the term ‘Lockean libertarianism’ to apply to any libertarians who (drawing inspiration from Locke) propose justifying initial acquisition subject to a proviso. These libertarians appear more sympathetic to the suggestion that natural resources are owned by everyone equally, since the need for a proviso indicates some recognition that people have some sort of equal claim to these resources. And yet Lockean libertarians are not necessarily left-libertarians, with an independent commitment to egalitarian world ownership. Indeed, one of the most famous among Lockean libertarians is Robert Nozick who, like Rothbard, maintains that resources are unowned and up for grabs. But even without a commitment to egalitarian world ownership, the recognition of the need for a proviso in order for self-ownership to be effective, and in order for self-ownership rights and rights over resources to be compossible, does however move libertarianism in a considerably more egalitarian direction.

Nozick draws heavily (and explicitly) from Locke, but notes some inadequacies in Locke's arguments. He asks why we should think that mixing something we own with something we do not own should confer ownership of the latter, rather than signify a loss of ownership of the former. He also notes that the stock of improvable objects is limited (something Locke overlooks) raising the problem of the 'zipper argument'.<sup>384</sup> This objection states that if the stock of worldly resources runs out at some point in the future, as it doubtless will, then there will not be 'enough and as good' for some distant future individual to appropriate. The appropriator directly before him would therefore not be permitted to appropriate. If this individual is denied permission to appropriate, then the appropriator prior to *him* has also not left 'enough and as good', and is likewise not permitted to appropriate. The conclusion of this argument is that even the very first person to appropriate is not permitted to do so since ultimately someone further down the line will be left without 'enough and as good'.

In an attempt to overcome this problem, Nozick comes up with an alternative formulation of the Lockean proviso. He claims that the crucial factor in determining whether or not private appropriation is just is to consider whether or not people are made worse off by such appropriation. He states:

A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened.<sup>385</sup>

In some ways, Nozick's formulation of the proviso is less demanding than Locke's, as it permits initial acquisition that does not leave others with the same opportunities to appropriate.<sup>386</sup> But unlike Locke's proviso it does address the (likely) possibility that the quantity of available resources will diminish, and still provides an improvement in people's condition compared with the state of nature. Nozick then stipulates a further condition: that of compensation. He claims,

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<sup>384</sup> Nozick, *Anarchy, State and Utopia*. p. 176

<sup>385</sup> *Ibid.* p. 178

<sup>386</sup> Having fewer opportunities to appropriate does not count as being made 'worse off', according to Nozick. *Ibid.*

Someone whose appropriation otherwise would violate the proviso still may appropriate provided he compensates the others such that their situation is not thereby worsened.<sup>387</sup>

This demonstrates a vital departure from radical right-wing libertarians, despite agreement concerning the original ownership status of natural resources. Imposing a condition such that compensation is owed whenever appropriation makes people worse off represents a stark contrast between Nozick and radical right-wing libertarians, and demonstrates a middle ground between unlimited appropriation and egalitarian ownership.

A criticism that can be levelled against Nozick's application of the proviso, if not its conceptualisation, is that Nozick appears to have a very limited understanding of what 'worse off' means. For Nozick the requirement is merely that a system of private ownership must not leave people worse off in terms of their access to wealth, but this is surely not the only meaning of 'worse off' that is important.<sup>388</sup> It is far more significant that an individual could be left worse off following private appropriation, in terms of *autonomy*. Autonomy, as I have argued in previous chapters, is the ability to exercise control over your life, and a libertarian theory of justice demands that people not be interfered with in exercising control over their lives. In a pre-acquisition state everyone is permitted to make use of worldly resources. Once resources are appropriated under a Nozickian proviso they enter into private ownership and so are no longer available to others. If we are to apply Nozick's 'worse off' proviso comprehensively then we should consider not merely whether everyone has the same level of well-being or access to material goods (perhaps in the form of a payment of compensation). Rather, we should consider if anyone has less control over their life than they had before, in which case they would be worse off in terms of autonomy.<sup>389</sup> Imagine a pre-acquisition state in which someone employed themselves by labouring on a piece of common land, and

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<sup>387</sup> Ibid.

<sup>388</sup> See G. A. Cohen, "Nozick on Appropriation," *New Left Review*, no. 150 (1985). p. 93

<sup>389</sup> For a similar argument, see Kymlicka, *Contemporary Political Philosophy: An Introduction*. p. 112-3. See also Cohen, *Self-Ownership, Freedom, and Equality*. p. 80

sustained themselves without having to sell their labour to anyone. This labourer's autonomy would surely be decreased if all the common land was then appropriated and the labourer no longer had the *option* of working for himself – even if the new owner employed the labourer, paying him twice what he could earn by labouring for himself. This would represent a significant change in the control he is able to exercise over his life. Nozick is unjustified in interpreting 'worse off' purely in a monetary sense. A Nozickian proviso, if it took into consideration all the relevant ways in which people could be made worse off by appropriation, would be far more restrictive, permitting appropriation in fewer cases, or identifying more instances where compensation is owed, enabling us to avoid the "inegalitarian Nozickian scramble"<sup>390</sup> that libertarian appropriation is often thought to permit.

In this criticism I have identified a way in which Nozick's proviso can be interpreted to promote a much more egalitarian outcome than he proposed. Nonetheless there are still limitations on what can be achieved with a proviso if we continue to uphold the claim that resources are unowned and up for grabs rather than viewing them as something to which everyone is equally entitled. Even with a comprehensive application of the 'worse off' condition, massive inequalities in the distribution of natural resources could still result if we take the baseline to be the state of nature (quite apart from inequalities that result from upholding self-ownership rights when people have varying natural abilities). This is not a problem for libertarians, nor is it a problem for robust self-ownership, which requires only that people have access to a *sufficient* share of natural resources, but it is an interesting enterprise to see how far equality can be promoted while upholding self-ownership.

For Nozick, the only appropriation that is permitted is (unsurprisingly) that of unowned resources. He would reject outright any claim that someone could 'appropriate' something already owned by someone else, even if a proviso were imposed such that the original owner must not be made worse off. For example, if I could take something belonging to someone else, make a far more efficient use of it, and pay them a share of the benefits which would make them better off than they had

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<sup>390</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 102

been when the good was their own property this would not justify me in depriving them of their property without their permission. Goods that are already owned are not up for grabs no matter how much the ‘re-appropriation’ of the good would improve the situation of others, including that of the original owner. This brings us back to the question of why external worldly resources in a state of nature should be seen as unowned, rather than as owned already by everyone. Nozick, like radical right-wing libertarians, has provided no support for the supposition that the world is unowned and up for grabs.<sup>391</sup> If we see the world instead as initially owned by everyone then it would not be so clearly permissible to appropriate something that is the property of everyone when one cannot appropriate a thing that is the property of just one other person. Locke believed there must be some justifiable way of removing things from common ownership without having to seek the consent of others, otherwise man would starve “notwithstanding the Plenty God had given him.”<sup>392</sup> But no reason has been given, either by Locke or by Nozick, why this should mean creating full property rights in that thing. Nozick argues that people will tend to be better off in a system that allows private appropriation because private property brings many advantages, including increased efficiency and productivity since the resources end up with those who can make best use of them.<sup>393</sup> But as we saw with reference to George, these advantages can be gained through private *use* of resources, without the need for private property rights over them.

We can explore a more egalitarian approach to world ownership, albeit still in a Lockean context, by addressing in addition to the question of ‘worse off *in terms of* what?’ the question: ‘worse off *compared to* what?’ Nozick takes the state of nature as his baseline, arguing that private appropriation is permitted provided that no one is made worse off than they would be in a state of nature. However, he does not defend this decision to compare the post-appropriation situation with the situation in a state

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<sup>391</sup> See Ibid. p. 84

<sup>392</sup> Locke, *Two Treatises of Government*. § 28

<sup>393</sup> Nozick also claims that private property, among other benefits, encourages experimentation, enables people to decide the risks they bear, and provides alternate sources of employment. Nozick, *Anarchy, State and Utopia*. p. 177

of nature, rather than with a preferable alternative.<sup>394</sup> Permitting this approach of ‘first-grabbing’ (even in circumstances where each individual was equally capable of being the ‘first-grabber’ – something that is not possible in any case in the light of unborn generations) creates a situation in which the majority of people are less well off than they might be in an alternative arrangement, thereby making them (comparatively) worse off than in a system that regulated appropriation in some other way. Otsuka criticises Nozick’s disregard for the significance of the opportunity to appropriate, arguing that someone is disadvantaged when they come into a fully-appropriated world – even if they are better off than they would have been in a state of nature – as they have been deprived of the opportunity to appropriate. He describes it as “manifestly unfair that a first grabber be allowed to monopolize all opportunities to improve one’s lot through acquisition.”<sup>395</sup> If an alternative distribution were available that would result in greater equality without infringing self-ownership then, according to Otsuka, this ought to be favoured. I shall return to Otsuka’s favoured distribution in chapter seven, but what is important here is to note that a Nozickian proviso, even if reinterpreted as I have suggested, does not push libertarianism as far from radical right-wing libertarianism and as far towards egalitarianism as it is possible to do while still maintaining self-ownership.

In this section I have explored how the implementation of a proviso on resource acquisition leads to an entirely different outcome from that advocated by radical right-wing libertarians, and one in which self-ownership is robust and where the proposed set of rights are compossible. I have so far discussed the proviso specifically with reference to Nozick, since he shares the radical right-wing libertarian commitment to the claim that natural resources are unowned rather than owned by all. This premise is unsupported, however, and I find it more plausible to suppose that everyone has equal entitlements to the earth. In fact, to suppose that a proviso is required at all suggests that there are rights of everyone to benefit from the

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<sup>394</sup> See Cohen, *Self-Ownership, Freedom, and Equality*. p. 78. On the question of the appropriate baseline for the proviso, see John Arthur, "Resource Acquisition and Harm," *Canadian Journal of Philosophy* 17, no. 2 (1987), and the response from Narveson: Narveson, *The Libertarian Idea*. p. 87-93

<sup>395</sup> Otsuka, *Libertarianism without Inequality*. p. 23

use of the external world, a view more in line with egalitarian ownership than non-ownership. As Nicolaus Tideman explains:

The obligation to explain to others why one's appropriations are just, combined with the apparent impossibility of doing so if one has not left as much for them (in resources or compensation) as one has taken for oneself, makes it reasonable to declare that all people have equal rights to land and other natural opportunities.<sup>396</sup>

I shall now turn to consider left-libertarian accounts, on which natural resources are owned in some egalitarian manner, to see how far this is genuinely compatible with a commitment to self-ownership. A full discussion of the range of interpretations of 'egalitarian ownership' will follow in the next chapters, but here I shall talk broadly of left-libertarianism and its coherence as a theory of justice.

## **Left-Libertarianism**

Left-libertarianism can have Lockean foundations, but crucially it also (unlike Nozick's libertarianism) has an independent commitment to egalitarian world ownership. In the words of three of its most forthright proponents: "Left-libertarians hold that, as a matter of natural right, agents initially fully own themselves and natural resources are owned in some egalitarian manner."<sup>397</sup> So while they may condone a Lockean-style proviso it will not be sufficient that enough and as good is left for others if this results in a radically inegalitarian distribution of natural resources.

I have argued in the previous section that Lockean principles do not necessarily lead to egalitarian outcomes, and yet Locke has been interpreted by many – and not just by left-libertarians – as defending a far more egalitarian approach to worldly

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<sup>396</sup> Nicolaus Tideman, "The Case for Geoliberalism: A Reply to Moellendorf," *International Journal of Social Economics* 36, no. 4 (2009). p. 497

<sup>397</sup> Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried." p. 208

resources than is upheld by right-wing libertarians like Nozick. This interpretation is primarily on account of the following passage from Locke: “Men, being once born, have a right to their Preservation, and consequently to Meat and Drink, and such other things as Nature affords for their Subsistence”.<sup>398</sup> This direct reference to subsistence has led to some people arguing that Locke supports positive rights. Henry Shue, for example, claims that this passage shows that “John Locke had taken for granted that the right to accumulate private property was limited by a universal right to subsistence.”<sup>399</sup> This reading of Locke is shared by Debra Satz, who maintains that Locke’s assertion that men have a right to preservation means that “everyone has an original pre-appropriation claim-right to an adequate subsistence from the resources of the world.”<sup>400</sup> It has also been contended that Pogge’s interpretation of Locke lends itself to a left-libertarian reading.<sup>401</sup> So while Lockean principles such as the proviso can be used to justify inegalitarian appropriation – for example, where some individuals are left with a bare sufficiency in the face of mass appropriation of resources by first-grabbers – a comprehensive reading of Locke suggests that a far more egalitarian approach underlies his proposals.

Such an egalitarian reading has been proposed by Otsuka, who explicitly embraces a Lockean-style proviso. He argues against Nozick’s conceptualisation of the baseline against which to compare whether or not private appropriation has made people worse off, and provides a further reformulation of the Lockean proviso, comparing the post-acquisition situation not with that in a state of nature, but rather with any other type of distribution that could have been chosen. He claims “an individual can come to acquire rights of ownership over a previously unowned bit of the world if and only if such acquisition places nobody else at a disadvantage.”<sup>402</sup> The alternative distribution he supports is captured in his refinement of the Lockean proviso, which elaborates on what it would mean for someone to be placed at a disadvantage. This he calls the Egalitarian Proviso, according to which:

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<sup>398</sup> Locke, *Two Treatises of Government*. § 25

<sup>399</sup> Shue, *Basic Rights : Subsistence, Affluence, and U.S. Foreign Policy*. p. 153

<sup>400</sup> Debra Satz, “Comments on Pogge’s *World Poverty and Human Rights*”, quoted in Pogge, “Real World Justice.” p. 40

<sup>401</sup> See Cruft, “Human Rights and Positive Duties.” p. 35

<sup>402</sup> Otsuka, *Libertarianism without Inequality*. p. 22

You may acquire previously unowned worldly resources if and only if you leave enough so that everyone else can acquire an equally advantageous share of unowned worldly resources.<sup>403</sup>

An 'equally advantageous share of worldly resources' is how Otsuka believes we ought to understand the condition of 'enough and as good', which will lead to a far more egalitarian distribution of natural resources than would be permitted by Nozick's formulation. I shall return to Otsuka's specific brand of left-libertarianism (as well as those of Steiner and Vallentyne) in more detail in the following chapters, but will turn now to consider objections that have been made against the coherence of left-libertarianism broadly construed.

Risse denies the coherence of maintaining that personal endowments are the rightful property of those in which they reside, while natural resources are common ownership of all. He claims,

One cannot endorse one view of what we owe to each other for one domain (ownership of persons) and another such view for another domain (ownership of external resources).<sup>404</sup>

This is based on the idea that anyone who supports common ownership of worldly resources will do so on account of the view that benefits and burdens ought to be shared among all. It would then be contradictory, according to Risse, to support self-ownership rights that assure to each individual the benefits from their (arbitrarily distributed) natural abilities. A similar argument has been made by Eric Mack, who observes:

any given individual's basic natural endowment, as much as any set of non-human basic resources, does 'appear from nowhere and out of nothing'. If this characteristic of non-human basic resources requires that all agents have

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<sup>403</sup> Ibid. p. 24

<sup>404</sup> Mathias Risse, "Does Left-Libertarianism Have Coherent Foundations?," *Politics, Philosophy, and Economics* 3, no. 3 (2004). p. 344

substantively equal rights to them, why is not the same true of basic human endowments?<sup>405</sup>

A response to this could be made along the same lines as my rejection of the germ-line genetic information argument: that it may be impossible in practice to determine which personal endowments have occurred naturally and which have been cultivated and nurtured, in which case it would be wrong to treat the former as a natural resource as this would risk also including the latter, which would violate rights of self-ownership. A potential problem with this response is that it may not in fact demonstrate a clear distinction between natural endowments and natural resources. Mack also argues that natural resources (unlike natural endowments) do not appear from nowhere and out of nothing, but rather “the status of natural objects... *as resources* does depend on human choice and action.”<sup>406</sup> Arguably personal endowments are more aptly described as appearing from nowhere and out of nothing than are so-called natural resources.

It is true that the terminology of ‘natural resources’ is not straightforward (I shall address this fully in the next chapter) and yet it is incorrect to claim that there is no natural resource component which genuinely does not embody anyone’s labour. It is possible to distinguish between a natural resource in its genuinely natural state, as opposed to its value-added form, whereas it is much more difficult if not impossible, to conceive of a talent in its natural as opposed to its nurtured form. The value-added to natural resources can be separated and a distinct value for this labour rewarded, but the same cannot be done with regard to talents. In the interests of protecting the rewards of individual effort, we must treat natural endowments as the property of the individuals in which they reside, but we need not do the same with natural resources.

Further criticism comes from Barbara Fried, according to whom left-libertarians fail collectively to agree on the meaning of self-ownership and on the property rights that are derived from it, which “suggests that the label ‘left-libertarianism’ houses

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<sup>405</sup> Eric Mack, "Distributive Justice and the Tensions of Lockeanism," *Social Philosophy and Policy* 1 (1983). p. 149, quoting Hillel Steiner, "The Natural Right to the Means of Production," *The Philosophical Quarterly* 27, no. 106 (1977). p. 44

<sup>406</sup> Mack, "Distributive Justice and the Tensions of Lockeanism." p. 134-5. I shall return to this complication of conceiving of ‘natural’ resources in chapter six.

disparate moral intuitions that share little but a name".<sup>407</sup> This arguably means that left-libertarianism lacks coherence since the variety of formulations that fall under this banner vary to such an extent that they fail to 'cohere' in any real sense. She also identifies two problems with the left-libertarian approach:

First, 'self-ownership' may not be able to do the work that left-libertarians assign it, any more than it can do the cognate work assigned by the (libertarian) right. Second, the robust interpretation of the Lockean proviso that left-libertarians embrace to distance themselves from the right assumes a view of fairness that threatens to eliminate the distinction between left-libertarianism and more conventional strains of egalitarianism.<sup>408</sup>

She even suggests that "left-libertarianism is just liberal egalitarianism in drag"<sup>409</sup> on the grounds that

the principles that distinguish left-libertarianism from liberal egalitarianism (a commitment to self-ownership, and an egalitarianism limited to the value of 'natural resources') are in the end not doing very much work in many versions of left-libertarianism.<sup>410</sup>

Firstly, in response to these criticisms it can be countered that left-libertarianism is no less coherent than any other family of theories. All theories consist of competing conceptualisations, which does nothing to undermine the coherence of the theory itself. Responding to Fried, Vallentyne, Steiner and Otsuka argue that "Left-libertarianism is no less uniform in this regard than egalitarianism, consequentialism, and liberalism."<sup>411</sup> I would add that the manner in which Fried clearly identifies above the distinct premises underlying left-libertarianism demonstrates its coherence and the specific domain of the theory. While Fried may be right to note that not all the theories adopting the label of left-libertarianism (or to whom it has been

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<sup>407</sup> Barbara H. Fried, "Left-Libertarianism: A Review Essay," *Philosophy and Public Affairs* 32, no. 1 (2004). p. 78

<sup>408</sup> Ibid. p. 70

<sup>409</sup> Ibid. p. 85

<sup>410</sup> Barbara H. Fried, "Left-Libertarianism, Once More: A Rejoinder to Vallentyne, Steiner and Otsuka," *Philosophy & Public Affairs* 33, no. 2 (2005). p. 219

<sup>411</sup> Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried." p. 211

attributed)<sup>412</sup> demonstrate adequate commitment to these two premises to make them worthy of the name, this does not undermine the coherence of the theory itself, but merely serves to disqualify some theorists from adopting the classification of left-libertarianism.

