

The Idea of Self-Ownership

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Summary

The idea that each of us owns our physical selves is one that has largely failed to achieve prominence in contemporary political theory, despite its sound philosophical basis, largely due to its association with a strong formulation of right-wing libertarianism best expressed in the work of Robert Nozick. In this thesis I argue that the idea as expressed in Nozick's most infamous work, *Anarchy, State and Utopia*, is essentially flawed and that there is in fact a way of unpacking self-ownership, necessary under proper consideration of its underlying premises, that would imply far less of a connection with right-libertarianism.

Fundamentally, Nozick considered self-ownership as a base value in itself, informing all of his subsequent political and ethical values. Through analysis of various important contemporary attempts to improve on and undermine self-ownership, points made respectively by libertarians who wish to modify it and non-libertarians who wish to do away with it, I argue that self-ownership must in fact be a structure which is itself derivative of a more basic and fundamental value. Conceding the argument held in common by all of the major theorists proposing modifications to self-ownership, that self-ownership is a self-defeating theory when we consider the operability and usefulness of the rights it bestows upon those who have no original resources to trade, I seek to enquire exactly what it is about rights-holders that self-ownership rights were designed to protect and promote, using evidence gleaned from the work of Nozick.

I conclude from this that the basic value of *agency* must underlie the Nozickian supposition of self-ownership. Making agency the primary value subsequently means that self-ownership needs a further derivative principle, something approximating a redistributive system which enables all agents to have self-ownership rights which are of comparably equal usefulness to them.

Declaration

This work has not been submitted in substance for any other degree or award at this or any other university or place of learning, nor is being submitted concurrently in candidature for any degree or other award.

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Introduction

Stated basically, self-ownership is the concept that I, or you, or any individual, or 'agent', “own” (to the extent that they have full, unfettered and rightful control over) their selves both physically and mentally. The sovereignty over their selves that agents display by the operation of their bodies shows that they are the just owners of their specific body, and that they are entitled that others refrain from interfering with it without explicit permission. The consequence of this intuitively appealing concept is that each person is solely responsible for his or her own actions and their consequences, and in academic political philosophy has almost entirely been associated with a libertarian stance on political issues and social justice. The intuitively attractive and straightforward statement “I am the rightful owner of my self” has far-reaching and radical implications for political philosophy.

This thesis claims that the radical implications classically understood as deriving from the principle of self-ownership are based on a misapprehension of the underlying moral theory which itself justifies self-ownership. It suggests the idea that a reading, developed beyond the basic one offered in the book but only using evidence contained within the book itself, of the basis of a classic right-libertarian work, Nozick's *Anarchy, State and Utopia*, results in a very different appreciation of how these “radical implications” should actually influence the structure of the state, to the point where we must argue Nozick’s account of the state is flawed, undermined by its own base principles. Essentially, I aim to tackle right-libertarianism on its own terms, and, using solely the principles they themselves wish to use as a basis for their political philosophy, re-interpret their

account of self-ownership as a derivative from a more basic moral stance, that of the promotion of universal moral agency. In essence, I would like to suggest that the Nozickian principle of self-ownership is a secondary or derivative principle, derived from a richer and more fundamental conception of agency. The consequences of taking universal moral agency as the basic value of right-libertarianism result in it no longer being classically understood right-libertarianism, but retain most if not all of the key features of its philosophical structure.

When we turn to questions of justice, morality and ethics in this subject we look at the rightful diffusion of power between individuals; the correct way to distribute potentially coercive force amongst the citizens of a state. Rather than focusing power in a government or state apparatus, proponents of self-ownership believe that the distribution of power in the form of rights which permit actions should, as far as possible, be equal between agents. This massively limits the power of the state and promotes the concept of the sovereign individual over centralised and powerful government as the most important ‘unit’ of political concern. ‘The libertarian sees that throughout history and into the present day, there has been one central, dominant and overriding aggressor upon all... rights: the State.’¹ In a wider context, self-ownership is one theory amongst many, but it is one that has often been dismissed or taken for granted within the canon of political philosophy literature. The reasons for its relative obscurity are plentiful – critics accuse it of being too simplistic, overly polemical, potentially damaging to the coherency of society and community, and generally of “swimming against the tide” of the general progression of Western political theory