Secondly, my own definition of self-ownership is more determinate than some of the others I have considered, and outlines clearly the property rights that self-ownership consists in and the prohibitions proceeding from recognition of the rights of self-ownership. Fried's claim that not all (so-called) left-libertarians adopt such a determinate definition of self-ownership, or that they disagree on the conceptualisation of self-ownership, does nothing to undermine my position.

The contention that the egalitarian component of left-libertarianism does not adequately distinguish left-libertarians from liberal egalitarians is also overstated. Vallentyne, Steiner and Otsuka deny any intention to distance themselves from liberal egalitarianism, declaring themselves to be not 'liberal egalitarians in drag' but rather as "proud, card-carrying liberal egalitarians".<sup>413</sup> Fried's criticism that the egalitarian component of left-libertarianism can take them too far – into territory that contradicts that of the self-ownership component – is based on the conceptualisation of natural resources favour by some left-libertarians. She believes that adopting a broad conceptualisation of natural resources leads them to end up with

a distributive program on the tax side that converges with what conventional liberal egalitarianism would support: an expropriative tax on all differential endowments, external resources as well as talents.<sup>414</sup>

This clearly does appear to conflict with self-ownership, and is an outcome that must be avoided, but this is again a criticism of certain arguments purporting to be left-libertarian, not of left-libertarianism itself. In the following chapters I shall examine

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<sup>412</sup> Fried is writing in response to the two collections of essays Vallentyne and Steiner, eds., *The Origins of Left-Libertarianism : An Anthology of Historical Writings*. and Vallentyne and Steiner, eds., *Left-Libertarianism and Its Critics : The Contemporary Debate*.

<sup>413</sup> Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried." p. 210

<sup>414</sup> Fried, "Left-Libertarianism, Once More: A Rejoinder to Vallentyne, Steiner and Otsuka." p. 220

different approaches to egalitarian ownership, the conceptualisation of natural resources, and the distribution that this permits. My conclusions will demonstrate that equal ownership of natural resources – if conceived in a suitably narrow sense – is compatible with upholding the rights of self-ownership and, though less egalitarian than the conclusions drawn by other left-libertarians, nonetheless justifies a substantial amount of redistribution.

## ***Conclusion***

I began this chapter by proposing a Georgist approach to world ownership, according to which land can never be held in full private ownership since production is the only justification for private property. Self-ownership rights show that labour can give rise to labour product – both the product of labouring on personal resources and the product of labouring on external resources on which one has paid the requisite rent or tax (details to follow in the next chapter) – but they cannot do the same for things that are not the product of labour, such as land. I then responded to radical right-wing libertarian criticism of this position, but argued that this alternative approach to permissible appropriation must be abandoned, since it did nothing to guarantee that self-ownership is robust, and it also resulted in proposing a set of property rights that were not compossible. From this I concluded that even from a libertarian perspective it is necessary to impose a proviso on appropriation. I then considered Nozick, as a right-wing Lockean libertarian, and suggested amendments to his proviso that would allow us to achieve a more egalitarian outcome without abandoning any of his premises. There will always be limits to the equality that can be achieved, however, if natural resources are seen as unowned and up for grabs, so in the interests of seeing how far libertarianism can be pushed in the direction of egalitarianism I then turned to left-libertarianism and its independent commitment to egalitarian world ownership. I have maintained that libertarianism can remain neutral as to the ownership of natural resources, since self-ownership is the only fundamental libertarian tenet, and the most that can be derived from self-ownership in terms of

worldly resources is that everyone must have access to a sufficient quantity to exercise their self-ownership rights. This still leaves open the nature of that ownership – whether common ownership, private ownership (for example, of equal shares) or (the more controversial) joint ownership. The next step then is to explore in more detail these various approaches to egalitarian world-ownership.

## Chapter 6: Egalitarian Ownership

### *Introduction*

In the previous chapter I made a Georgist proposal that production is the only thing that can create a property right, meaning that natural resources can never be held in full private ownership. I compared this with right-wing libertarian accounts, of both the radical and Lockean-Nozickian types, and argued that even without an independent commitment to the thesis that natural resources are owned by everyone and cannot become private property, libertarians must nonetheless reject unlimited appropriation on the basis that it does not promote robust self-ownership and it leads to an impossible set of rights. I also argued that we should reject the inegalitarian outcome permitted by following Nozick's formulation of proviso, since Nozick has provided no justification for the claim that resources are unowned and up for grabs. Since the ownership of worldly resources – unlike self-ownership – is something that is up for discussion from a libertarian point of view, it is plausible to adopt an approach to worldly resources that is the one most likely to lead to self-ownership being robust. It is also interesting to see how far the libertarian position can be pushed towards egalitarianism before it starts to undermine the libertarian commitment to self-ownership. I shall now return to the idea that natural resources are owned by all and cannot be the subject of full private property rights.

My main point of comparison for Georgist common ownership will be Steiner's proposal of the Global Fund and equal shares of natural resources. While assessing the similarities and differences of these two positions I will identify some of the problems that arise on these models, and shall then address these problems with reference to joint ownership. When resources are held in joint-ownership all decisions about their use must be made collectively. It is differentiated from common ownership by the fact that consent of one's fellow owners is required before one can

do anything with a jointly owned resource – it is not sufficient merely to observe certain conditions, such as the payment of rent. It is widely believed that ownership of this kind is incompatible with effective self-ownership, but I will demonstrate that these claims are overstated. Finally I shall compare my revised conclusions regarding the just egalitarian ownership of natural resources and the proposal of a fund collectable from the use of natural resources with Thomas Pogge’s proposal for a Global Resources Dividend. I will also address the issue of what should be understood by the term ‘natural resources’ and consider some of the problems of adopting this terminology. The ultimate aim of this chapter is to provide an answer to the question: ‘what is meant by “egalitarian ownership of worldly resources”?’ with the emphasis on the nature of the ownership rather than the nature of the egalitarianism. In other words: if natural resources are owned in some egalitarian manner, what is this manner in which they are owned? And what are the ‘resources’ that are owned in this way? In the next chapter I will shift the emphasis to the nature of the egalitarianism and turn to consider what counts as ‘equal’ when it comes to egalitarian ownership. Having concluded in this chapter how funds should be raised from the resources held in egalitarian ownership I shall turn to consider in the next chapter how these funds ought to be distributed.

Although I shall consider the terminology of natural resources in greater detail in due course, it is necessary to set out now in broad terms what I intend this phrase to convey, as a backdrop to the preliminary discussion on ownership. I shall begin then with a definition of natural resources provided by Vallentyne, Steiner and Otsuka in a joint article. They describe natural resources as

those things that have no moral standing (e.g. are not sentient) and have not been transformed by any non-divine agent. Thus land, seas, air, minerals, and so forth in their original (humanly unimproved) states are natural resources, whereas such things as chairs, buildings, and land cleared for farming are not.<sup>415</sup>

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<sup>415</sup> Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried." p. 202

In short, a natural resource, on this definition, is a naturally occurring raw substance which has been involved with no human interaction and does not itself have moral standing (thereby ruling out people, at the least). In due course we shall come to see some of the limitations of this definition. For example, while distinguishing such things as land and seas from chairs and buildings may appear to be relatively straightforward, the distinction between ‘land’ and ‘land cleared for farming’ may be harder to draw, and suggests greater difficulties in ascertaining precisely what is to count as a ‘natural resource’, which is important in terms of identifying precisely what it is of which there is equal ownership. But this definition will suffice in the meantime as the background for a preliminary discussion of the application of different conceptualisations of egalitarian ownership.

### ***Egalitarian Ownership***

The aim of equality sets left-libertarians apart from right-wing libertarians, but there is no necessary distinction in the type of ownership proposed. Egalitarian ownership of worldly resources means that everyone has an equal claim to those resources, but this need not imply a lack of private ownership. Risse offers an insightful account of pre-institutional (that is to say, natural) rights with regard to worldly resources. He identifies four types of ‘ownership status’: joint, private, common, and no ownership.<sup>416</sup> The ‘no ownership’ status essentially means that these natural resources are unowned, and this – as we saw in the last chapter – is the position of right-wing libertarians that permits first-grabbing. I dismissed this approach as less plausible than a more egalitarian one, particularly when it is possible to achieve greater equality in this way without involving any risk to self-ownership.<sup>417</sup> While natural resources prior to appropriation have no specific owner it is misleading to

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<sup>416</sup> Mathias Risse, "Common Ownership of the Earth as a Non-Parochial Standpoint: A Contingent Derivation of Human Rights," *European Journal of Philosophy* 17, no. 2 (2009). p. 287; See also Risse, "Does Left-Libertarianism Have Coherent Foundations?" p. 344

<sup>417</sup> Risse shares this view, maintaining that egalitarian ownership is the most plausible view of world ownership since "the existence of the resources of the earth is nobody's accomplishment, whereas they are needed for any human activities to unfold." Risse, "Common Ownership of the Earth as a Non-Parochial Standpoint: A Contingent Derivation of Human Rights." p. 285

think of them as owned by no one.<sup>418</sup> I shall therefore move on from no ownership and turn to alternative accounts of egalitarian ownership.

## Common Ownership

I have already considered common ownership in my discussion of George in the previous chapter. I use this term to refer to the Georgist position where resources never cease to be owned by all but they can permissibly be privately appropriated without the consent of others subject to observing certain conditions, namely: the payment of rent. This private appropriation confers some property rights, such as the right to possess, to use, and to exclude others from its use, but since a rent will always be payable it is inappropriate to call this full ownership. To cloud the issue, this term of 'common ownership' has also been attributed to a second form of ownership, one typically associated with Locke. On a Lockean account, private appropriation from what is held in common ownership is permissible as long as one observes a proviso such as leaving 'enough and as good' for others, but on Locke's account this appropriation creates full property rights in that thing (as long as they have observed the proviso) with no need for ongoing recognition of common ownership. It is misleading, then, to think of this as 'common ownership' when it is more properly understood as a system of private ownership that is permitted to arise from an *initial* system of common ownership. Both these types of ownership are also distinct from common *use*, under which it is not permitted to privately appropriate anything at all, but it is permissible to *use* the common resources (such as collecting water from a river) without seeking the consent of others, as long as one does not prevent others from using them. It is important to distinguish then between common *use*, *original* common ownership, and *ongoing* common ownership of worldly resources. Henceforth I shall use the term 'common ownership' to refer only to instances of the latter, where the resources continue to be the property of all, and where private appropriation does not create full property rights in the appropriated

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<sup>418</sup> See Steiner, *An Essay on Rights*. p. 235, n.11; Otsuka, *Libertarianism without Inequality*. p.22 , n.28

resource. This is the position, described as ‘Georgist Social ownership of Natural Resources’ which is supported by Peter Vallentyne. On this account,

Private appropriation is allowed, but only in a weak sense that makes exclusive control conditional upon the regular payment of rent to society for the right of exclusive control.<sup>419</sup>

Vallentyne sums this up as “common ownership modified by quasi-private appropriation.”<sup>420</sup>

I mentioned in chapter four that Cohen believed that the attempt to conceive of egalitarian world ownership is unsuccessful (leading him to believe that in order to undermine libertarianism the egalitarian had to attack self-ownership). His opposition to common ownership is based on the belief that it would permit the able-bodied to make use of as many resources as they wish without needing to provide anything to those who are physically disadvantaged, thereby rendering it unsatisfactory from an egalitarian point of view.<sup>421</sup> Though Cohen is also critical of the equal shares approach as we shall see shortly, he argues that when resources are divided into equal shares the less able do at least have something with which to trade, rather than merely the permission to appropriate if they can, which is all he believes to be available to them under common ownership. However, it should be apparent that common ownership only faces this criticism if it is understood (as Cohen explicitly understands it) in the Lockean rather than the Georgist sense. The Lockean proviso demands only that ‘enough and as good’ be left for others when one appropriates natural resources, thus giving these appropriators no obligation to assist those who may be unable to appropriate for themselves.<sup>422</sup> As I have explained, it is inappropriate to refer to this as common ownership, since resources can be taken into full private ownership on Locke’s account. The Georgist account, in contrast, makes resources available to anyone who can make use of them, but only on the

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<sup>419</sup> Vallentyne, "Review: Self-Ownership and Equality: Brute Luck, Gifts, Universal Dominance, and Leximin." p. 328

<sup>420</sup> Ibid.

<sup>421</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 103

<sup>422</sup> As Cohen rightly notes (Ibid. p. 103, n. 18) and as I have mentioned before, Locke may be interpreted in the First Treatise as advocating a duty of justice that requires the well-off to help the worse off, but – like Cohen – I shall disregard that here.

understanding that those who *do* use them owe something to the rest of mankind. According to George, the private appropriation of a resource incurs a duty to pay a rent on that resource, thereby providing a means by which the less able-bodied can realise their stake in commonly owned resources. This form of common ownership is therefore not subject to Cohen's criticism.<sup>423</sup>

## Steiner, Equal Shares and the Global Fund

An alternative to the common ownership of resources is individual private ownership of initially equal starting shares. Unlike the private appropriation permitted under a Georgist common ownership scheme, private ownership of equal starting shares gives people full property rights over those resources – including rights to sell or destroy them, to rent them out to others, and so on – albeit only over an equal share. This is the view attributed to Hillel Steiner by Cohen<sup>424</sup> but in fact the terminology of private ownership is misleading. Steiner does indeed adopt the approach that every person is entitled to an initially equal starting share of natural resources, but he does not utilise the language of private property in this context. The significance of this in terms of my comparison with my Georgist approach will become clear shortly.

Steiner argues that we have two original rights “to self-ownership and to an equal share of initially unowned things.”<sup>425</sup> Only if these ‘initially unowned things’ can be ‘justly ownable’, he claims, can we begin to own anything.<sup>426</sup> Steiner advocates an

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<sup>423</sup> Contemporary accounts from Michael Otsuka and Peter Vallentyne address Cohen's criticism directly, adopting Lockean and Georgist positions respectively. These accounts are (I believe) predominantly concerned with the distribution of commonly owned resources (or of the funds collected from the rent paid on these resources) rather than the ownership status of worldly resources *per se* (in other words, they address how those resources are *equally* owned, rather than how they are *equally owned*). For this reason I will consider their views only briefly in this chapter, and return to them in full in chapter seven.

<sup>424</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 102-3

<sup>425</sup> Steiner, *An Essay on Rights*. p. 236. See also Hillel Steiner, "Choice and Circumstance," *Ratio* 10, no. 3 (1997). p. 300 and Hillel Steiner, "Territorial Justice and Global Redistribution," in *The Political Philosophy of Cosmopolitanism*, ed. Gillian Brock and Harry Brighouse (Cambridge: Cambridge University Press, 2005). p. 34-5

<sup>426</sup> Steiner, *An Essay on Rights*. p. 235. (See p. 235 n.11 for how ‘initially unowned’ means unowned in the sense of not owned by any specific individual).

equal division of resources as a way to ensure that no one takes more than would leave enough and as good for others, thereby observing a Lockean proviso. The proviso, he argues, “entails a foundational right, vesting each person with an entitlement to (be left) an equivalent portion of land.”<sup>427</sup> Arguably, one cannot be accused of leaving others with not enough if one has appropriated no more than what one has left for those others.<sup>428</sup>

The criticism levelled against the approach of equal starting shares by Cohen, in his attempt to discredit egalitarian world ownership, is that it will inevitably lead to inequality given the fact that people have varying natural abilities.<sup>429</sup> Under a system of equal shares those people who are naturally disadvantaged will be forced to trade with others, most likely on terms that are unfavourable to them, leaving them vulnerable to the will of others. This concern is shared by Fabre, who argues: “the badly off are more vulnerable to the talented than the talented are to them. ... It is not an attractive feature of a theory of justice that it allows such vulnerability.”<sup>430</sup> As I have said before, this need not be a cause for concern for libertarians, but the appeal of libertarianism would be greatly strengthened if such a consequence could be avoided (without undermining self-ownership).

Steiner does provide an attempt to compensate for natural disadvantages by appealing to the concept of germ-line genetic information, which I discussed briefly in chapter three in the context of the paradox of self-ownership. If germ-line genetic information is seen as a natural resource, argues Steiner, then everyone is entitled to an equal starting share of it. This would permit the redistribution from those with children with superior genetic information to those with children with inferior genetic information. In this way, he argues, natural disadvantages can be

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<sup>427</sup> Steiner, "Hard Borders, Compensation and Classical Liberalism." p. 84. We can see that Steiner refers specifically here to land, but as we shall see in due course, he also speaks of natural resources more broadly construed.

<sup>428</sup> This has been queried by Mack, who notes that the Lockean proviso requires leaving ‘*enough* and as good’ not ‘*as much* and as good’. Eric Mack, "What Is Left in Left-Libertarianism?," in *The Anatomy of Justice*, ed. Stephen De Wijze, Matthew H. Kramer, and Ian Carter (Routledge, 2009). p. 112

<sup>429</sup> See Cohen, *Self-Ownership, Freedom, and Equality*. p. 104

<sup>430</sup> Cécile Fabre, "Justice, Fairness, and World Ownership," *Law and Philosophy* 21, no. 3 (2002). p. 257

compensated for, thereby avoiding the unappealing consequence that Cohen attributed to the equal shares model.

I have reservations about this approach, however, and I do not believe that this can be done in such a way that maintains a proper commitment to self-ownership. Distinguishing genetic endowments from cultivated abilities is no easy task. In practice it is impossible to determine which abilities someone is born with and which they have striven to achieve. One cannot redistribute the benefits of the former without running the risk of also redistributing the rewards of the latter. To redistribute the rewards gained from exercising an ability that has been carefully cultivated, perhaps even in spite of a lack of innate ability, is to use one person's labour to benefit others, which would violate the right of self-ownership. This is a problem recognised by Otsuka, who argues that a tension arises in Steiner's political philosophy,

because his view has the implication that nature's contribution to our mental and physical capacities can render our self-owned bodies natural resources to which everyone has an equal claim.<sup>431</sup>

Steiner's attempt to compensate for natural inequalities by appealing to the notion of germ-line genetic information is in danger – despite his insistence to the contrary – of descending into talent-pooling and sharing out the rewards of hard work rather than merely the benefits of natural abilities. This would deprive people of some of their labour product, over which they have a human right as a self-owner. Equality is rescued, then, only at the cost of self-ownership.<sup>432</sup> Disregarding for now the inequality that the equal shares approach would supposedly allow<sup>433</sup>, let us see how this approach would work, with reference to the Global Fund, and how it compares with a Georgist model of world ownership.

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<sup>431</sup> Michael Otsuka, "Owning Persons, Places and Things," in *The Anatomy of Justice*, ed. Stephen De Wijze, Matthew H. Kramer, and Ian Carter (Routledge, 2009). p. 135

<sup>432</sup> Steiner's argument for treating germ-line genetic information as a natural resource has also been criticised on the basis that people do not need to be compensated for something that they have not been deprived of, since one person's use of germ-line genetic information does not prevent others' use of the same, as it would with physical natural resources. See Alan Carling, "Just Two Just Taxes," in *Arguing for Basic Income: Ethical Foundations for a Radical Reform*, ed. Philippe Van Parijs (London: Verso, 1992).

<sup>433</sup> I shall return to the matter of the equality of the resulting distribution in chapter seven.

Steiner believes that we all have a right to an equal share of the earth's resources, which makes it impermissible to appropriate more than an equal share. He argues,

Persons who appropriate a greater than equal proportion ('over-appropriators') are thereby engaging in a redistribution. They are imposing an unjust distribution on some or all of those who have appropriated a less than equal share ('under-appropriators'). And they consequently owe them redress.<sup>434</sup>

This 'redress' represents the idea of rectification that we looked at in chapter two. Those who have taken a greater than equal share have violated the (negative) rights of others not to be deprived of an equal share and hence owe them compensation.<sup>435</sup> This is a positive duty which is derived from a right, and is therefore enforceable, even from a libertarian point of view. The compensation owed to under-appropriators comes from a tax on the over-appropriated resources, paid into a common fund. According to Steiner, "the total amount of under-appropriators' entitlements is equal to the sum of whatever is owed to the fund plus whatever remains unappropriated".<sup>436</sup> Thus, in addition to being permitted to appropriate as yet unappropriated land, under-appropriators are also entitled to compensation from those who have unjustly appropriated more than an equal share.<sup>437</sup>

This compensation is realised by charging a Global Fund Levy on all natural resources, paid to the Global Fund. Steiner explains,

Titles to sites thus amount to leaseholds: each such owner owes to the global fund a sum equal to the site's rental value, that is, equal to the rental value of

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<sup>434</sup> Steiner, *An Essay on Rights*. p. 268

<sup>435</sup> See Steiner, "Hard Borders, Compensation and Classical Liberalism." p. 85

<sup>436</sup> Steiner, *An Essay on Rights*. p. 269

<sup>437</sup> This over-appropriation need not be seen as an injustice, provided compensation is paid, since it can represent the most efficient use of resources. Tideman, in rejecting the equal division of resources, argues: "Instead of delivering resources to people and requiring them to find buyers for any resources that they do not wish to use themselves, it is much more sensible to allow unequal use of resources and collect fees from those with above-average use of resources, thereby generating funds with which to compensate those with below-average use." Tideman, "The Case for Geoliberalism: A Reply to Moellendorf." p. 495

the site alone, exclusive of the value of any alterations in it wrought by labour.<sup>438</sup>

Here we can begin to see clear similarities with George's position. Although the site is in private possession rather than common use, a rent is payable on that site by its owner: each leaseholder pays a sum to the Global Fund equal to the site's rental value. Importantly, the rent is payable on the site value alone rather than on any added value, reflecting George's insistence that the conditions of the leasehold should "sacredly guard the private right to improvements".<sup>439</sup> While George spoke specifically of land, however, Steiner takes this further:

The world's raw natural resources are compendiously describable as constituting a set of territorial sites. And the value of any such site is the sum of the values of all the sub- and supra-terrestrial resources, as well as the surface areas, it comprises.<sup>440</sup>

On Steiner's account, then, the value of the resources above and below the land are factored into the rent payable. He continues:

the value of a territorial site is equal to the difference between the aggregate market value of all its contents and the aggregate market value of those of its contents that constitute improvements made to it by human activity.<sup>441</sup>

Steiner has begun to talk of the *value* of natural resources and 'territorial sites', in recognition of the impracticability of dividing the resources themselves into equal shares. It is this combined value of all the territorial sites of the world which everyone has an entitlement to an equal share, rather than the resources themselves. The Global Fund comprises payments from the owners of territorial sites that are equal to the value of the sites they own, once the value of improvements has been deducted. Everyone then has a claim to an equal share of this fund. "The Global

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<sup>438</sup> Steiner, *An Essay on Rights*. p. 272-3

<sup>439</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 287

<sup>440</sup> Steiner, "Just Taxation and International Redistribution." p. 175

<sup>441</sup> *Ibid.* n.12; see also Steiner, "Capitalism, Justice and Equal Starts." p. 67

Fund is thus a mechanism for ensuring that each person enjoys the equivalent of enough and as good natural resources”<sup>442</sup> – to use the terms of the Lockean proviso.

One difference between George and Steiner that is evident here is that Steiner adopts a *global* approach to egalitarian ownership.<sup>443</sup> George, in contrast, maintained that the land of each nation was the common property of the citizens of that nation.<sup>444</sup> I also propose a global application of George’s principles, since the unequal global distribution of natural resources and of desirable land is entirely arbitrary. Steiner’s focus on the value of territorial sites ensures that different countries pay an appropriate contribution, proportionate to that country’s natural endowments in terms of natural resources. As Steiner explains, an acre of land on the Bangladeshi coast will be worth less than an acre in the centre of Tokyo, leading him to propose that “the Global Fund Levy on the ownership of the latter will be greater than on the ownership of the former”.<sup>445</sup> In addition to being able to factor in the different value of land in different countries, interpreting the equal right to natural resources to mean a right to an equal share of the *value* of natural resources also, according to Steiner, “neatly accommodates the problem of generational differentiation and also takes account of the fact that, for a host of reasons, land values vary over time.”<sup>446</sup> While values fluctuate, Steiner insists, “what doesn’t change is each current person’s right to an equal share of their value”.<sup>447</sup> So, it is necessary to have continual redistribution, rather than a one-off equal division of resources, to ensure that all people benefit equally from fluctuations in value over time. In this way, the Global Fund ensures not merely that people who have appropriated more than an equal share pay redress to under-appropriators, it also ensures that what people have appropriated does not *become* more than an equal share. If the land I possess becomes more valuable than all other land, I now have a greater than equal share. Likewise, if the population doubles in size, to hold on to my original allocation would also mean maintaining a greater than equal share. The Global Fund takes these eventualities

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<sup>442</sup> Steiner, "Just Taxation and International Redistribution." p. 175

<sup>443</sup> Indeed this is unanimous among left-libertarian accounts. See Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried." p. 213

<sup>444</sup> Tideman, "The Case for Geoliberalism: A Reply to Moellendorf." p. 493

<sup>445</sup> Steiner, "Just Taxation and International Redistribution." p. 175

<sup>446</sup> Steiner, "Territorial Justice and Global Redistribution." p. 35

<sup>447</sup> Steiner, *An Essay on Rights*. p. 272

into account, ensuring that the rights of all to their equal share of resources are fulfilled over time.

George similarly acknowledges that as more people enter the world, this will diminish the share to which we are entitled. He illustrates this with reference to the analogy of spreading out in the empty carriage of a train.<sup>448</sup> If we board an empty train carriage, then we are at liberty to fill the entire carriage with our possessions, spreading out our bags and so on. When someone else boards the carriage, we must allow him or her to occupy half of the carriage, and so must take up no more than half of the carriage ourselves. As more people board the train, our share is decreased, but this cannot be seen in any way to erode our rights. No one is entitled to more than their share, even if this is less than they have been used to receiving in the past.

There are obvious similarities, then, between the Georgist model that I have proposed, and Steiner's proposal for a Global Fund. I mentioned earlier that Cohen is misguided in claiming that Steiner advocates private ownership of initially equal starting shares. This is because Steiner does not permit individuals (or indeed individual nations) to benefit from the arbitrary fluctuations of their initial allocation of resources. If it was a genuine case of full private ownership, then the owners could do whatever they wanted with that resource and would not owe anything to anyone, provided what they started with was no more than an equal share. As it stands, Steiner does in fact argue that an ongoing payment is owed to reflect the fact that the value of the world's natural resources continues to be something to which everyone is entitled. If payment is owed to the Global Fund in order to ensure that the fluctuating values of worldly resources do not arbitrarily benefit some and not others, then this suggests that these resources do not in fact ever pass into full private ownership. Rather, this reflects far more closely my proposal for common ownership, where private appropriation is permitted but the resources actually remain the common property of all, and it is mistaken, then, to suggest that what Steiner advocates is a system of private ownership of initially equal starting shares. All that we can be said to have a private property right over is an equal share of the *value* of

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<sup>448</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 244

those resources – in other words, to a share of the rent – which does not give us full private property rights over the resources at all.

As I have mentioned, George did not propose a global application of his rent principle, though this is what – in line with Steiner – I am advocating. Extending his proposal to a global context gives rise to an interesting question: can nations be said to own what falls within their borders? Steiner appears to answer this question in the affirmative, not to the extent of full ownership such that they can do what they like with their resources and owe nothing to anyone else, but he *does* suggest that they have effectively privately appropriated these resources when he claims that they owe payment of their full value to the Global Fund. I suggest that it is a mistake to suppose that nations have appropriated the resources within their borders. I propose instead that individual landholders pay a rent to the state, which is put into the common fund, along with any rent that the state itself pays on unappropriated land that they do not wish to leave available for appropriation by other states. In this way, it is not the case that all the land within a nation's borders is automatically seen to have been privately appropriated by that nation. Notably I am referring just to land here, and this is because I also think it is important to draw a distinction – as Steiner has not – between land and the supra- and subterranean resources that appear on that land. George talks only of land<sup>449</sup> and Steiner makes an important addition to his work in recognising that we must also take into account the valuable resources that can appear above and beneath the ground, such as oil and minerals. Steiner does not draw a distinction between land and these other types of resources, however, which I believe is a mistake. Both types of resources are finite rather than renewable (unlike trees, for instance) but – unlike land – these other resources are also exhaustible. That is to say: they can be used up. This is of crucial importance, since on Steiner's account, payments into the Global Fund will be lower the more resources nations have extracted from the earth. When the Global Fund is distributed this will then assure to each nation an equal share of the value of remaining resources even if they have used up their own, which is counterintuitive. It is inappropriate for the rent or

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<sup>449</sup> Though some maintain that he clearly intends 'land' to mean all natural resources. See Bruce Yandle, "A Property Rights Paradox: George and Rothbard on the Conservation of Environmental Resources," *American Journal of Economics and Sociology* 41, no. 2 (1982). p. 194, n.11

the Global Fund Levy to reflect the sub- and supra-terranean resources, as well as the value of the land itself, since then the rent will decrease the more these resources are extracted. For this reason, I shall now modify my Georgist position and argue that these other types of resources should not be held in common ownership like land, but should be held in an alternative method of ownership, namely joint ownership.

## **Joint Ownership**

Under joint ownership every person has a stake in the resource, but it differs from common ownership since natural resources that are held in joint ownership can only be put to use with the consent of others. All decisions about the use of these resources must be made collectively. Cohen maintains that this sort of egalitarian ownership is an improvement on equal shares in terms of equality, since it assures a level of bargaining power to each individual regardless of their ability. However, he rejects it as a plausible understanding of egalitarian ownership, arguing that if we have joint ownership of natural resources then this effectively means that we have joint ownership of each other. This is due to the fact that nothing is permissible under joint ownership without the consent of others. Just as one would need the consent of another to make use of something that is entirely that other person's property (for example, when worldly resources have been entirely appropriated by right-wing libertarians), likewise their consent is needed to make use of something that is jointly owned. If we support a right of self-ownership, which permits us to use our bodies as we wish (subject to respecting the self-ownership of others), we will nonetheless be unable to exercise our self-ownership if we are prevented from using our bodies in conjunction with worldly resources when others withhold their consent, in precisely the same way that we are unable to exercise self-ownership in a world that is fully appropriated. Requiring the consent of others in order to make use of natural resources means, in effect, requiring the consent of others even to move one's body.

For this reason Cohen declares joint ownership to be “inconsistent with the most minimal effective self-ownership.”<sup>450</sup>

Joint ownership of natural resources is a form of egalitarian ownership which is largely dismissed even by left-libertarians. Vallentyne, for example, goes so far as to say that joint ownership “of course, is a crazy view”<sup>451</sup> and argues that “Any minimally plausible version of libertarianism will allow some appropriation without the consent of others”.<sup>452</sup> Though the criticisms raised by Cohen and reiterated by Vallentyne are valid, I want to pick up on this mention that ‘some’ appropriation must be permitted without the consent of others, since it suggests that ‘some other’ appropriation need not be so permitted. This leaves open the possibility that resources may not all be held in the *same* egalitarian manner, and that joint ownership could in fact be the most appropriate form with regard to some particular types of resources.

A rare proponent of joint ownership is James Grunebaum. Grunebaum advocates individual ownership of one’s self and one’s labour but what he calls ‘community ownership’ of land and resources. On this account each person has the “right to participate in decisions concerning how land and resources are to be used”<sup>453</sup> (for which reason I claim this represents joint ownership on the definition proposed, rather than common ownership, despite the misleading name). He holds that an individual’s autonomy is threatened when collective property is used without first obtaining that individual’s approval.<sup>454</sup> However, Grunebaum has not anticipated Cohen’s objection, which still stands. It is more plausible that an individual’s autonomy is threatened when he cannot do anything without the permission of others as this would prevent him from exercising any real control over his life. I shall therefore consider another attempt to defend joint ownership.

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<sup>450</sup> Cohen, *Self-Ownership, Freedom, and Equality*. p. 98; see also Leif Wenar, "Self-Ownership, Freedom, and Equality," *Mind* 109, no. 436 (2000). p. 870

<sup>451</sup> Vallentyne, "On Original Appropriation." p. 174

<sup>452</sup> Vallentyne, "Libertarianism and the State." p. 192. See also Vallentyne, "Critical Notice of G. A. Cohen: *Self-Ownership, Freedom, and Equality*." p. 615

<sup>453</sup> James Grunebaum, *Private Ownership* (New York: Routledge & Kegan Paul, 1987). p. 173

<sup>454</sup> *Ibid.* p. 143

A more engaging attempt to rescue joint ownership is offered by Jedenheim-Edling, who argues directly that it can be shown to be compatible with effective self-ownership. In response to Cohen's claim that requiring the permission of others to make use of resources undermines self-ownership he argues that we have no reason to assume that we cannot reach an agreement under joint ownership that supports effective self-ownership. Moreover, he believes that it is likely that such an agreement will be reached.<sup>455</sup> Joint ownership is valuable only to the extent that it gives one bargaining power with which to ensure access to sufficient external resources to enable one to exercise self-ownership. We must therefore accept a trade-off, he argues, whereby joint control is sacrificed in exchange for external resources. In addition, so that such an exchange would not have to be sought each time external resources were used, he proposes that rules should be arrived at which cover most of the uses concerned.<sup>456</sup> However, this seems problematic since individuals will commit to a certain exchange that may prove disadvantageous over time as the circumstances change under which resources are put to use. Some may find they have sacrificed joint ownership in such a way that the resources they obtained in exchange no longer satisfy their needs, but by this stage they will have lost the bargaining power which joint ownership afforded them. An even greater problem arises from his claim that we ought to exclude from the decision-making process those few who refuse to agree to a contract whereby joint ownership is traded for resources, as they are effectively depriving others of their voice.<sup>457</sup> These people, he argues, ought to be excluded but left with sufficient resources to achieve effective self-ownership. But clearly anyone excluded in such a way has gained nothing through joint ownership, as the bargaining power it was intended to preserve has been denied them. The primary advantage of joint ownership has therefore been abandoned. Although some people claim that joint ownership need not require unanimous consent to use resources or in order to arrive at general procedures which establish rules for future use<sup>458</sup> it seems clear that a failure to take into account the views of every individual deprives these individuals of the benefits of joint

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<sup>455</sup> Magnus Jedenheim-Edling, "The Compatibility of Effective Self-Ownership and Joint World Ownership," *Journal of Political Philosophy* 13, no. 3 (2005). p. 284

<sup>456</sup> *Ibid.* p. 302

<sup>457</sup> *Ibid.* p. 303

<sup>458</sup> See Vallentyne, "Critical Notice of G. A. Cohen: Self-Ownership, Freedom, and Equality." p. 615

ownership, namely the bargaining power it provides. Addressing more broadly Jodenheim-Edling's proposal of a trade-off between joint ownership and external resources – access to which is necessary for self-ownership to be effective – this serves only to reinforce the idea that they are not compatible. If one is effectively forced to give up joint ownership in order to achieve effective self-ownership, then the bargaining power will again have been curtailed. The less-advantaged may have to sacrifice more in terms of joint ownership than people with greater natural advantages in order to achieve effective self-ownership. And if all decisions that are taken are to be upheld indefinitely, rather than an ongoing decision-making procedure, then joint ownership has effectively been abandoned altogether. Use of resources will then merely be governed by a set of rules, which is no longer joint ownership but which resembles more closely a type of common ownership in which private appropriation of resources is subject to certain conditions. Joint ownership is only compatible with effective self-ownership if it is modified to such a great extent that it in fact ceases to be joint ownership. We must therefore reject this attempt to save it, and concede that joint ownership of all worldly resources is incompatible with effective self-ownership.