1 M. Rothbard, 1978, *For a New Liberty: The Libertarian Manifesto*, Collier Books; New York, p.23.

towards a liberal consensus.² Yet self-ownership possesses many of the features that societies found so appealing when subscribing to the liberal ideal, such as liberty of individual action, a core of inalienable human rights and a government which is a servant of the people and possesses severely limited power over its citizens. These features are commonly accepted as desirable social norms, or positive aspects of a modern liberal society,³ and despite their overt presence in its theories self-ownership seems unable to develop a firm footing within the discipline. This may be due to self-ownership's natural association with the work of prominent libertarians, such as Nozick, Rothbard and Berlin, and their claim that self-ownership renders the taxation needed to fund redistributive mechanisms unjust. All three theorists claim that self-ownership, interpreted as independence from responsibility for the actions of others to the extent that taxation becomes part-ownership of an individual by the government, is a necessary feature of any right-libertarian theory. Self-ownership rarely, if ever, achieves such prominence in any other political theories.

From this, self-ownership has become associated with a denial of distributive justice mechanisms, and therefore a society of gross material inequalities. These gross material inequalities lead to a situation where some are more able than others to do what they want to do with themselves. Self-ownership is relatively unappreciated because of this association. It is difficult to drum up support for a theory that has no redistributive function in contemporary political thought – the most

2 These are criticisms levelled at the theory by, amongst others, Attracta Ingram in *A Political Theory of Rights*, 1994, Clarendon Press; Oxford, John Rawls in *Political Liberalism*, 1993, Columbia Press; New York, and G.A. Cohen in *Self-Ownership, Freedom & Equality*, 1995, Cambridge University Press; Cambridge. Acknowledging the force of these objections, is vital to the coherency of this thesis. It is worth noting here that a 'liberal consensus' is not necessarily a given – neo-liberal welfare states, a progression from the less conditional welfare state of the mid-20th century, must include a commitment to some form of self-ownership.

3 While these values are seemingly entrenched in our appreciation of a 'good' society, they are by no means universally accepted; witness Chinese, Korean or Iranian government approaches to the notion of the individual.

prominent individualist theories consider that each individual requires the support necessary to achieve their basic needs. When John Rawls released his many follow-up works answering critics of *A Theory of Justice*, he did not see fit to answer any of the problems posed by self-ownership.⁴ Essentially, critics claim self-ownership gives us the *rights*, but these rights do not themselves translate into *freedoms*. Freedom in right-libertarianism is merely formal, as in agents possess rights, and not real, as in they lack some of the necessary resources to use these rights.⁵ Key to this thesis is the question of whether self-ownership must forever bear its natural association with right-wing philosophy, or whether its core of human rights and individual moral agency can be separated from the ostensibly negative consequences of a modern society with no centralised redistribution. The primary aim of this thesis is thus twofold; firstly, to illustrate a fully-realised conception of self-ownership which displays logical consistency from premises to consequences, and secondly to explore where, how and why this theory can be criticised, developed and improved upon. Subsequently, we will be looking at theorists with a richer, more fully developed account of self-ownership too – Phillippe Van Parijs and Hillel Steiner, who treat self-ownership as the derivative of a more basic principle of agency, and use this to draw different conclusions from those of Nozick.

I see ownership of the self as a philosophical response to the idea that an individual's control rights can be involuntarily transferred from the owner-occupier and an attempt to understand what is wrong with coercion by any supposedly 'higher' power, that is, to be free of involuntary actions imposed by the actions of others. Robert Nozick says, at the beginning of his book *Anarchy, State &*

4 Although he does examine Nozick's historical entitlement theory briefly as a competing account of basic structure, on p. 263.5 of *Political Liberalism*.