However, the implications of joint ownership may be altered somewhat if we distinguish between types of worldly resources. Following the definition proposed at the beginning, 'natural resources' extend to things as diverse as land and minerals, but as I have mentioned these things are distinct in a significant way: it is not possible to 'use up' land in the way in which one could use up other resources such as oil, mineral deposits and precious metals. More to the point, these other resources do not have the same significance as land in terms of effective self-ownership. If I am unable to move my body without the consent of others (as would be the case if I cannot occupy land) then my self-ownership is merely formal. This is true also if I have insufficient access to resources to be able to support myself (for example, if I only have access to unfertile land – adequate for erecting a shelter but unsuitable for growing food). But the same argument cannot be made with regard to *all* natural resources. Effective self-ownership demands access to natural resources, but only those necessary for life, and even then only a sufficient quantity. So it is wrong to

argue that nothing can be held in joint ownership if self-ownership is to be effective. It is true, as Vallentyne noted, that ‘some’ appropriation must be permitted without others’ consent, but *only* ‘some’. If things such as oil wells and gold mines are jointly owned then consent must be sought before these resources can be put to use, but it is not plausible to claim that lack of access to oil or gold undermines self-ownership since they are not necessary factors in exercising self-ownership rights. Nor is it the case that even all land must be excluded from joint ownership. Areas of land with specific value, such as the rainforest, could be held in joint ownership, requiring consent before use. Provided that everyone has access to a sufficient portion of those resources that are necessary for exercising self-ownership rights – including a sufficient portion of land – joint ownership of some resources and even of some areas of land would not undermine effective self-ownership. Commitment to the principle that the world is owned in some egalitarian manner need not suggest that all natural resources ought to be owned in the *same* egalitarian manner. Some resources – such as finite and exhaustible resources like oil, and special areas of land such as the rainforest – can be jointly owned without posing any threat to effective self-ownership, while those things that are necessary for the exercise of self-ownership – predominantly, the majority of land since every self-owner requires standing room at the very least – can be held in common ownership.

To summarise my conclusions regarding conceptualising egalitarian world ownership: I have proposed common ownership of (the majority of) land and joint ownership of those resources which are finite and depleted by their use. People can privately appropriate from commonly owned land, subject to the payment of rent, but the land remains the common property of all. Appropriation confers some rights of ownership, including a right of exclusive use, but does not create full property rights over it, such as the right to destroy. Those natural resources that are exhaustible, such as oil wells and mineral deposits, are held in joint ownership, according to which decisions about their use must be made collectively at a global level. I do not propose that enacting such a policy would be without difficulties, but nor do I concede that it is inconceivable. Objections regarding the difficulty of application are practical rather than principled. To sketch a brief outline of how such a practice might work,

suppose that individuals, companies or states could propose to extract a particular resource, much in the same way as applying for planning permission. This proposal would then be open to a consultation process, where fellow co-owners could lodge an objection against the proposed extraction, providing a reasoned case for their opposition, and a committee could decide whether or not to approve it. Such a system would ensure that valuable subterranean resources were not put to use against the will of fellow owners. If the decision is taken to extract a resource and put it to use, a large proportion of the value realised by such extraction would then be paid to the co-owners (namely: everyone).<sup>459</sup> Along with the rent collected from the private appropriation of land (paid either by individual landholders or by the state itself, on land it does not wish to leave available for appropriation) this tax on the extraction of valuable exhaustible resources will create a common fund available for distribution. I shall assess in the next chapter proposals for the distribution of such a fund, but first I will turn to Thomas Pogge and his proposal for a Global Resources Dividend, since this bears significant similarities with the approach to world ownership which I am advocating. As with my analysis of Steiner's Global Fund, I shall identify similarities, but also outline where I believe my approach can provide improvements. Having considered Pogge's approach I shall then briefly return to the question of the conceptualisation of natural resources.

### ***Pogge and the Global Resources Dividend***

In the previous section I have defended the creation of a common fund – similar to Steiner's Global Fund – which comprises the rent paid on land and a tax paid on the extraction of finite and exhaustible resources such as oil. This latter tax in particular is similar to Pogge's proposal for a Global Resources Dividend (GRD). On both my and Pogge's approaches, a portion of the value of the extracted resource is available for distribution. These approaches differ, however, with regard to the decision to

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<sup>459</sup> I shall not attempt here to quantify the proportion, but suggest that the majority of the value would be available for distribution among the fellow owners, with a relatively small share payable to those who go to the effort of extracting it.

extract the resource in the first place. On my proposed joint ownership of finite and exhaustible resources, the decision whether or not to extract the resources must be made collectively. For Pogge, in contrast, this decision lies with the host nation. We have returned then to the question of whether or not a nation should be said to own what occurs within its borders. In the following discussion I shall present Pogge's position, and also draw again on Steiner's Global Fund in my analysis.

Under the Global Resources Dividend, Pogge proposes that:

states and their governments shall not have full libertarian property rights with respect to the natural resources in their territory, but can be required to share a small part of the value of any resources that they choose to use or sell.<sup>460</sup>

This reflects the position of both myself and Steiner, that full ownership rights are rejected. He calls this payment a 'dividend', since it is based "on the idea that the global poor own an inalienable stake in all limited natural resources".<sup>461</sup> The GRD is designed to capture the idea that "those who make more extensive use of natural resources should compensate those who, involuntarily, use very little".<sup>462</sup> In contrast to my joint ownership position, however, Pogge proposes that each nation maintains control over the natural resources within its territory. Other nations have no right to participate in decisions regarding that resource – how, when or if that resource is to be used – but they do have an entitlement to a share of the economic value if it is decided that the resource *is* to be used. This portion of the value represents the dividend payable on the extraction of that global resource (the GRD). Pogge denies that the GRD proposal requires us to consider global resources as owned by all people equally, since each government remains in control of those resources which occur within its territory. As noted, this is where Pogge and I differ. In arguing that the global poor have a 'stake' in these resources, I think it is more fitting to consider global resources to be held by all equally. Moreover, since I have argued that the payment of rent on subterranean resources like oil and minerals is inappropriate,

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<sup>460</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 202

<sup>461</sup> Ibid.

<sup>462</sup> Ibid. p. 210

given that they can be extracted and their value decreased, it is more fitting for resources of these kinds to be held in joint ownership rather than common ownership. I reject Pogge's suggestion, then, that each resource should remain under the control of the country in which it resides, but nor do I maintain that it is open to appropriation by any other nation, corporation or individual who wishes to exploit it. When these resources are held in joint ownership, decisions about their use must be taken collectively, where everyone has the power to veto their use.

The 'limited natural resources' that Pogge refers to as subject to his GRD include what I have proposed to be held in joint ownership: oil, minerals, and so on. However, Pogge believes that the GRD can also be applied to those 'limited resources'

that are not destroyed through use but merely eroded, worn down, or occupied, such as air and water used for discharging pollutants or land used for farming, ranching or buildings.<sup>463</sup>

It is harder to see, though, how a tax could be levied on the use of land, for example, since – unlike a resource like oil – it is not extracted and given a fixed realisable value. I therefore maintain that my approach of common ownership of land and a rent payable on its private appropriation is a more workable approach, although a fixed tax, like the GRD is more appropriate for resources whose quantity is diminished by use.

To compare Steiner's Global Fund with Pogge's Global Resources Dividend<sup>464</sup>: they both support the idea that everyone is entitled "to a share of the benefits from natural resources which only some unilaterally control".<sup>465</sup> They are therefore in agreement with one another – in contrast to my joint ownership approach – in insisting that control over these resources remains with the host nation. Despite agreeing on this

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<sup>463</sup> Ibid. p. 203

<sup>464</sup> Steiner develops the idea of his Global Fund and the Global Fund Levy in response to an earlier incarnation of Pogge's GRD – the Global Resource Tax. See Thomas Winfried Menko Pogge, "An Egalitarian Law of Peoples," *Philosophy and Public Affairs* 23, no. 3 (1994). p. 199. The details of the GRT are similar to the GRD in all relevant respects for Steiner's criticisms to hold against both.

<sup>465</sup> Steiner, "Just Taxation and International Redistribution." p.185

point, however, Steiner and Pogge disagree on the tax base to be used. For Steiner, the owner of resources pays the full value of those resources into the Global Fund. On Pogge's view, the owner pays a tax only on the resources that he chooses to make use of. So, the quantity of resources that is to be redistributed consists in a *proportion* of the value of *used* resources, for Pogge, and the *full* value of *owned* resources, for Steiner. This is one of Steiner's reasons for preferring the Global Fund: it will yield more tax. Used resources are merely a subset of owned resources, so by definition Steiner's approach will make more resources available for redistribution. Pogge focuses only on those resources that countries "decide to use or sell"<sup>466</sup> in order to avoid redistributing funds from resource-rich poor countries to resource-poor rich countries. If a country must pay the value of the resources within their borders to the Global Fund, this value may be difficult if not impossible for some countries to obtain. If they are not exploiting those resources, and do not have an otherwise prosperous society, they will be incapable of raising the value required. A disagreeable implication of this may be that any country unable to pay the full value of the resources within its borders to the Global Fund must permit other nations to appropriate them, but this would go against Steiner's contention that the resources must remain within state control. But then on the other hand, is there not also a problem with a country having full control over a resource that belongs to everyone equally? This is Steiner's objection: that a country should not be permitted to deprive other countries of the use of a resource without having to pay them compensation. While Steiner maintains that a country may not be forced to make use of a resource that they own (he gives the example that people may not want to extract oil from a location beneath a mosque), he insists that, "in unilaterally appropriating that site, they must compensate those thereby excluded. What they choose to do with that site is justly up to them".<sup>467</sup> His Global Fund Levy is then an improvement on Pogge's approach, he believes, since it requires the owner of a site to compensate others for choosing *not* to use a resource while simultaneously refusing to let others use it or to share in the benefits that its use would bring. It would seem, then, that each of these accounts faces a problem: either a country must pay to the Global Fund a sum that they may not be able to afford (Pogge's criticism of Steiner), or a country can deny

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<sup>466</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 202

<sup>467</sup> Steiner, "Just Taxation and International Redistribution." p. 185

to others the benefits of resources within their own borders while themselves benefiting from the exploitation of resources elsewhere (Steiner's criticism of Pogge).

I have suggested, in contrast to both, that the host nation does not in fact 'unilaterally control' the natural resources within its borders. Rather, these natural resources should be divided into two categories: those that are finite but cannot be used up (namely: land), to be held in common ownership, and those that are finite and exhaustible (such as oil, metals and minerals) to be held in joint ownership. Land held in common ownership can be appropriated (by anyone) without consent, subject to the payment of rent, while other resources held in joint ownership cannot be appropriated (even by the host nation) without first seeking the consent of others. In contrast to Steiner, I maintain that a nation ought not to be seen to have 'appropriated' something that happens to appear within its borders. But nor is it so straightforward that the choice whether or not to use a resource would lie, as Pogge argues, with the government of the country in which that resource appears. Rather, I have maintained that the decision whether or not to put such a resource to use is a decision that must be taken collectively by all those who have a stake in it. This avoids the problem that countries may be forced to exploit a resource within their borders, but it also avoids the suggestion that a country ought to be charged a fee for refusing to exploit such a resource. And since rent is payable to the common fund only on land that has been appropriated (whether by individuals or the state itself) it is possible to redistribute the different land values of Tokyo and Bangladesh (to follow Steiner's earlier example), but this would not penalise countries for the inclusion of valuable land or other resources within their borders which are not being used.

Focusing only on those portions of land and other resources that are actually put to use (as both Pogge and myself do) ensures that the tax burden is shouldered not only by those who *use* the resources, but also by those who *consume* them in more refined forms. When a tax must be paid on the extraction of a resource like oil this will most likely lead to an increase in the price of oil, since companies making use of natural

resources will presumably want to maintain their profit margins and so will attempt to pass at least some of the tax burden to their customers. Likewise, purchasers of the oil who manufacture it in increasingly refined forms will also want to pass on the tax to their customers. On this assumption, the consumer of the resource in its most refined form will end up paying most of the tax. It has been argued that if the tax burden is passed on to the consumer in this way, then the GRD would cease to be a tax on resource exploitation and would rather become a tax on 'end-user consumption'. According to Haubrich,

It penalizes the high-consuming wealthy who have become wealthy not because of their brute luck (of being endowed with natural resources) but because of the choices they have made in their lives (as individuals or societies) to reach their current level of prosperity. In short, by taxing wealth itself the scheme is indiscriminate and insensitive towards the sources of wealth.<sup>468</sup>

But this objection only holds if we draw no distinction between spending on resource-intensive goods, and spending on goods and services which do not make much use of natural resources. The tax should not be seen as a tax on wealth but as a tax on consumption, and even then only on the consumption of worldly resources. A wealthy consumer who spends her money going to the opera and getting her hair done will not pay as much taxation<sup>469</sup> as another who spends the same money on jewellery and international flights in a private jet.

This distinction between cases of production which make extensive use of worldly resources, and cases of production which do not is of crucial importance for the permissibility of redistributive taxation. Recall Nozick's claim that redistributive taxation is 'on a par with forced labour'. This is only the case if we consider the tax to be a tax on income, where some have laboured longer or harder than others or with skills that are in a higher demand, thus amassing greater wealth, and are then forced to give up some of that wealth for people who are less well off. In these

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<sup>468</sup> See Dirk Haubrich, "Global Distributive Justice and the Taxation of Natural Resources - Who Should Pick up the Tab?," *Contemporary Political Theory* 3 (2004). p. 65

<sup>469</sup> She will still pay some taxation since even an opera will require the use of some natural resources – such as an area of land on which to perform – in its production.

circumstances, the comparison with forced labour is understandable, though perhaps overstated.<sup>470</sup> But as I have shown, we can collect a rent on land and deduct a tax from the extraction of other resources, thereby raising a fund for distribution which is derived entirely from the principle of egalitarian ownership of worldly resources, and which poses no risk to the reward for labour or to our self-ownership rights generally. In this way, producers can legitimately be taxed, from a libertarian point of view, based not on their income, but on their use of natural resources in their production processes. This line of argument is posed by Otsuka, who argues:

Nozick's objection to redistributive taxation in general is persuasive only if one mistakenly assimilates cases that involve worldly resources with cases that do not.<sup>471</sup>

Otsuka compares his example of the hair weaver, weaving garments of clothing out of her own hair, with that of a paradigmatic case of resource use: farming. It is appropriate that the farmer should pay tax on the basis of the resource-intensive nature of her production, while the hair weaver should not. Some people may object that farming is not an exceptionally lucrative profession, while people who provide non-resource-intensive services (such as a fortune-teller, a masseur or a lecturer) may be far better off in terms of wealth, and a tax on resource use would in no way reflect this. This is, of course, the point. It is a requisite of any system of taxation that is proposed on a libertarian basis that people do *not* pay according to their ability. However, these consequences will most likely not be as bad as may be expected if the tax is passed on to the consumer (as it doubtless would be in practice with producers aiming to maintain their profit margins). If the tax on resource use amounts to a tax on consumption of natural resources than those individuals working in services that are not resource-intensive will contribute to the tax fund whenever they purchase goods that have made substantial use of resources.

Nozick's rejection of redistributive taxation on the grounds that it amounts to forced labour only works, according to Otsuka, if "one's right of ownership over worldly resources that one uses in order to earn income is as full as one's right of ownership

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<sup>470</sup> See Cohen's argument presented in chapter four.

<sup>471</sup> Otsuka, *Libertarianism without Inequality*. p. 17

over oneself.”<sup>472</sup> I have argued that we have full ownership rights over our selves, but only partial property rights over natural resources, since they are not the result of production. Any private appropriation of land requires the payment of rent, and any agreed use of resources such as oil, requires the payment of a tax. These are the legitimate costs of making use of natural resources held in common or joint ownership. While I have not attempted to derive support for egalitarian world ownership from libertarian principles (and I do not believe it is possible to do so), nor can a libertarian claim that egalitarian ownership contradicts libertarian principles, since the collection of the rent and the tax that I am proposing leave the rights of self-ownership entirely intact.

### ***Conceptualising ‘Natural Resources’***

In the foregoing discussion I defended common ownership of land and joint ownership of finite and exhaustible resources such as oil and minerals, the former subject to an ongoing rent and the latter to a tax at the point of extraction. I have collectively described land and these other resources as ‘natural resources’ and have maintained that these ‘natural resources’ are held in egalitarian ownership, albeit different varieties of egalitarian ownership. Some people will still have reservations about the language of ‘natural resources’, discussion of which does raise a number of questions, including: “when is something ‘natural’?” and “what characterises a ‘resource’ rather than simply a naturally occurring substance?” Others will be critical of my conceptualisation of ‘natural resources’ to extend only to these physical elements, rather than being construed more broadly to include, for example, Steiner’s case of germ-line genetic information. In this final section I shall say a little to defend my use of the language of ‘natural resources’ and my justification for construing them so narrowly, before moving on in the next chapter to discuss the just distribution of the common fund.

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<sup>472</sup> Ibid. p. 20

## Can a 'Resource' be 'Natural'?

As we have seen, left-libertarians interpreting egalitarian world ownership are greatly influenced by Locke and his proviso, but Locke himself never actually uses the expression 'natural resources'. Locke's phrase when introducing his proviso is whatever one "removes out of the state of nature".<sup>473</sup> He talks specifically of 'land', 'natural provisions', the 'things of nature', the 'fruits of the earth' and the 'spontaneous products of nature'. He also refers to the 'world' held in common.<sup>474</sup> But at no point does he refer to these things collectively as 'natural resources'. Steiner interprets the Lockean proviso to mean "that an individual may appropriate only such natural resources as will ensure that 'enough and as good is left in common for others'".<sup>475</sup> This is a very early mention of 'natural resources' in Steiner's work, and he also makes use of other terminology, interpreting Locke's proviso as requiring rather that each person has "a quantitatively and qualitatively similar bundle of natural objects."<sup>476</sup> He has also referred to 'unowned natural objects',<sup>477</sup> 'initially unowned things',<sup>478</sup> 'untransformed and untransferred things',<sup>479</sup> things that 'embody no one's labour',<sup>480</sup> and 'the ingredients which enter into the production of non-natural objects'.<sup>481</sup> Of all of these it is specifically the terminology of 'natural resources' that people can find objectionable.