5 P. Van Parijs, *Real Freedom For All*, 1995, Oxford University Press, Oxford, p. 17-24.

Utopia, which is vital to our understanding of contemporary self-ownership, 'fundamental coercive power is power not resting upon any consent of the person to whom it is applied'.⁶ If an action that strongly physically affects an agent is conducted without the consent of the specific affected agent, the action must be coercive and therefore, in Nozick's terms, unjust. Furthermore, by virtue of their imposition the aggressor conducting this action acts as if the affected party does not possess the rights which give her a decisive say in how she is treated. Coercion thus violates rights, and to an exhaustive extent (not just that of direct impersonal disposal), supporters of self-ownership feel that they are the rightful owners of their bodies and that their rights to their selves may not be coercively infringed. This prevents the problems mentioned above, slavery and trafficking and so on. Giving every individual the right to themselves prevents them being used by others, and stops them being treated in a way inappropriate to respecting them as an individual.

The standard application for rights like this is protecting the individual from the aims of the state incompatible with what the individual wants to do, or achieve. Indeed, a theory like self-ownership can help re-imagine the state as simply a classically libertarian minimal state, a tool for protecting the self and the self's right to freedom, which in this sense is defined as a lack of barriers to the full expression of individual agency. This is often represented as the freedom to live one's own life to one's own life plan, one's conception of the 'good life', and is a feature of the richer conceptions of self-ownership proposed by Steiner and Van Parijs. Philosophically, such a concept is classically called an "end" or a "goal" and is the focal point of autonomy-based theories. Its

6 While this quote is from R. Nozick, *Anarchy, State & Utopia*, 1977, Basic Books; New York, p. ix, 5-6; others including D.L. Thomas, *Locke On Government*, Routledge; London, p.18-9; J. Wolff, *Robert Nozick: Property, Justice & the Minimal State*, 1991, Polity Press; Cambridge, p.8 and R.W. Grant, *John Locke's Liberalism*, University of Chicago Press; Chicago, p.72-3 all concur on this point.

importance is due to the concept that a life is best lived from the inside, and never the outside, and from this that all these individual thought processes occur with some sort of wide-reaching goal in mind.

For example, my decisions to go to work, obey the law and live a respectable life are based on my long-term goals of retaining my job, retaining my personal freedoms and, in the bigger picture, enjoying a happy life and then a happy retirement. Proponents of the notion that leaving agents to think entirely for themselves (or upholding the individual application of moral agency) is the best way to respect the individual, argue that agents are the most likely to know what is right for themselves, as others who believe they are more capable of making their decisions for them may have imperfect information, be pursuing their own ends, and so forth. It might seem obvious that freedom to pursue “ends”, by giving the individual an inviolable system of rights that protects them and their actions from unreasonable interference, best promotes individual liberty.⁷ However, the counter-argument will run that individual liberty is not the most important political consideration, and that individuals often make bad decisions, or are naturally selfish, and have to be made to do things they do not want to do for the ‘greater good’ of society, which will require a basic level of (forced) co-operation. Taxation, for instance, requires being forced to give up private resources for the aid of others in a less fortunate situation. Individuals need to be forced to give up their resources as they are less likely to freely give to charities which will perform the same function. Thus, to those viewing society as an interdependent collective, individual rights may be an inappropriate tool in their quest for a society that aspires to some sort of value as a whole. They argue that self-owners

7 An example of reasonable interference would be forcibly preventing an individual from (inadvertently or otherwise) violating another individual’s rights.

may need to re-consider the prominence given to the individual if it becomes apparent that justice itself is better served by group or community action. Much of political philosophy is a question of fairness and justice, of the individual versus the social, and the ideas up for debate in this thesis will be no different.