Arguably there are problems with conceiving of something as both 'natural' and a 'resource'. If something is a 'resource' this implies that it is something that has been identified as useful and perhaps even made available as something to be used. So a natural 'resource', as opposed to a naturally occurring substance or natural phenomenon, is something that is useful and usable. To illustrate: before uranium

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<sup>473</sup> Locke, *Two Treatises of Government*. § 27

<sup>474</sup> Ibid. see §§ 31-33, 37

<sup>475</sup> Steiner, "The Natural Right to the Means of Production." p. 45

<sup>476</sup> Ibid.

<sup>477</sup> Hillel Steiner, "Justice and Entitlement," *Ethics* 87, no. 2 (1977). p.151

<sup>478</sup> Steiner, *An Essay on Rights*. p. 236

<sup>479</sup> Steiner, "Just Taxation and International Redistribution." p. 174

<sup>480</sup> Steiner, *An Essay on Rights*. p. 236, n.12

<sup>481</sup> Steiner, "The Natural Right to the Means of Production." p. 48

was discovered to have a use it was just a naturally occurring phenomenon; once its use had been identified, it became a resource. We *can* conceive of something as a resource even when it is in its natural state, if it is something that is useful, but once things are in their useable resourceful form then they are no longer as they occur naturally. Moreover, there are problems associated with conceiving of their value in a distributable form. I aim to show, however, that both these problems are overstated.

In his earlier work, Steiner argued that the reason why no one has any greater right to so-called 'natural resources' than anyone else is because these resources come about with no historical attachment to any particular individual. They embody no one's labour<sup>482</sup> and appear from nowhere and out of nothing.<sup>483</sup> This is a point picked up by Eric Mack which we considered briefly in the previous chapter (in the context of the coherence of left-libertarianism). Mack denies that 'natural resources' appear from nowhere and out of nothing, arguing instead that "the status of natural objects... *as resources* does depend on human choice and action."<sup>484</sup> He claims that 'natural' resources are hardly 'natural',

in the sense of appearing from nowhere, out of nothing and not as the results of individuals' past actions. For their appearance is also a function of the direction of economic and technological development and of individual effort, skill, luck, and entrepreneurial insight.<sup>485</sup>

This point is echoed by Risse, who also notes another cause for being sceptical about the terminology of natural resources. Risse states:

First, ... strictly speaking raw materials become *resources*, and thus obtain market value in virtue of their usefulness for human activities, only through activities that require a social context: crude oil, say, became important only after the invention of the motor engine. Second, unlike biblical manna, resources require work to become 'available': oil must be extracted and refined, minerals must be mined, etc. These two features capture special entitlements to resources, and while they may not entail much, they do entail

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<sup>482</sup> Hillel Steiner, "The Fruits of One's Labour," in *Liberalism, Citizenship and Autonomy*, ed. David Milligan, William Watts Miller, and Colston Research Society., *Avebury Series in Philosophy* (Aldershot: Avebury, 1992), p. 84

<sup>483</sup> Steiner, "The Natural Right to the Means of Production." p. 44

<sup>484</sup> Mack, "Distributive Justice and the Tensions of Lockeanism." p. 134-5

<sup>485</sup> *Ibid.* p. 144-5

that it is not the case that any two individuals are equally situated with regard to all resources.<sup>486</sup>

It is inappropriate then, according to Mack and to Risse, to consider claims to these resources to be symmetrical. 'Natural resources' in their usable form have had labour mixed with them. This means that these 'resources' are no longer natural, but it also suggests, they argue, that these resources can no longer be seen as owned equally by all.

Moreover, the problem is not simply that resources are not eligible for redistribution once they embody labour, but rather that they *have* to embody labour in order to get them into a distributable form. In short: natural resources both *must* embody labour, and *must not* embody labour. It has been argued that we need to distinguish between 'available resources' and 'naturally occurring phenomena', and while it is only possible to redistribute the former, it is only morally permissible to redistribute the latter, since they are the only ones that do not embody labour.<sup>487</sup> We then face the problem of having to distribute something that cannot be made available for distribution without removing it from the pool of things which are eligible for distribution.

Firstly, let me address the idea that a resource cannot be natural. I believe that this objection may be easily overcome. It is in-keeping with common parlance to speak of an entirely untouched natural phenomenon as an untapped 'resource'. To be a resource something must simply be identified as useful, not made available in a useable form. More challenging is the contention that natural resources in their useable form are no longer common property since they embody labour, but I believe that this also is overstated. Mack and Risse are correct to draw our attention to the fact that there is some historical entitlement attached to something in its useable form, but it is then an unjustified leap to claim that such a resource is no longer the property of all. I have argued that only production can create property rights, not labour-mixing. The fact that a natural resource embodies labour does not mean it is

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<sup>486</sup> Risse, "How Does the Global Order Harm the Poor?" p. 361-2

<sup>487</sup> See Tim Hayward, "Global Justice and the Distribution of Natural Resources," *Political Studies* 54 (2006). p. 360

not still common or joint property. When an individual mixes his labour with commonly owned land, or on a jointly owned resource such as an oil well, this does not create a property right in that thing. Rather, there are two possible outcomes: firstly, the labourer could deserve a wage, in return for his labour (but this is the most that the labourer can expect – he does not have a property right in the thing itself); alternatively, if he did not pay rent on the land or seek the consent of others before mixing his labour with the oil well, then he has relinquished his labour. As Nozick observed, why should we believe (as Locke claimed) that mixing something we own (our labour) with something that we do not should result in a title over that latter thing rather than merely a loss of the former?<sup>488</sup> The fact that a resource embodies labour does not give the labourer a private property right in that resource. We can still distribute the value of something that has had labour mixed with it as long as the labourer is paid for their labour, for expending time or effort, a finder's fee, a reward for their entrepreneurial insight and so on. Having subtracted this payment for the labourer, we can still then realise the value of the resource and make that value available for distribution.

This response does not overcome all the problems associated with distributing the value, however. The problem can be set out thus: for a natural substance to be available for redistribution it must have been extracted and marketed; only in this way can its value be determined, which is what must be distributed. Once it has been extracted and marketed it will embody labour, and for this reason, it has been argued that to talk of the value of these natural substances is in fact to cease talking about the natural substances altogether.<sup>489</sup> I have argued that it is not a problem that things must embody labour in order to be marketed, because labour-mixing does not confer ownership. What *is* a problem, however, is the difficulty of *separating* the value added by labour from the value of the resource in its natural state.

My Georgist account and Steiner's account both require us to be able to separate the site's rental value (or the market value of the contents of a territorial site) from the value of improvements wrought by labour. Since my approach demands that the rent

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<sup>488</sup> Nozick, *Anarchy, State and Utopia*. p. 174-5

<sup>489</sup> Hayward, "Global Justice and the Distribution of Natural Resources." p. 360

or tax is paid only on those resources that have been appropriated or put to use, rather than merely those that fall within a nation's borders, it does not face the problem of identifying how much a resource in the ground is worth, before it has been marketed. But there are still difficulties in ascertaining how much of the value of something is attributable to its natural form. We cannot talk about the market value of raw natural objects as they cannot be marketed in their raw state, by definition, and so we cannot make sense of the value of anything without including that part of its value that is affected by human activity. If we are unable to separate the value of the contents of a territorial site (the value of the natural substance) from the value of the contents that constitute improvements made to it by human activity (the value added to it by labour) then we cannot identify the value that ought to be distributed equally among all.

George's proposal for calculating the rent is unfortunately rather vague. When he claims that land must be let out "to the highest bidders in lots to suit, under such conditions as would sacredly guard the private right to improvements"<sup>490</sup> this suggests that the rent is determined merely by the size and location of the plot of land in question. Certainly he intended it to exclude consideration of what is currently on that land (for example, houses, factories and so on) but what is rather more nebulous is consideration of the *properties* of the land, such as the fertility of the soil. If improvements are to be 'sacredly guarded', then clearly rent is payable only on those properties of the land that have occurred naturally, and *not* those that have been added by labour. But this faces the complication that something like the fertility of the soil may or may not represent a human improvement (the quality of the soil may have been improved by diligent fertilising), leaving open the question of what precisely people are bidding on. Some of the valuable assets of a piece of land may have come about naturally while others are the result of hard work, and we cannot determine the value the land would have 'naturally', separate from the value added to it by labour. If we must safeguard improvements then the value of the land in its natural state must be identified, and it is hard to see how this can be done. I do not hope to come up with a comprehensive value-added scheme here, but nor does it

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<sup>490</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 287

seem to me that such a scheme is beyond reach.<sup>491</sup> As long as we do not maintain that labour-mixing confers ownership we can avoid the criticism that natural resources cannot be made available without removing them from the collection of things eligible for distribution.

## Ecological Space

It may be asked at this point why I insist that what should be distributed equally are the land and other resources such as oil and minerals when conceptualising natural resources in such a way is still problematic, given the difficulty of identifying a workable value-added scheme. An alternative conceptualisation that could be proffered, arguably avoiding such problems, is that of ecological space. This approach, advocated by Hayward, maintains that what we are all equally entitled to is not the resources themselves, nor a share of their value, but rather a share of ecological space. This is defined as the

total amount of biologically productive land and water area required to produce the resources consumed and to assimilate the wastes generated using prevailing technology.<sup>492</sup>

This approach, he argues, “captures how all human interactions with the natural world – our use of resources and our environmental impacts – occur within a single biophysical reality”.<sup>493</sup> In other words, the ecological space approach does not consider merely the initial appropriation of the natural world, but also takes into

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<sup>491</sup> Others share my confidence that a solution can be found. See Steiner, *An Essay on Rights*. p. 273, n.14, Philippe Van Parijs, "Competing Justifications of Basic Income," in *Arguing for Basic Income : Ethical Foundations for a Radical Reform*, ed. Philippe Van Parijs (London: Verso, 1992). p. 13. The idea of a land tax is the motivation behind many political campaigns, including the Henry George Foundation and the Land Value Taxation Campaign (See the Henry George Foundation of Great Britain ([www.henrygeorge.org.uk](http://www.henrygeorge.org.uk)); the Land Value Taxation Campaign ([www.landvaluetax.org](http://www.landvaluetax.org)); and the International Union for Land Value Taxation and Free Trade (International Geogist Union) ([www.interunion.org.uk](http://www.interunion.org.uk).) I shall suggest that the practicalities of implementation can be addressed by these policy makers.

<sup>492</sup> Tim Hayward, "Thomas Pogge's Global Resources Dividend: A Critique and an Alternative," *Journal of Moral Philosophy* 2, no. 3 (2005). p. 324

<sup>493</sup> Hayward, "Global Justice and the Distribution of Natural Resources." p. 359

consideration the ongoing effects that such appropriation has on the environment and on the population as a whole. The quantity of ecological space that an individual ‘occupies’ – that is: what he requires in order to fulfil his consumption and waste needs – constitutes his ‘ecological footprint’. As explained by Hayward,

ecological footprint accounts express in ‘global hectares’ the amount of biologically productive space with ‘world average productivity’ necessary to maintain the current material throughput of the human economy under current management and production practices.<sup>494</sup>

Just as the ecological footprint of an individual can be calculated, he argues, so can that of a nation: “The footprint of a nation measures its total resource consumption by adding imports to, and subtracting exports from, its domestic production”.<sup>495</sup>

The Ecological Space approach captures the idea that ‘natural resources’ do not cease to exist once they have been extracted and put to use. As Hayward states: “natural resources are not ‘used up’ in their extraction; nor do they disappear at any point in the process of production, exchange and consumption”.<sup>496</sup> Rather, it is more appropriate to think in terms of “the ongoing initial appropriation of nature by humans”.<sup>497</sup> Ecological space accounts take into consideration the fact that even those who make use of resources in more ‘refined’ forms (that is: the products generated from the use of naturally occurring substances) are nevertheless still “drawing benefits from natural resources”.<sup>498</sup> This is not an exclusive benefit of the ecological space approach, though, since I have argued that the tax on the production of resource-intensive goods is likely to be passed on to consumers, so that even individuals consuming natural resources only in their refined forms will still contribute to the common fund.

Working on the assumption of a typical Lockean proviso, the utilisation of a certain quantity of ecological space will be just if ‘enough and as good’ is left for others.

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<sup>494</sup> Ibid.

<sup>495</sup> Ibid.

<sup>496</sup> Hayward, "Thomas Pogge's Global Resources Dividend: A Critique and an Alternative." p. 323

<sup>497</sup> Ibid. p. 326. See also Hayward, "On the Nature of Our Debt to the Global Poor." p. 17

<sup>498</sup> Hayward, "Thomas Pogge's Global Resources Dividend: A Critique and an Alternative." p. 324

With ecological space there is no concept of some being ‘less good’ than the rest, so it is merely the question of ‘enough’ that is significant here. Essentially, no one may occupy an amount of ecological space that is incompatible with everyone else having access to a sufficient share. The ecological space approach appears to have libertarian appeal, since it makes use of a Lockean-style proviso. Moreover, Hayward concedes that inequalities in ecological space allocation are permitted when these represent the rewards of labour. The reference made above to ‘prevailing technology’ indicates that ecological space is necessarily, at least in part, a result of people’s labour – land is made productive and waste able to be assimilated primarily by the industriousness of individuals. Some ecological space has been produced by labour and as such should not be seen as something to which we are all equally entitled. If one is able to make land more productive, for example, or create technology that improves waste assimilation, then one has created ecological space. In order to respect self-ownership, that extra portion of ecological space must be reserved specifically for its creator. Hayward recognises this permissible inequality in ecological space utilisation, stating: “the only inequalities that are justified are those achieved by a more efficient extraction of benefits from one’s equal share of ecological space”.<sup>499</sup>

If the ecological space approach can cater to libertarian principles in this way, then why do I reject it? The key reason is that the ecological space approach is not redistributive. It is egalitarian to the extent that no one is permitted to occupy a share of ecological space that leaves others with less than enough, but this is open to the same criticism that is levelled against Lockean common ownership by Cohen. Everyone is permitted to occupy ecological space but in practice, under a system of this kind where there is no requirement to help the less able, the able-bodied will fare much better. Those who are able to make full use of the ecological space available to them do so; those who are not able to are not entitled to any help from others. Clearly this failing does not contradict libertarian principles, but it does show that the ecological space account would not push libertarianism as far as it could towards egalitarianism while still maintaining the rights of self-ownership. For this reason I

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<sup>499</sup> Ibid. p. 326

will continue to conceptualise the natural resources to which we are all equally entitled as the physical resources of land and exhaustible subterranean resources such as oil.

## **A Narrow Conceptualisation**

The conceptualisation of natural resources that I have advocated in this chapter provides plenty of scope for collecting a common fund available for distribution. However, it is considerably narrower than that of other left-libertarians. Steiner, as we have seen, believes that the germ-line genetic information that contributes to people's natural talents should be seen as a natural resource, permitting redistribution from parents of children with superior genetic endowments.<sup>500</sup> A similarly broad conceptualisation of natural resources is defended by Van Parijs, who argues that the resources available for distribution include "the whole set of external means that affect people's capacity to pursue their conceptions of the good life, irrespective of whether they are natural or produced."<sup>501</sup> These comprise things as diverse as factories, houses, stamp collections, nursery rhymes and the work ethic. I reject this conceptualisation and uphold Fried's criticism on this point, that

when talents and propensity for hard work are both transported out of the self-ownership camp and into the collective resources subject to Locke's proviso, it is hard to see what is left for the self-ownership half of left-libertarianism to operate on.<sup>502</sup>

To include produced goods in the resource base for distribution presents clear problems for self-ownership and the property right over labour product. Although self-ownership itself only gives an individual full ownership rights over those goods he can produce through labouring on personal resources, I have argued that an individual can likewise have full property rights over goods produced through labouring on external resources provided he has paid the requisite rent or tax on

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<sup>500</sup> Steiner, *An Essay on Rights*. p. 277

<sup>501</sup> Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* p. 101

<sup>502</sup> Fried, "Left-Libertarianism: A Review Essay." p. 86

those natural resources. The only proposed justification for depriving an individual of the product of labouring on external resources once she has paid the requisite rent or tax would violate her self-ownership rights, since the labour is the only remaining component which has not been taxed. This is therefore not permissible, and we must reject the inclusion of produced resources in the ‘natural resource’ base to which people are equally entitled.

Furthermore, inclusion of something as abstract as the ‘work ethic’ in the pool of natural resources faces the same problems as Steiner’s attempt to incorporate germ-line genetic information. It is impossible to determine if something like a work ethic is a natural endowment or something that an individual has carefully cultivated, perhaps against all the odds. To distribute the benefits of something like a work ethic would therefore also undermine self-ownership, and its inclusion in the natural resource base must be rejected. As will become clear in the next chapter, my narrow interpretation of the natural resource base renders my interpretation of left-libertarianism less egalitarian than these other versions, but I maintain that it is the only interpretation which is genuinely consistent with a commitment to self-ownership.<sup>503</sup>

## ***Conclusion***

In this chapter I have defended the egalitarian ownership of worldly resources and have demonstrated how we can collect funds for distribution without undermining self-ownership. I have argued that egalitarian ownership of worldly resources should be understood as the common ownership of land and the joint ownership of other finite and exhaustible resources such as oil and mineral deposits. Similar to Steiner’s approach, my Georgist model permits private appropriation of land without needing to seek consent provided that one pays rent on the land, but land can never be held in

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<sup>503</sup> An additional factor that I have not yet addressed which is sometimes thought to be included in the pool of natural resources available for distribution is the estates of the dead. I shall address this matter in the following chapter in the context of a right to bequeath and duties to future generations.

full private ownership. My joint ownership approach to other resources such as oil and minerals has similarities with Pogge's approach, since I have argued that a tax must be paid at the point of extraction. My approach differs from both those of Steiner and Pogge, however, in that I do not propose that the resources are controlled by the nation in which they reside (unless the state directly appropriates them). Rather, land is available for appropriation, and other resources may be put to use only following collective agreement.

I have argued that we can make sense of the term 'natural resources' as the thing to which everyone is equally entitled, since production alone – and *not* labour-mixing – confers a full property right. Thinking in terms of natural resources in contrast to the competing conceptualisation of ecological space permits a more egalitarian form of left-libertarianism. However, my refusal to extend the natural resource base to include things such as germ-line genetic information and the work ethic renders my form of left-libertarianism less egalitarian than those conceptions which include these things, but I believe this is the inevitable cost of maintaining a genuine commitment to self-ownership.