Specifically, this thesis examines the heart of the divide between liberalism, left-libertarianism, and right-libertarianism, in terms of the right to the ownership of one's self in the strongest possible terms. While liberalism fully accepts the need for universal rights, it does not go so far as to interpret these rights as affecting the ownership of resources in a way that forbids the state from some form of redistribution of these resources from those with plenty to those who lack. Similarly, left-libertarianism feels that upholding a more basic value than self-ownership requires some form of redistribution. Right-libertarianism justifies retention of private property solely via the prime value of the ownership of the self and the conflation of resources owned with the rights to the self, under the banner of general property ownership. Property ownership is all that justice consists of in right-libertarianism – liberalism brings what it feels to be more weighty ethical values to bear on its interpretation of justice.

The main section of the thesis present a systematic investigation into the most prominent self-ownership arguments put forward in recent times which take the most well-developed aspects of the self-ownership argument and interpret them to make such thoughts appropriate to our political context. As these are the most developed arguments for the rights to the self, and my analysis of right-libertarianism must focus on this as the basis for right-libertarian political

organisation, contemporary interpretations of self-ownership will form the centrepiece of the thesis. I will use these accounts, and the accounts of those who deny the justice of self-ownership entirely, to show the problems Nozick has to defend his theory against if it is to be considered coherent.

Before this, it would be worthwhile to introduce and explain the theory of self-ownership and its major features and controversies in greater depth. For this exposition, it is necessary to define the self, and what ownership implies in relation to it. Once the basics of the idea have been laid out, the relevant consequences for political theory of aspects of the theory of self-ownership will also be outlined before being explored in greater depth in the main body of the thesis.

The Idea of Self-Ownership

To every individuall in nature, is given an individuall property by nature, not to be invaded or usurped by any: for everyone as he is himselfe, so he hath a selfe propriety, else could he not be him-selfe, and on this no second may presume to deprive any of, without manifest violation and affront to the very principles of nature and of the Rules of equity and justice between Man and Man; mine and thine cannot be, except this be.⁸

Richard Overton

Writing about the misuse of absolute sovereign power from inside Newgate Prison, Richard Overton seems to capture the essence of self-ownership. My ‘self’ encompasses all of my humanity from my physical presence to my thought processes; it is literally everything that is ‘me’. Every aspect of me that could be termed my ‘self’ must relate to a corresponding property right I possess over that aspect of my self. It appears Overton is suggesting that if a man does not have a self-property, that is, a property right over his self, he would not be a recognisable person as such, because his power to do anything would be subject to another’s permission. Thus, he seems to suggest that a major part of what it is to be ‘recognisably human’, or to be an agent, is to possess and make use of the self. The rights of self-ownership ensure the protection of not only the physical self, but also the actions the physical self may perform. These are the actions which go towards comprising the self, in terms of personality and thought. Self-ownership is thus constitutive of the

8 Richard Overton, *An Arrow Against All Tyrants*, 1646, accessible through http://www.constitution.org/lev/eng_lev_05.htm

self and being recognised as an agent.

The idea of possessing a 'right' is of overriding importance to this theory, and is a simple way of expressing the idea that an individual has, in some sense, exclusive control over something. Its use as such here is largely derived from legal theory. To say, "I have a right" is to state that the thing I claim to have a right to is validly and rightfully within my control.⁹ In a very simple sense, these rights give the individual permission to pursue their favoured course of action, and are valuable in themselves.¹⁰ The right to freedom of self-expression, for example, enables us to express ourselves without censorship. No appeal to another competing ethical value is required; these rights exist because self-owners must be free to pursue their desires, and rights enable them to do so. Overton is suggesting that it is impossible to conceive of a fully realised man who is not a self-owner; that if agents do not possess a property in their selves they cannot lead a worthwhile life and, to an extent, cannot be themselves, as their self-control is not actually within their control. For example, if another individual is rightful owner of my right to free movement, and therefore the owner of my body, I must obtain his or her permission before I go for a walk, to the shop or to work. Aside from the obvious qualitative comparisons to slavery, this denies a self-owner their self-ownership and leaves them without the freedom to choose anything for themselves. To self-owners it is therefore logical to state, as Steiner puts it, that "we must be owner-occupied"¹¹ or that the way to operate which best respects the agent is to bestow upon them rightful control over their selves,

9 Edmundson notes two major forms of the concept of rights, as prohibitions and permissions. Prohibitions protect the individual from unreasonable authority, for instance, I have a right that prohibits you using force on me, or using my property. Permissive rights give the individual moral independence and a freedom from the perceived demands of morality. I shall refer to both these ideas as simply a "right".

10 William A. Edmundson, *An Introduction to Rights*, 2004, Cambridge University Press; Cambridge. p.xiv.

11 Hillel Steiner, *An Essay on Rights*, 1994, Wiley-Blackwell; New Jersey. p.233.

and not subject them to the will of another.

Proponents of self-ownership believe that agent's rights to their selves must be equivalent to full liberal ownership and reside in the appropriate agent, meaning agents originally possess all conceivable control rights relating to their selves, and all elements of agent control are exclusive to one person.¹² To say otherwise would be to admit the possibility that control rights do not originally reside in the individual, or that these control rights simply do not exist¹³. Overton is suggesting that the right to the self is completely natural and as such sits outside political or societal organisation as a normative principle. Nozick would concur with this interpretation, as is made obvious by his refutation of an anarchic society with no formalised laws at the beginning of *Anarchy, State and Utopia*, but as we shall see later in the thesis, left-libertarian proponents of self-ownership use it as a derivative tool from a more basic ethical value, rather than an independent principle. If, as right-libertarians would claim, self-ownership is a 'natural law', to use the classic phrase, it is something agents are morally compelled to obey regardless of context and circumstances. Furthermore, this makes it a universal concept, immune to the differing opinions of different societies. Such a notion dismisses contextualism, a popular theory that states that the definition of morality and right and wrong can change from society to society and time to time due to customs, local laws and beliefs, and so forth.

12 Ibid, p.99.

13 A common rebuttal of self-ownership is that individuals do not possess the capability to wield the control rights of others and so self-ownership is pointless, because why protect freedoms if they cannot possibly be alienated from you? This argument seems to imagine slavery as a normative wrong (as self-ownership does) but also assumes no one will try enslaving or exploiting anyone else, because they are aware of this norm. This stance ignores a great deal of historical evidence and the ever-present potential for individual abuses.

Practical application of the abstract principles of self-ownership is largely done through the presence (or absence) of rights, duties and obligations. For instance, self-ownership considers the body I inhabit to be mine, and my ownership is expressed in the form of a powerful right, of which I am the only possessor, over my body entitling me to rightful control over it. The presence of this right implies an obligation on the part of all other agents to refrain from wrongful interference with me. Self-ownership as it is presented here is therefore largely a “rights theory”, and as such it is prone to the many common objections to theories based on the idea of natural rights. However, the presentation of self-ownership as a theory based on the control rights relating to *people* immediately illustrates one of the main reasons for advancing a concept of self-ownership; the fact that, given the relatively recent existence of legally bound slaves, that there have often been taken to be control rights relating to humans, as that historically such rights have been misused by those who seek to control other agents for their own benefit.

As he necessarily must to uphold self-ownership's suggested natural basis, Overton believes there is a definitive universal (thin) morality, and to respect it properly we must view ownership of the self as an inviolable right to a property, in the same way that it is an injustice for you to interfere with something I have purchased and thus now exercise control rights over.¹⁴ Consequently, my right to do what I will with myself takes a similar form to my right to do what I will with an item of my belongings.

14 Clearly ownership of the self is not entirely analogous to ownership of external objects (rights of sale and forfeit may be different, as well as the question of natural and artificial rights), but that is an argument for further into this chapter.