Conceptualising natural resources as land on which rent must be paid, and finite exhaustible resources such as oil and minerals on which a tax must be paid at the point of extraction has enabled me to create a fund available for distribution which is compatible with upholding the rights of self-ownership, and therefore with libertarianism. This fund can be conceived of globally, with rent paid into individual national funds, then collectively pooled into a larger global fund. In the next chapter I shall discuss how this fund ought to be distributed.

## Chapter 7: Redistribution

### *Introduction*

I have proposed that land is held in common ownership, such that it never ceases to be the property of all, but that private appropriation of it is permissible subject to the payment of rent. In addition, I have proposed joint ownership of those resources that (unlike land) can be used up. Consent must be sought before these resources can be used, and a tax paid on their extraction, equivalent to the greater share of their value. This rent and the tax collectively comprise a common fund to which everyone – globally – is equally entitled. I shall now consider proposals for the distribution of this fund.

Some left-libertarians have proposed that the collected fund should be distributed equally, by which I mean that every person should be given a share identical to everyone else's.<sup>504</sup> Pogge, in contrast, has argued that the proceeds from a tax on global resources should "be spent where they can make more of a difference in reducing poverty and disadvantage"<sup>505</sup> and that such spending should be directed so as to ensure "that all human beings can meet their own basic needs with dignity."<sup>506</sup> I shall not dwell on the equal division approach – which I take to be the default left-libertarian position – for the simple reason that there is little more to be said about it. Nor shall I consider approaches such as Pogge's which advocate targeting those most in need. I shall instead focus my attention on accounts that advocate egalitarian distribution, but where 'equality' is not understood in terms of identical shares. In considering these accounts I shall assess to what extent it is possible to embrace a more extensive interpretation of equality while remaining true to the commitment to self-ownership. I shall begin with the distribution proposed by Michael Otsuka,

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<sup>504</sup> This is the position held by Steiner, and also by Nicolaus Tideman: "rent payments should be divided equally among all agents in the world." Tideman and Vallentyne, "Left-Libertarianism and Global Justice." p. 454

<sup>505</sup> Pogge, "An Egalitarian Law of Peoples." p. 202

<sup>506</sup> Pogge, *World Poverty and Human Rights : Cosmopolitan Responsibilities and Reforms*. p. 203

according to which the fund should be distributed in order to promote equality of opportunity for welfare. On this account, individuals must receive a share of the fund that enables them to achieve the same level of welfare as everybody else. I shall argue that the unequal distribution that Otsuka proposes risks undermining self-ownership, in circumstances where an able-bodied individual receives so few resources (on account of her superior genetic endowments) that she no longer has robust self-ownership. I shall then turn to equality-promoting Georgist libertarianism and the equality-promoting, full benefit taxation conception of natural resource ownership, advocated by Peter Vallentyne. These approaches also propose distributing the fund unequally in order to address natural disadvantages. I shall argue that the latter approach is not in fact consistent with a commitment to self-ownership, as it taxes the benefits of exercising one's faculties, and it does so in a way which is not possible to avoid. The former approach is compatible with self-ownership, to the extent that the rights of self-ownership do not in themselves entail that the rent should be divided equally. Nonetheless, any deviation from equal shares will need to be careful to ensure that each person's self-ownership remains robust, so the egalitarian commitment must be secondary to upholding self-ownership. I shall then outline my proposed basic income, based on the common and joint ownership of worldly resources and finally say a few words on the limits that can be imposed on bequeathing – compatible with self-ownership – which will have a beneficial impact on future generations.

### ***Otsuka and Equality of Opportunity for Welfare***

Michael Otsuka supports a stringent right of self-ownership, which must be robust rather than merely formal, and egalitarian ownership of worldly resources. As we saw in the previous chapters, he rejects Nozick's argument that redistributive taxation is on a par with forced labour, on the grounds that our rights in worldly resources are not as full as our rights over ourselves. Otsuka advocates a more egalitarian Lockean-style proviso, which states:

You may acquire previously unowned worldly resources if and only if you leave enough so that everyone else can acquire an equally advantageous share of unowned worldly resources.<sup>507</sup>

Otsuka does not believe that providing individuals with equal bundles of resources, or equal shares of their value, would be adequate to realise people's equal claim to natural resources. People have different mental and physical constitutions, brought about by luck, which affect their ability to derive welfare from a given quantity of resources. This means that identical shares would provide some with a greater level of welfare than others. According to Otsuka, we ought therefore to focus not on equal shares but on shares that are equally advantageous, taking into account people's differing capacities to derive equal welfare from those resources. Adopting an approach of equality of opportunity for welfare, Otsuka argues,

shares are equally advantageous if they are such that each is able to attain the same level of welfare as anybody else given the combination of her worldly and personal resources.<sup>508</sup>

The egalitarian proviso demands that people are allotted natural resources in accordance with the "mental and physical capacities that bear on their efficiency in converting resources into welfare."<sup>509</sup> The distribution of worldly resources should therefore take people's differing capacities into account. To illustrate this, Otsuka provides an example of two people who will freeze to death without a blanket.<sup>510</sup> One of them (through no fault of his own) is twice the size of the other. It is intuitively fairer, Otsuka contends, for the blanket to be divided between them *unequally* rather than for one to suffer exposure to the cold while the other has enough of the blanket to wrap around himself twice. Distributing the resource *unequally* is the best way to promote genuine equality. Otsuka therefore favours his proposed 'welfarist specification' of the egalitarian proviso<sup>511</sup> as it takes into account

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<sup>507</sup> Otsuka, *Libertarianism without Inequality*. p. 24

<sup>508</sup> Ibid. p. 25. Otsuka draws the language of 'equality of opportunity for welfare' from Richard Arneson, "Equality and Equality of Opportunity for Welfare," in *Equality: Selected Readings*, ed. Louis P. Pojman and Robert Westmoreland (New York ; Oxford: Oxford University Press, 1997).

<sup>509</sup> Otsuka, *Libertarianism without Inequality*. p. 31

<sup>510</sup> Ibid. p. 26

<sup>511</sup> He defines this welfarist specification in greater detail thus: "Someone else's share is as advantageous as yours if and only if it is such that she would be able (by producing, consuming, or

people's unchosen characteristics which affect their ability to derive welfare from resources. In this way, Otsuka attempts to avoid Cohen's criticism that upholding self-ownership rights will create inequality in a world of people with varying abilities. If these natural inequalities in personal abilities can be taken into account at the point of distribution of natural resources, then this inegalitarian outcome of upholding self-ownership can be avoided.

Otsuka denies that to provide people with different quantities of goods or with different shares of the collected value would interfere in any way with people's self-ownership. In considering a land-reform policy that distributes government land unequally depending on individuals' inherited land, he argues that the state

does not infringe any libertarian right of ownership over land by giving more land to those who have less and less to those who have more. Similarly, the state does not infringe any libertarian right of ownership over self by allowing those who have lesser talents to acquire more land than those who have greater talents.<sup>512</sup>

In other words, just as people's property rights over land are unaffected if they are given more land – even if this is not as much land as is given to others – self-ownership rights are unaffected when people receive additional goods, even if they receive unequal portions of additional goods. Distributing resources unequally, he argues, is compatible with self-ownership.

As noted in chapter five, Otsuka is very supportive of the idea that self-ownership must be robust. Individuals must be left with sufficient worldly resources to be able to exercise their self-ownership rights; otherwise their self-ownership is merely formal. Since Otsuka's egalitarian proviso places no constraints on the distribution required to achieve equality of opportunity for welfare, he concedes that providing people who are naturally disadvantaged with a greater than equal share of worldly

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trading) to better herself to the same degree as you, where 'betterment' is to be measured in terms of level of welfare understood as the 'satisfaction of the self-interested preferences that the individual would have after ideal deliberation while thinking clearly with full pertinent information regarding those preferences.'" Ibid. p. 27, quoting from Richard Arneson, "Primary Goods Reconsidered," *Noûs* 24, no. 3 (1990). p. 448

<sup>512</sup> Otsuka, *Libertarianism without Inequality*. p. 31

resources in order to compensate for this will necessarily eat into the shares of the able-bodied. From this he notes the possibility that there may arise,

a distribution of worldly resources that leaves the able-bodied with so few resources that they would be forced, on pain of starvation, to come to the assistance of the less talented.<sup>513</sup>

And when an individual has no choice but to come to the assistance of others, then their self-ownership is no longer robust.

When the egalitarian proviso demands that the share of resources given to the able-bodied is inadequate for survival, then this attempt at equality has rendered self-ownership no longer robust. But, in an attempt to get round this objection that he has identified, Otsuka argues that the egalitarian proviso will require this only in situations where “the able-bodied have no desire for resources beyond that which is necessary for subsistence”.<sup>514</sup> Following Otsuka’s example: imagine an artificial society made up of two strangers, one of them is unable to do anything for himself (Unable) while the other is an able-bodied person seeking only subsistence (Able). In this society, the division of resources must be such that the latter is left with insufficient resources for survival as only then will she need to interact with Unable. If Unable is to have any bargaining power at all, which is necessary for him to achieve the same level of welfare as Able, then Able must be provided with fewer resources than she needs, since giving her fewer than she wants will not guarantee her cooperation if she seeks only subsistence. However, Otsuka claims that it is safe to assume that the able-bodied do in fact have “more ordinary preferences for material resources”.<sup>515</sup> If Able requires more than what is sufficient for subsistence in order to reach a given level of welfare then it is not necessary to leave her with fewer resources than she *needs*, merely with fewer resources than she *wants*. She will then choose to engage with Unable in a mutually beneficial trade by which they will both be able to improve their welfare, but it is not the case here that she is forced to assist Unable ‘on pain of starvation’. Her self-ownership is therefore robust.

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<sup>513</sup> Ibid. p. 31

<sup>514</sup> Ibid. p. 32

<sup>515</sup> Ibid. p. 33

However, even if we set aside the possibility that those able-bodied people for whom subsistence is a satisfactory end will be forced to assist others merely in order to survive, Otsuka's approach is still problematic. Otsuka indicates that the range of cases where equality cannot be successfully reconciled with self-ownership is relatively limited<sup>516</sup> but this has been called into question.<sup>517</sup> The problem is that much hinges on the claim that people will make mutually beneficial voluntary choices. If resources are divided in such a way that both the disabled and the able-bodied can increase their welfare to the same extent through voluntary exchange, then ostensibly the rational choice would be to engage in a trade. But if (or more likely, when) the occasion arises that this mutually beneficial decision is not reached – perhaps someone may have a strong objection to disabled people and refuse to trade with them on principle – then Otsuka is faced with a dilemma. If the exchange does not take place then the able-bodied cannot obtain an optimal level of welfare, but they will nonetheless have sufficient resources to sustain themselves. The disabled, however, (assuming they are entirely unable to do anything for themselves, as is the case in Otsuka's example) have more to lose, and it is unrealistic to suggest that the bargaining power is the same on each side. As Quong notes, "The Able can afford to be much more patient in striking a bargain with the Infirm since the Able are at no risk of dying or severe hardship in the event of non-agreement."<sup>518</sup> If exchange is not enforced then the resulting inequality will be very damaging to the disabled, possibly resulting – in the worst case – in death. The alternative is that the able-bodied are forced to come to their assistance, not just by the unacceptable alternative of starvation, which would render self-ownership no longer robust, but actually forced by others, which would violate the rights of self-ownership. In the absence of the 'correct' decisions being made regarding exchange, the outcome is a choice between equality and self-ownership. And as I have argued previously, a libertarian account (to qualify as such) must prioritise self-ownership.

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<sup>516</sup> Ibid. p. 11

<sup>517</sup> See Quong, "Left-Libertarianism: Rawlsian Not Luck Egalitarian." p. 72-3, and Inoue, who argues that Otsuka's robust conception of self-ownership cannot in fact be reconciled with equality in ordinary circumstances, since "the egalitarian proviso cannot be satisfied in the presence of uncertainty, which is unavoidable in most actual circumstances." A. Inoue, "Can a Right of Self-Ownership Be Robust?," *Law and Philosophy* 26, no. 6 (2007). p. 582

<sup>518</sup> Quong, "Left-Libertarianism: Rawlsian Not Luck Egalitarian." p. 73

It would seem, then, that the attempt to distribute natural resources in such a way that takes into consideration people's natural inequalities risks undermining self-ownership. If natural resources and personal endowments are taken together as a bundle, then those who have fared well in terms of natural abilities will be given a smaller share of resources. This could leave an individual with so few resources that her self-ownership is no longer robust. It could be contended that the distribution of resources could take disparities in natural abilities into account up to the point at which it threatens to undermine self-ownership – in other words, giving people unequal shares, but never giving anyone so few shares that her self-ownership will not be robust. However, this would necessarily mean that there would not be equality of opportunity of welfare. Any individuals who are so badly-off in terms of personal endowments would not be able to achieve the same level of welfare as others unless some able-bodied people had their share of worldly resources diminished to below a level that would make their self-ownership robust. Otsuka's attempt to promote equality of opportunity of welfare ultimately cannot avoid threatening to undermine self-ownership. Let us consider then an alternative attempt to promote equality, to see if this fares any better in its compatibility with self-ownership.

### ***Vallentyne and Equality-Promoting Georgist Libertarianism***

Peter Vallentyne favoured a more explicitly Georgist conception of egalitarian world ownership. Like Otsuka, Vallentyne was writing in response to Cohen's claim that a plausible egalitarian approach to world ownership cannot be found. He shares Cohen's criticism of equal division of the common fund, since it does not compensate for natural disadvantage. However, he denies that such equal division is a necessary component of Georgist libertarianism "which only requires full self-ownership and the payment of competitive rent for appropriation."<sup>519</sup> He advocates instead what he calls Equality-Promoting Georgist Libertarianism, in which the money collected as rent on appropriated resources "is spent to promote equality of

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<sup>519</sup> Vallentyne, "Critical Notice of G. A. Cohen: Self-Ownership, Freedom, and Equality." p. 621

unchosen advantage.”<sup>520</sup> Vallentyne claims that his Georgist conception is compatible with self-ownership, despite directing the collected fund to the disadvantaged rather than dividing it equally, because

it restricts the demand of equality to the *spending* of the social fund. The *size* of the social fund is determined by the competitive value of natural resource appropriated – and not by the amount needed to eliminate unchosen disadvantage.<sup>521</sup>

In other words, the fund is collected not from all equally, nor from each to the extent that they are able to pay, but rather from each according to their appropriation of resources. Under this equality-promoting Georgist libertarianism, the inequalities of natural disadvantage can be addressed, according to Vallentyne, while upholding self-ownership.

Vallentyne does not specify equality of opportunity of welfare, so he is not committed to a conceptualisation of equality that would demand a distribution of natural resources that would render the self-ownership of some individuals merely formal. Distributing the funds unequally so as to mitigate some of the worst effects of natural disadvantage does not then conflict with self-ownership. However, that does not mean that it does not contradict Georgist common ownership, as I have set it out. On my account, rent is owed to a common fund on the basis that the land is rightfully the common property of all. If some individuals receive less than an equal share of the rent on account of having superior genetic endowments to others, then they have arguably not truly realised their stake in the resources which they own to the same extent as others. Imagine that two sisters collectively own a house. One of them is able-bodied and talented while the other has a disability that prevents her from faring as well as her sister. They decide to rent out the house. If the rent is then divided unequally between them, to reflect their differing abilities, this does not affect the self-ownership of the able-bodied sister, but it would have an effect on her decision to rent out the house in the first place. Let us suppose that her share of the rent was intended to fund the rent on a more modest flat while leaving her some

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<sup>520</sup> Ibid.

<sup>521</sup> Ibid.

money to set aside for the future. If she receives less than half the rent, on account of her superior genetic abilities, then she may no longer be able to afford to do that, and would perhaps be better off not renting out the house, but rather occupying it herself. It is important that the Georgist rent model provides incentives for allocating the resources to those who will make best use of them, so it is an unappealing feature of Vallentyne's proposed distribution of the rent that it could detract from this. I suggest that if rent is owed on the basis of egalitarian ownership, this will be interpreted by many to mean that it is owed to all equally. That said, I concede that an unequal distribution of the rent need not conflict with self-ownership, if it is not equality of opportunity for welfare that is sought, and I have said that the approach to world ownership is up for discussion from a libertarian perspective, open to any number of interpretations providing it doesn't affect robust self-ownership. This would include the interpretation that natural resources ought to be used so as to counteract natural disadvantage. So while I believe that this interpretation would be less popular as a principle of distribution, I do not believe that this interpretation undermines self-ownership.

The same cannot be said for an additional suggestion by Vallentyne which attempts to promote equality even further. Under equality-promoting Georgist libertarianism, rent is collected only on the basis of the value of natural resources. Accordingly,

agents with more advantageous unchosen personal endowments (e.g. productive talents) pay the same taxes as those with less advantageous unchosen personal endowments who own equally valuable natural resources.<sup>522</sup>

Vallentyne maintains, however, that it is unfair that people with greater productive capacities reap greater benefits from using natural resources while paying the same taxes as people with inferior capacities. He therefore proposes a more demanding version of world ownership which he calls the "equality-promoting, full benefit taxation conception of natural resource ownership".<sup>523</sup> I believe that this approach improves equality only by bringing self-ownership into jeopardy.

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<sup>522</sup> Ibid.

<sup>523</sup> Ibid. p. 622

Vallentyne distinguishes between common use and unilateral appropriation, both of which he believes must be features of a plausible conception of world ownership.

Common-use means, roughly speaking, that

agents are permitted to use an unappropriated natural resource as long as they violate no one's self-ownership, no one else is currently using it, and perhaps subject to certain other conditions.<sup>524</sup>

Unilateral appropriation, in contrast, allows “*appropriation* of unappropriated natural resources without the consent of others – as long as certain conditions... are met.”<sup>525</sup>

Vallentyne argues that the rights over natural resources are themselves valuable, and people should have to pay a competitive value for them. Full appropriation is therefore something that must be paid for, and not something we have a natural right to. The Georgist model I have proposed, and Vallentyne's equality-promoting Georgist libertarianism, both permit such unilateral appropriation, subject to the payment of rent. Under equality-promoting full benefit taxation, Vallentyne proposes that appropriators “must pay the competitive rent *plus* taxes equal to up to the full value of the net benefit from appropriation (net of competitive rent).”<sup>526</sup> The effect of this, he says, is to treat “all benefits of applying personal talents to appropriated natural resources as a social asset.”<sup>527</sup>

This looks dangerously close to talent-pooling, in precisely the same way as Steiner's proposal of taking germ-line genetic information to be a natural resource. Vallentyne insists, however, that this approach does not conflict with self-ownership, for this reason:

it imposes the obligation to pay the benefit taxation only on those who appropriate natural resources. Agents are free to use unappropriated natural resources under the terms of common use without acquiring any obligation to

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<sup>524</sup> Ibid. p. 619. These other conditions could include an obligation not to reduce the value of the resource, or conditions along the lines of a Lockean-style proviso.

<sup>525</sup> Ibid. p. 619 (emphasis in original)

<sup>526</sup> Ibid. p. 623 (my emphasis)

<sup>527</sup> Ibid. p. 622

pay rent or benefit taxes. It is thus possible for agents to avoid having to pay the tax.<sup>528</sup>

In other words, since people can choose not to appropriate resources, they can choose not to put themselves in a position where the tax is payable. The tax is therefore not compulsory, Vallentyne argues, and so does not jeopardise self-ownership.<sup>529</sup>

The first thing to note about this approach is a practical objection: if the benefits of private appropriation are to be taxed – especially if this can be as high a rate as 100% – it is reasonable to suppose that this will act as a disincentive to private appropriation, encouraging people simply to make use of the resources held in common ownership rather than appropriating them unilaterally. This would have the effect of dramatically diminishing the common fund, leaving very little to distribute among all – whether equally or unequally – and creating precisely the situation that Cohen criticised in which those who can make use of the resources do so but do not need to pay anything to those who do not.

A second point is that a considerable amount of work is being done by the proposed distinction between appropriation and use. According to Vallentyne people who merely use rather than appropriate natural resources are not liable to pay either the tax or the rent. But what does it really amount to, to say that agents can ‘use’ unappropriated natural resources? Much seems to hinge on whether one can truly ‘use’ without appropriating. If not, then agents are forced into appropriation and are not able to opt out of the rent or the tax. If people are forced to pay a tax on the benefits of appropriation then this approach cannot in fact be compatible with self-ownership.<sup>530</sup>

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<sup>528</sup> Ibid.

<sup>529</sup> This appears to contradict Vallentyne’s later acknowledgement that equality-promoting full benefit taxation denies that “agents are entitled to the net benefits of their labour (net of competitive rent)”. Ibid. p. 624

<sup>530</sup> If agents are forced into appropriation and cannot opt out of the *rent* this does not affect self-ownership, unlike their inability to opt out of the tax, since only the tax relates to self-ownership rights – namely, rights over personal talents – rather than just rights over natural resources.

So, can 'use' be separated from 'appropriation'? Certainly we can make sense of this distinction at a conceptual level. For example, if a hammer were held in common use then each person would be permitted to use it provided they violate no one's self-ownership with it, no one else is currently using it, and perhaps subject to the condition that they do not break it or reduce its value in any way. As long as these conditions of common use are observed a person may use the hammer and then return it, never having needed to appropriate it for themselves. This system could also apply to larger objects (for example, a tractor) and could maybe even be extended to something like a house, in certain circumstances. But there are two issues which render the distinction between use and appropriation more nebulous: time, and the necessity of the object in question. When one uses something, rather than appropriating it, the implicit understanding is that it is for a brief period only. If someone returns the hammer after a brief time then this is merely use; if someone removes the hammer for an indefinite period, depriving the other common owners of its use for an extended time, it is more accurate to see this as appropriation, even if it is only temporary appropriation. With regard to something like a house it is possible to use it without appropriating it, but only under specific circumstances. For example, the shelters – known as bothies – traditionally used by hill walkers in the Scottish Highlands and elsewhere are available to all free of charge, on the understanding that an individual does not stay there indefinitely. In this situation it is possible merely to use, rather than appropriate, what is effectively a small house, and it remains in common use. More ordinarily, however, houses are privately owned, excluding the use of others, since people do not use them for only a brief time. The main reason for this is of course that people need shelter. Anything that is necessary for survival – such as land – is something that people must appropriate. It makes no sense that they would return it when they have finished with it. Of course, it could be countered that this is exactly what people do when they die – they return what they no longer need. But this precisely illustrates the difficulty in trying to conceive a distinction between mere use and temporary appropriation. Any resource that is necessary for survival, and which would then need to be removed for an extended period from the use of others, must be considered to be appropriated rather than

merely used. A natural resource such as land would fit these criteria, and so it is not feasible to say that people may use land without appropriating it.

The terminology of ‘use’ and ‘appropriation’ are both utilised by George but he does not appear to draw clear distinctions between the two terms, suggesting that he considers them to be interchangeable. At times he refers to appropriation, for example when he states that “the value of land or economic rent... expresses nothing but the advantage of appropriation.”<sup>531</sup> Elsewhere he speaks of use, for example when he claims “the man who is using land must be permitted the exclusive right to its use in order that he may get the full benefit of his labor.”<sup>532</sup> However, in speaking of the ‘exclusive right of use’ George demonstrates that he does not conceive of the ‘use’ of resources in the same sense as Vallentyne. Rather, he believed that rent is payable on any resource that people are using it, for the duration of that period of use. ‘Use’ in this sense is more properly seen as temporary appropriation. Natural resources technically *can* be used rather than appropriated in the sense Vallentyne meant if we understand them in a Lockean state of nature – drawing water from the river, picking berries and acorns on common land, but never depriving others of access to the river or the land. Individuals who live such a meagre hand to mouth existence might qualify for being exempt from any rent payment, but these individuals will certainly be the minority, since it is unlikely that any remaining common land can sustain many people in this way.

An applicable distinction cannot realistically be drawn between use and appropriation, and so we must reject Vallentyne’s claim that it is possible to avoid the full benefit taxation by refraining from privately appropriating something and merely using it instead. It is not justified, then, to see the tax as non-compulsory in practice. Rather, the basis of the tax can only be derived from the belief that the arbitrary distribution of natural talents entitles people to a share of what may be produced when those talents are used in conjunction with natural resources, and this conflicts with self-ownership. Individuals’ talents, even if traceable to luck, cannot

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<sup>531</sup> George, *Progress and Poverty : An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth - the Remedy*. p. 293

<sup>532</sup> *Ibid.* p. 243

permissibly be used for the benefit of all. This is a clear case of talent-pooling, and must be rejected by libertarians, in favour of self-ownership.

So, I have argued that we must reject the more egalitarian equality-promoting, full benefit taxation conception of natural resource ownership, but let us now return to the proposal for equality-promoting Georgist libertarianism. Can a libertarian support the unequal distribution of the rent collected on natural resource use? Barbara Fried, in her critique of left-libertarianism, denies this, arguing:

If the just state may not take more from the talented by virtue of their unequal talents – the premise of left-libertarianism – why may it give more to the untalented by virtue of their unequal talents?<sup>533</sup>

Arguably there is an inconsistency in acknowledging differentials in natural ability at the point of distribution, but not at the point of collection. However, self-ownership rights can only be violated by the collection of funds, not by their distribution, as long as everyone receives a sufficient quantity to have robust self-ownership. Any criticism of the unequal distribution of the collected fund stems not from a conflict with self-ownership, but rather from the contention that equal ownership of natural resources should issue in identical shares of the collected rent. An individual who receives less than an equal share on account of being able-bodied and reasonably talented could complain that she has not received her true resource share, but she cannot derive this complaint from the libertarian commitment to self-ownership. Provided self-ownership rights are not violated and self-ownership is robust, a libertarian can remain neutral as to which conceptualisation of equality is adopted when it comes to conceptualising people's "equal" shares of natural resources. Admittedly, the equality that can be achieved on this account will always be constrained by the requirement to uphold, first and foremost, the rights of self-ownership, but this does not amount to the claim that self-ownership requires that equal shares can only ever be understood in the sense of equal division, merely that there is a limit to the extent that *unequal* shares can be used to promote equality.

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<sup>533</sup> Fried, "Left-Libertarianism: A Review Essay." p. 90

The fact that egalitarian principles can play a part in determining the distribution of the Georgist rent fund, should not be taken to mean, however, that the ‘left’ part of left-libertarianism is doing more work than the libertarian self-ownership side, contrary to what Fried believes. She argues:

as long as the Georgian tax base is substantial relative to income inequalities redistribution of the tax base in accordance with liberal egalitarian principles will undo any operational effect of the Georgian tax, producing exactly the outcome we would expect from liberal egalitarianism alone.<sup>534</sup>

She continues, “liberal egalitarian principles are doing all the redistributive work in such cases, leaving left-libertarian (Georgian) rhetoric to provide the window dressing.”<sup>535</sup> However, it is wrong to suggest that the Georgist libertarian element is not playing a part here. Indeed, the redistributive work was always going to be done by the egalitarian principles, since redistribution is not a libertarian idea. Where the libertarian element comes in is in the *collection* of this fund, and the significance of this ought not to be underestimated. The Georgist approach has enabled the rent and the tax to be raised without undermining the rights of self-ownership. In left-libertarianism it is accurate to say that the ‘left’ part operates on the distribution, while the ‘libertarian’ part operates on the collection of the fund. Observance of this fact does nothing to undermine left-libertarianism since the goal is precisely to bring these two theories together, not to attempt to derive one set of principles from the other.<sup>536</sup>

## ***Basic Income***

The payments that are distributed to individuals from the common fund – comprising the rent collected from private appropriation of land and the tax charged on the extraction of finite and exhaustible natural resources such as oil – can be conceived

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<sup>534</sup> Fried, "Left-Libertarianism, Once More: A Rejoinder to Vallentyne, Steiner and Otsuka." p. 220

<sup>535</sup> Ibid. p. 221

<sup>536</sup> Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried." p. 208

of as a basic income. Despite the terminology, a ‘basic income’ is not intended to suggest an income sufficient to meet basic needs, but rather is defined as “an income unconditionally paid to all on an individual basis, without means test or work requirement.”<sup>537</sup> A right to a basic income should not be confused with a right to subsistence. In chapter one I defended negative subsistence rights on a libertarian account but denied that there is a right to the provision of subsistence. But since a basic income is defined such that it need not be sufficient for subsistence, there is no contradiction in denying positive subsistence rights while embracing a right to a basic income.<sup>538</sup> The right to basic income is instead founded on the right of everyone to common ownership of the earth.

One of the earliest proponents of a basic income on the grounds of egalitarian world ownership was Thomas Paine. He proposed a very specific policy (advocating that a fixed sum payment should be made to each individual at the age of twenty-one, and ongoing annual payments to all those over the age of fifty) “as a compensation in part, for the loss of his or her natural inheritance.”<sup>539</sup> In other words, to make up for the fact that there is no land left in an unappropriated state for newcomers to acquire, people shall receive a share of the rent that is paid on that land by its current possessors. This is precisely what I propose should happen (though I will not attempt to formulate the practical application) with the fund collected from the natural resources held in common and joint ownership.

Proponents of a basic income who nevertheless criticise the idea of founding it on equal rights to the earth contend that such a foundation can justify only a very small sum, and moreover one “that keeps shrinking relative to total income, as natural resources are depleted while capital, skills and people become more abundant.”<sup>540</sup> It should be noted that land is not depleted – rent payments to the fund will be ongoing

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<sup>537</sup> Van Parijs, "Competing Justifications of Basic Income." p. 3 (see also n. 1). This is the definition adopted by the Basic Income European Network.

<sup>538</sup> Ibid. n. 12. See also Pogge, who states, “the poor can really have a claim only to a proportional resources share, not to adequate subsistence, because there may simply not be enough to go around.” Pogge, "Real World Justice." p. 41

<sup>539</sup> Paine, Thomas (1796) ‘Agrarian Justice’, quoted in Van Parijs, "Competing Justifications of Basic Income." p. 12

<sup>540</sup> Ibid. p. 13

as long as there is private appropriation of land. However, it must be conceded that a basic income based only on this foundation will be more minimal than one that takes other factors (for example, a tax on income) into consideration. There is some truth, then, in the claim that “The most a libertarian approach can justify, it seems, is an admittedly strong right to a pathetically small grant.”<sup>541</sup> However, to have demonstrated a strong right to any grant at all is no small feat from a libertarian perspective. My aim was to demonstrate that it is possible to justify some redistribution while upholding a strong libertarian commitment to self-ownership. Even though (I have argued) it is permissible for the basic income derived from the common fund to vary for different individuals, depending on their natural abilities, equality of outcome is not assured since it can only be promoted up to the point that it is compatible with self-ownership. A basic income founded on egalitarian world ownership would therefore not address all inequality, but it will ensure that people do not lose out from their rightful share of worldly resources. As Tideman explains,

The principle of public collection of rent does not address ‘all of the sources of morally relevant social inequality.’ It addresses only those aspects of inequality that are matters of justice.<sup>542</sup>

It is sufficient from a Georgist perspective that people are not deprived of their share of natural resources, but I suggest that proper application of this principle will bring about a level of redistribution which is not insubstantial.

## ***Inheritance and Future Generations***

In this final section I shall say a little about inheritance and the estates of the dead. Whether or not there is a right to bequeath has an impact on more than just the

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<sup>541</sup> Ibid. p. 15-16. For this reason, Van Parijs adopts what he calls ‘real libertarianism’ which adopts a more comprehensive understanding of freedom (that is: one that is not exclusively negative). Van Parijs’s formulation of libertarian deviates too far from the libertarian principles I have set out in this thesis for me to address it here.

<sup>542</sup> Tideman, "The Case for Geoliberalism: A Reply to Moellendorf.", p. 502, quoting Moellendorf, "World-Ownership, Self-Ownership, and Equality in Georgist Philosophy."

prospective donor and recipient, since it affects whether there is anything still available for appropriation. This is important in considering the fate of future generations under the left-libertarian model that I have proposed. Many of George's contemporaries supported egalitarian world ownership on the basis that it would improve the situation for future generations. Spencer's opposition to private property in land was based on his belief that recognition of such private property would commit us to the position that one generation would be more privileged than the next or that future generations would be "doomed to slavery".<sup>543</sup> If resources never ceased to be owned by all, then the suggestion is that those resources return to the pool of natural resources available for appropriation, when people die.<sup>544</sup>

The question of whether or not there is a right to bequeath one's wealth to others is another bone of contention between radical right-wing libertarians and left-libertarians. Hospers and Rothbard believe that there is such a right<sup>545</sup> but Steiner and Otsuka deny this, arguing instead that the estates of the dead revert to common property – the pool of natural resources available for redistribution.<sup>546</sup> (The position of Nozick is rather more complicated, as I shall explain shortly). Steiner's rejection of a right to bequeath is based on his insistence that a right-bearer must be able to demand or waive his rights. According to Steiner: "transfers of ownership... involve an exchange of correlatives".<sup>547</sup> In other words, if I own something and I sell it to someone else, then they have acquired certain rights with respect to that thing and I have acquired certain duties to refrain from interfering with those rights. Since the dead cannot fulfil their correlative duties, the idea of a right to bequeath cannot work. He claims,

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<sup>543</sup> Herbert Spencer, "The Rights of Life, Personal Liberty, and the Use of the Earth," in *The Origins of Left-Libertarianism: An Anthology of Historical Writings*, ed. Peter Vallentyne and Hillel Steiner (Basingstoke: Palgrave, 2000). p. 179 (Spencer changed his mind about this in later work).

<sup>544</sup> Such was the position of Jefferson, who believed that "the earth belongs in usufruct to the living" and that "The portion occupied by any individual ceases to be his when himself ceases to be, and reverts to society". Thomas Jefferson, "Rights of Usufruct and Future Generations," in *The Origins of Left-Libertarianism: An Anthology of Historical Writings*, ed. Peter Vallentyne and Hillel Steiner (Basingstoke: Palgrave, 2000). p. 67

<sup>545</sup> Hospers, *Libertarianism*. p. 71, Rothbard, *For a New Liberty: The Libertarian Manifesto*. p. 41

<sup>546</sup> This is also the position of Van Parijs, who maintains that both gifts and bequests can be taxed up to 100%. Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* p. 101

<sup>547</sup> Steiner, *An Essay on Rights*. p. 253

the justification of bequest, if there is one, cannot lie in the demands of justice. And the property of the dead thereby joins raw natural resources in the category of initially unowned things: things to an equal portion of which... each person has an original right.<sup>548</sup>

Since I have remained neutral with regard to the interest and will theories of rights, I am not committed to Steiner's conclusion. Nonetheless, I shall propose limits on bequeathing, based on the common ownership of land, as I shall explain shortly. My position differs markedly from Otsuka's, which I shall now present at length before turning to my own proposal.

Like Steiner, Otsuka also rules out bequeathing, though he does so in the interests of future generations. He argues,

If the egalitarian proviso were to sanction bequests of one's entire holdings to whomever one chooses, then the members of the first generation could divide all worldly resources among themselves and then bequeath all of their holdings to a very few, leaving the majority of the next generation landless paupers.<sup>549</sup>

Moreover, not only does the egalitarian proviso, prohibit bequeathing natural resources, but also what one can produce through labouring on them:

Since individuals possess only a lifetime leasehold on worldly resources, they have nothing more than a lifetime leasehold on whatever worldly resources they improve. They should be forewarned that any worldly object they improve through their labour will lapse into a state of non-ownership upon their death and hence will not be bequeathable. Individuals have nothing more than a lifetime leasehold on the timber that they transform into yachts and hence nothing more than a lifetime leasehold on the yachts.<sup>550</sup>

He denies that this prohibition on bequeathing interferes in any way with people's self-ownership rights, arguing that,

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<sup>548</sup> Ibid. p. 258. On the subject of estates of the dead as natural resources, see also Hillel Steiner, "Three Just Taxes," in *Arguing for Basic Income: Ethical Foundations for a Radical Reform*, ed. Philippe Van Parijs (London: Verso, 1992). The force of this proposal is limited by the fact that Steiner permits unlimited gift-giving before death.