To view the right to the self as a right to property may seem cold, uncaring and insufficient to encapsulate a true respect for persons; as if a human, with all their metaphysical properties, could be reduced to the equivalent of an unthinking, easily ownable unit, politically treated as if they were a simple man-made inanimate object. However, ownership of human beings has been an on-going feature, if not a specific concern, throughout the history of political theory. Plato's *Republic* repeatedly and casually talks of slavery,¹⁵ and Ancient Greeks saw the existence of slaves as a perfectly natural occurrence. Aristotle talked of slaves, who are "by nature" slaves, as "tools" for men to use so they could fulfil their *telos*.¹⁶ Slavery occurs in all sorts of contextual passages throughout early political philosophy, always without a convincing justification for a fellow human's treatment as something lesser than the slave holder. A greater concern for the individual arose in later political theory which came to treat humans as not only essentially equal, but worthy of individual respect as ethical beings, such as in Locke's concern for individual sovereignty or Kant's depiction of the individual as the primary unit of ethical concern, always deserving of respectful treatment. Modern interpretations of individual human rights complete the journey of human beings from property that could be owned to self-owned property worthy of respect and independence. Nevertheless, destitute immigrants in the Middle East are put on fixed contracts, paid a pittance a month, which is taken off them for room and board, and have their passports confiscated to prevent them from leaving. In respect of human rights, the only charter that has been ratified across the area is the UN Convention on the Rights of the Child. Adult migrant worker's rights are often explicitly ignored.¹⁷ This is to say nothing of the cheap child labour still used in

15 G. Vlastos, *Does Slavery Exist in Plato's Republic?*, *Classical Philology*, 1968, vol. 63, no. 4, p.291-5.

16 Aristotle, *Politics*, book I, part VII.

17 Mediterranean Migration Observatory report on International Migration, available at http://www.mmo.gr/pdf/news/Migration_in_the_Middle_East_and_Mediterranean.pdf , p.33.

Asia today to make consumer goods for rich Western societies. Many centuries worth of progression in coming to view individuals as independent units of ethical concern shows that there is a seemingly shared opinion that the individual must have some form of right or entitlement to their selves which overrides anyone's right to coerce them into doing their bidding, or they are in danger of being enslaved against their will. The enforced enslavement of individuals, and their treatment as the property of other individuals, is something political theory has come to recognise is always wrong.

Certain scholars have observed that there were two problems that made the creation of self-ownership a “political necessity”; the European expansion into the New World, which raised the question of whether Europeans could legitimately “acquire” people who lived there, and the problems posed by the turbulent European governments of the time, who were struggling to justify an ever-increasing tax burden on angry citizens.¹⁸ The struggle between individual and state resulted in a desire for a statement of property rights in the self “that could be recognised by rational and moral individuals regardless of the provisions of law”, and that would formalise the idea of an agent holding property rights that were inviolable, especially by a ‘higher power’ that perceives itself to have moral authority.

As mentioned briefly above, Locke is a philosopher who can lay claim to a great influence of the development of self-ownership. He developed his moral philosophy in response to the works of two of his contemporaries, Robert Filmer and Thomas Hobbes, who respectively argued for the

J. Cunliffe in *The Origins of Left-Libertarianism* (ed. P. Vallentyne), 2007 Palgrave MacMillan; Basingstoke, p.3-4.

divine right of the King to rule, and the subjugation of all citizens' rights to the head of state.

Locke's rebuttal of these ideas draws on both a response to slavery and the necessity of freedom from government interference, essentially the two points mentioned in the previous paragraph. He propounds on those ideas thus –

“The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no legislative power but that established, by consent, in the commonwealth; nor under the dominion of any will, or restraint of any law, but what that legislative shall enact, according to the trust put in it.”¹⁹

Coercion from any illegitimate source (the only legitimate source being a government with all of the people's express consent) is thus in itself naturally wrong. Locke envisaged this liberty from others in terms of the rights to the self, especially when we observe the famous quotation “Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this nobody has any right to but himself.”²⁰ The natural liberty desired in the first quotation is ensured by the property in our persons of the second quotation. The assumption that agents wish to have full control of their own lives is borne out by endowing them with the natural rights to their persons, freeing them from coercion from any source. This is the first explicit statement of a specific property in the self, that is, the explicit ownership of that which comprises

¹⁹ J. Locke, *Second Treatise*, IV, 22.