<sup>549</sup> Otsuka, *Libertarianism without Inequality*. p. 36

<sup>550</sup> Ibid. p. 38. He suggests that this argument would not extend to what someone can produce through labouring on her personal resources (e.g. hair-woven clothes), which would be bequeathable. p. 39

a person's right of ownership over worldly resources does not extend to the right to give away income generated through interaction with these worldly resources. Hence, preventing someone from transferring these resources is a means of preventing him from doing things with the world that he has no right to do, rather than an infringement of his right of self-ownership.<sup>551</sup>

Clearly there are extensive prohibitions on bequeathing in Otsuka's theory and – in the interests of future generations – Otsuka argues that the proviso demands that

members of each generation... ensure that, at their deaths, resources that are at least as valuable as those they have acquired lapse back into a state of nonownership so that the next generation has opportunities to acquire unowned resources which are at least as valuable as theirs.<sup>552</sup>

I will show that on my approach to egalitarian ownership of natural resources it is not necessary to take such a hard line on bequeathing, and that some prohibitions would indeed interfere with self-ownership rights. Firstly, let us consider my Georgist approach to common ownership of land. In outlining George's position in chapter five, we saw that he mentioned that people could bequeath what 'they are pleased to call their land', as long as those who inherit continue to pay the rent due. This suggests a departure from the left-libertarian views outlined above, but this is in fact exaggerated. Under Georgist ownership of land individuals do not have full property rights over the land, and so they cannot transfer these rights to others. Any act of bequeathing of this land will transfer merely the rights to possess and use the land and to exclude others from its use, but it is still the common property of all, subject to the payment of rent. It is not the case, then, as Otsuka would have it, that all natural resources have been divided up, leaving future generations 'landless paupers', since those in possession of this land do not have full property rights over it. With this limited account of bequeathing, I do not believe it is necessary, as Otsuka does, to ensure that resources revert back to a state of non-ownership, since the continuous payment of rent to the common fund will ensure that future generations are not disadvantaged, and will not bring with it the problems of inefficient use of resources that come with the constant changing of hands.

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<sup>551</sup> Ibid. p. 39

<sup>552</sup> Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate or Irrelevant: A Reply to Fried." p. 214

The question of bequeathing natural resources themselves does not really arise on my account, since I have proposed that they are never fully owned by individuals. Land can be bequeathed only in the weak sense described above. Other natural resources, such as oil, cannot be bequeathed even in this weak sense, since they only leave joint ownership at the point of extraction, when they are manufactured into products, with the aid of labour. Bequeathing this type of product, I argue, in contrast to Otsuka, must be permitted. People can bequeath that which they have produced, either through labouring on personal resources, or through labouring on external resources on which they have paid the relevant rent or tax, or that which they have received through trading those products. I have argued that to tax labour products would effectively be to tax labour, since the natural resource component has been taxed already, and that it is therefore a requirement of self-ownership that these products are exempt from tax. Likewise, these products must be exempt from prohibitions on bequeathing, in the interests of upholding self-ownership. I do not share Otsuka's belief that individuals have just a lifetime leasehold over something like timber. What they have a lifetime leasehold over is the land, but anything that can be produced from labouring on the land can become permanent private property, provided that rent has been paid.

In addition to labour products, individuals can also bequeath wealth they have gained through exercising their self-ownership rights: selling their labour, renting out their body and so on. What I would prohibit the bequeathing of, however, is the wealth that people have received from the common fund to compensate for being deprived of worldly resources. The basic income that people receive from the common fund in effect amounts to their holdings in terms of worldly resources – and they have just a lifetime leasehold over this. Just as individuals cannot bequeath natural resources in any real sense, not can they bequeath the value of their natural resource share. What this would mean in practice is that no one may bequeath to others more than they have earned over their lifetime, since any more than this amounts to their natural resource share rather than anything they have a right over as part of their self-ownership. I would also prohibit the bequest of wealth that individuals have

themselves received as a bequest or gift, since this wealth likewise does not reflect self-ownership. My argument here adapts a view from Nozick. Contrary to what he proposed in *Anarchy, State, and Utopia*<sup>553</sup>, Nozick argues in a later work that people should only be permitted to bequeath that which they have themselves produced over their lifetime – they cannot bequeath what they have themselves inherited.<sup>554</sup>

According to Nozick, bequeathing is an expression of caring – it demonstrates an affection for the recipient which ought to be respected. However, this characteristic is not in place when people bequeath to others what they have themselves been given in bequest. This no longer upholds an intimate bond between the bequeather and the recipient. Nozick even goes so far to say that when people pass on what they themselves have inherited, “The resulting inequalities seem unfair”<sup>555</sup> indicating quite a departure from his earlier work. Instead he proposes,

to restructure an institution of inheritance so that taxes will subtract from the possessions people can bequeath the value of what they themselves have received through bequests.<sup>556</sup>

I propose a slightly different arrangement, whereby taxes subtract anything over that which one has created in one’s lifetime. So if an individual inherits £1 million, and over the course of his lifetime is able to earn (through exercising his self-ownership rights in conjunction with natural resources on which he pays rent) a further £2 million, on my proposal he would be able to bequeath up to £2 million, whereas on Nozick’s he would be able to bequeath up to just £1 million, since we must subtract the £1 million inheritance from the possessions available for bequest. Importantly, both Nozick and I would prohibit the individual from bequeathing up to the full £3 million. Moreover, if the same individual had received a further £1 million from the common fund over his lifetime, this would not affect the outcome – this basic income

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<sup>553</sup> Nozick, *Anarchy, State and Utopia*. p. 159-60

<sup>554</sup> Nozick, *The Examined Life*. This idea builds on an idea from Huet and Rignano. See Francois Huet “Le Regne Social Du Christianisme” and Eugenio Rignano “What Shall the Decision Be?” both in Vallentyne and Steiner, eds., *The Origins of Left-Libertarianism : An Anthology of Historical Writings*.

<sup>555</sup> Nozick, *The Examined Life*. p. 30

<sup>556</sup> *Ibid.* As Nozick himself claims to no longer be a libertarian at this stage, it has been argued that this option is not available to libertarians, since it interferes with people’s voluntary transactions, namely, their rights to transfer things to whomever they wish. Van Parijs, “Competing Justifications of Basic Income.” p. 32, n. 21. However, since I have claimed that rights over these things are not derived from self-ownership rights, I do not believe that libertarians are committed to this position.

would not arise on Nozick's account, and on my account it does not affect the claim that only what one has produced through one's lifetime (and not what one has received as bequests or from the common fund) can be bequeathed to others. Anything over this amount is paid back into the common fund from which the basic income is derived.

Even with my limits on bequeathing and the benefits this would bring to future generations, it could be argued that my joint ownership approach to finite and exhaustible resources such as oil is worse for future generations than an approach that permitted private appropriation of them subject to a Lockean-style proviso, since it would then be necessary to ensure that appropriation leaves (some variation of) 'enough and as good' resources for future generations. The joint ownership requirement of collective decision-making, in contrast, excludes all those who are not the current owners, and so does not guarantee consideration of future generations. I think this objection is overstated. Firstly, the problems associated with seeking the consent from fellow owners to put these resources to use is likely to result in fewer instances of resources such as these actually being extracted. By complicating the extraction process, the joint ownership approach is likely to have the effect of reducing the number of resources put to use, not increasing it. Secondly, it is highly plausible that existing people – who *do* have a say in the collective decision-making process – will speak out on the part of future generations. One of the grounds for opposing further extraction of resources might be that the current generation has already extracted a great deal and must cease to exploit those resources for a while, in the interests of unborn generations. Finally, since extraction of these resources will now be subject to a substantial tax, this will act as a disincentive to extract them, since the value one would actually accrue to one's self would be minimal. Due to this disincentive it is also likely that people will look elsewhere for cheaper alternatives to resources like oil – for example, renewable resources that would not be subject to a tax.<sup>557</sup> This demonstrates how the Georgist model I have proposed can take future

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<sup>557</sup> Even if harnessing these renewable resources incurred a rent it is unlikely to be as high as the tax, since the supply of renewables is not fixed.

generations into account and can perhaps also have incidental environmental benefits.<sup>558</sup>

## ***Conclusion***

In this chapter I have looked at proposals for the distribution of the collected common fund and different accounts of how egalitarian ownership of natural resources ought to be realised. I have identified where attempts to promote equality go too far and risk undermining self-ownership, but have maintained a commitment to the promotion of equality to the extent that it is compatible with self-ownership. The distribution of the collected fund need not be equal, I have argued, since unequal shares do not in themselves undermine self-ownership and the principle of egalitarian ownership is one which is open to interpretation and not dictated by libertarian principles. However, I rejected the more demanding account of full benefit taxation proposed by Vallentyne, since taxing the benefits of what one reaps from appropriation is equivalent to taxing people's labour and therefore would constitute a violation of the rights of self-ownership.

The quantity of tax raised through the methods I have advocated will not be insignificant, and as it need not be distributed equally in order to uphold self-ownership, the implications for global redistribution are considerable. Admittedly, the basic income that can be achieved on such a foundation will not be as extensive as it might be on competing justifications, but nonetheless I have provided grounds for redistribution which do not require violating self-ownership rights, and which therefore have a wide-reaching appeal. Moreover, the limits on bequeathing which can be imposed without undermining self-ownership will also help to contribute to the common fund from which the basic income is derived, and will have beneficial consequences for future generations.

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<sup>558</sup> The environmental benefits of the common ownership approach are noted by Risse, who claims "common ownership provides strong reasons to care about the environment: we are guardians of resources that we possess only because we are currently alive, but we do not own any more than our 22<sup>nd</sup>-century offspring do." Risse, "Does Left-Libertarianism Have Coherent Foundations?." p. 339

## Conclusion

I began this thesis with the classic libertarian tenet that human rights are exclusively negative and that non-interference is the fundamental libertarian value. From this point I have then endeavoured to show that what can proceed from this basic principle can be unexpected, creating far more restrictions and conferring far more duties than is ordinarily thought to be the case from a libertarian theory of justice. When we add the additional left-libertarian premise of egalitarian ownership of worldly resources, there are opportunities to extend these rights and duties even further – all the while maintaining a strong commitment to the fundamental libertarian rights of self-ownership.

Firstly, I argued that negative human rights can include negative subsistence rights, such as a right not to be deprived of the means of being self-supporting. In addition to archetypal libertarian duties to refrain from interfering with people's security, there are also prohibitions on behaviour that would deprive people of their ability to seek subsistence. At an individual level these latter prohibitions may not amount to much, since individuals are rarely in a position whereby their behaviour alone would have the effect of depriving people of the means of subsistence, or of a clean living environment and so on. For this reason, I incorporated the behaviour of institutions into my libertarian theory of justice, and argued that individuals share responsibility for the rights violations committed by any institutions which they actively support. This expands an individual's negative duties even further, since they must now refrain from supporting rights-violating institutions. This can include, for example, a negative duty to refrain from purchasing goods manufactured by companies that violate rights, demonstrating a prohibition on various instances of individual behaviour not ordinarily recognised on libertarian accounts.

In addition to these negative duties I argued that libertarians can support a range of positive duties. Besides charitable obligations and duties incurred through entering into contractual agreements (neither of which are particularly controversial from a libertarian point of view) I demonstrated that there is widespread libertarian support

for a principle of rectification, demanding that the perpetrators of rights violations take positive action to counteract the harm they have caused. These positive duties of rectification are applicable primarily in the case of previously violated negative subsistence rights, since it is obviously easier to restore people's subsistence levels than it is to undo the harm of murder or torture, but they are owed in the event of any past violation of a negative right. Taking this duty of rectification in conjunction with my argument that rights can be violated by individuals providing support to rights-violating institutions, it follows that these individuals – as well as the institutions – owe positive duties of rectification to ensure that people's subsistence levels, clean environment and so on are restored, and perhaps also to campaign for the reform of those institutions who have committed the rights violations. This demonstrates stringent positive duties owed by a considerable number of individuals, non-fulfilment of which can be judged on a par with the violation of negative rights. This authorises a considerable amount of interference with people's lives – to ensure that they are not bringing about rights violations (including deprivations) whether individually or through institutions, and that they are fulfilling their positive duties of rectification – interference which I have nonetheless justified on a libertarian basis.

Importantly, this interference does not affect our self-ownership rights, which I have defended as the most fundamental human rights underpinning a libertarian theory of justice. I have defined the rights of self-ownership as property rights over the body, the faculties (including talents, abilities and labour) and over what one can produce through exercising those faculties in conjunction with that body. Despite criticisms of the thesis of self-ownership, I have attempted to defend it as a coherent and consistent theory, and one which has intuitive appeal, safeguarding bodily integrity and prohibiting interference with the exercise of individual autonomy except where necessary to respect the rights of others. Self-ownership assures to individuals the benefits of their natural talents and abilities, but the consequences of this need not be as inegalitarian as may at first be thought. Self-ownership in itself, as I have defined it, justifies property rights only over those products which can be produced through labouring on personal resources – in practice, a very minimal if not non-existent proportion of the total product of labour. The rights of self-ownership do not in

themselves justify any rights over external natural resources, and I suggested that libertarian principles do not presuppose any particular conception of world ownership, leaving this matter open to different interpretations, all of which are compatible with a libertarian theory of justice. The only stipulation is that in order for self-ownership to be robust, every self-owner must have *access* to external resources, since one will be unable to exercise their self-ownership rights if they cannot – at the very least – occupy standing room.

On the grounds that libertarians support self-ownership, self-ownership ought to be robust, and robust self-ownership requires access to worldly resources, I suggested that we can reject radical right-wing libertarian accounts, since they permit unlimited appropriation and are therefore incoherent even from a purely libertarian perspective. In addition to permitting self-ownership to be ineffective, these accounts propose a set of property rights over external resources that is not compossible with self-ownership rights. At the very least, a proper commitment to self-ownership requires the imposition of a proviso, and I demonstrated how a Lockean-proviso such as Nozick's can be adapted so as to provide a far more egalitarian outcome than it is ordinarily thought to produce, without any independent commitment to egalitarian ownership of natural worldly resources. However, in the interests of seeing how egalitarian libertarianism can be – that is: to what extent equality is compatible with a strong commitment to self-ownership – I advocated egalitarian ownership of worldly resources, proposing a Georgist common ownership model according to which land never ceases to be owned by all but can be privately appropriated subject to the payment of rent. This is based on the idea that natural resources cannot become fully private property since they are not *produced* by anyone, and production alone is capable of creating property rights.

This rent payment bears significant similarities to Steiner's proposal of the Global Fund, but I argued that in extending the payment to beyond merely rent on land, his proposal ran into counterintuitive territory whereby countries pay less into the Global Fund the more they have used up the subterranean resources that appear within their borders. To avoid this problem, I proposed distinguishing exhaustible resources from

land, and conceiving of egalitarian ownership of these resources as joint ownership, rather than common ownership. This means that a collective decision would have to be reached in order to put these resources to use, but I denied that this undermines self-ownership since these resources are not necessary for survival. I also denied that the resources within a state's borders are automatically under the control of that country. By conceiving of certain resources as held in joint ownership, I demonstrated how we can avoid the criticism that host countries would have to compensate others if they refuse to exploit a resource.

From this conceptualisation of egalitarian ownership, we can identify the means for collecting a fund to make available for redistribution. This includes rent paid on land, and a substantial proportion of the value of extracted resources, payable as a tax. These natural resources are, however, the full extent of what can be taxed in this way. Individuals cannot be taxed on their labour or on the product of their labour – whether the product of labouring on personal resource or external natural worldly resources, provided the relevant rent or tax has been paid. Once the natural resource component of products has been taxed, the product itself cannot be taxed further without imposing a tax on the only remaining component, which is labour. This would violate the rights of self-ownership. Labour products, therefore must be exempt from any system of taxation, as long as the proper taxation has been paid on the use of natural resources.

From the premise of egalitarian world ownership, to be taken in conjunction with the rights of self-ownership, we can formulate a libertarian theory of redistribution. According to the duties of rectification identified in chapter two, depriving someone of something that is rightfully theirs means that the individual who has brought about the deprivation must return it to its rightful owner. Therefore, if resources are owned by all, it follows that people who have not received the equivalent of an equal share of natural resources are owed compensation. If the libertarian accepts the premise of egalitarian world ownership, then she must accept the compulsory taxation that I have advocated, and the redistribution that that entails. Moreover, I have argued that the libertarian has no reason *not* to accept egalitarian world ownership, since it does

not contradict libertarian principles, and provides a far more plausible understanding of world ownership than non-ownership and radical right-wing libertarianism, which would not even ensure that self-ownership is robust or that property rights are compossible.

This taxation fund is collected globally. The rent paid by individual landowners is paid to a national fund, together with any rent payments the state itself wishes to make in order to remove certain tracts of land from the pool available for appropriation. The national fund of each country is then pooled into one great common fund, thereby ensuring that the different land values across the world are shared equally. The common fund also includes the tax paid on jointly owned global resources at the point of extraction. This fund is then distributed among all at an international level.

While the necessity of redistribution is not disputed on a left-libertarian account, the nature of the distribution is. I argued that the promotion of equality of opportunity of welfare must be rejected, on the basis that it can permit self-ownership to be ineffective for those individuals receiving an insufficient quantity of worldly resources on account of their superior genetic endowments. I suggested that equal division will be the most popular method of distribution, but conceded that deviations from identical shares need not contradict self-ownership, and are therefore permissible. This fund is distributed, then, whether in equal shares or shares which reflect (to some extent) natural disadvantage, as a basic income to which every individual in the world is entitled. I argued that this basic income, since it reflects one's share of natural resources over which one has only a lifetime leasehold, cannot be bequeathed by individuals, and nor can wealth that they have themselves inherited from others. Rights over these particular types of wealth are not derived from self-ownership and so are not human rights. However, rights over labour and the product of labour (both products from personal resources and from external natural worldly resources on which the rent or tax is paid) are self-ownership rights (or *derived* from self-ownership rights, in the case of the product of labouring on external resources) and therefore *are* human rights, so there is no limit to the quantity of labour product

or income from labour which an individual may bequeath. The inability to bequeath natural resources or even the value one receives in lieu of a natural resource share will ensure that future generations are not disadvantaged by the appropriation of current individuals.

In conclusion, the rights and duties that exist within a libertarian theory of justice are extensive when we take into consideration negative subsistence rights and the ability to violate rights through the practices of institutions. With the additional premise of egalitarian world ownership – plausible, appealing and compatible with libertarian principles – we can observe the past violation of negative rights in the form of misappropriation of worldly resources. This creates a positive duty of rectification, which can be fulfilled only with redistribution. In this way we can observe subsistence rights, enforceable positive duties and a justification of redistributive taxation, all within a left-libertarian theory of rights.

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