²⁰ *Ibid*, V, 27.

our persons, which is linked to the natural liberty of man. Indeed, rights are, in this commonly understood sense, a vehicle for each agent's liberty. These specific rights, however, take the form of ownership of the self, and this is where we find self-ownership starting to develop as a theory of individual freedom and liberty from coercive power and force. Indeed, one interpretation of this would be the bestowal of the powers of moral agency upon the agent – rights free the agent to make moral decisions regarding their selves (the stronger the rights the freer the individual is to make these decisions), and these powers of agency are of utmost importance to individual flourishing. This is one of many interpretations of agency, but as I shall show in the final chapter by discussing Nozick's Kantian basis, it is certainly not far-fetched. Self-ownership, then, can be viewed as an intuitively appealing justification for an abstract philosophical ideal.

The classic example of G.A. Cohen's which shows the intuitive logical force of self-ownership's proposed right to the self is the eye lottery.²¹ Say some of the population are born with no working eyes, but most are born with two working eyes. Furthermore, technology has advanced to the point that it is possible, with few drawbacks, to transplant one working eye from the two-eyed to the no-eyed, leaving the previously blind with one working eye. A lottery is arranged to decide which two-eyed individual will give up an eye so that a no-eyed person can see, which will overall increase the number of people with sight in society. Is this the right thing to do? Someone who viewed society as a co-operative venture for the overall advancement of as many of its members as possible should suggest that the fairest thing to do 'for the good of society' would be to enable as many people as possible to see. On this reading, the best course of action is to go ahead with the eye

21 G.A. Cohen, *Self-Ownership, World Ownership and Equality*, Social Philosophy and Policy, Vol. 3, Issue 2, 1986.

transplants. If you were one of the two-eyed people, losing an eye to compensate the blind, would you think this was right? Thinking as one of the two-eyed members of society, we will feel that losing one of our eyes because someone needs to be compensated for their poor luck is unjust *to us*; that it might serve *society* well but it does not serve *each person* well. I already feel that I own my body parts, and no uncontrollable externalities should be enough of a reason to take them from me. It is in this puzzle, between taking the best course for the individual or society, which the key questions affecting self-ownership lay.²² Given self-ownership's suggested property rights, they would ask us what then is the difference between giving up an eye and giving up anything else that is rightly ours?²³ Furthermore, if we feel that sharing like so is not 'right', then to what values are we appealing? Clearly, it cannot be a social value, as the utilitarian or socialist would re-distribute eyes for the good of society, so that every individual had the power of vision. By denying that a forced trade-off between my rights and the greater good can be just, it is possible to observe that proponents of self-ownership believe that what society might believe would lead to a better situation for all does not always match what serves each individual best.

Robert Nozick, an important modern exponent of the self-ownership thesis, goes so far as to refute the idea of "social fairness", stating "There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others uses him and benefits the others... Talk of an overall social good covers this up".²⁴ Anybody used only as a means to achieve any non-chosen end, Nozick claims, is fundamentally wronged. The justice of the

22 Ibid.

23 S.C. Wheeler ably ties these two claims to property rights together, in *Natural Property Rights as Bodily Rights*, *Nous*, 1980, Vol. 14, No. 2, p. 171-93.

24 R. Nozick, *Anarchy, State & Utopia*, p.33.

utilitarian approach, as well as any generally redistributive account, is therefore called into question, as practical utilitarian theory is based on a system that hopes to incorporate the experience of agents into a calculus that will reveal the course of action that benefits the most agents possible. Indeed, the coherency of any theory that redistributes on the grounds of some social value is denied by Nozickian self-ownership. The fact that some agents (or even just one agent) will not benefit and might be unjustly penalised is a more important 'wrong' than denying the majority whatever the benefits of 'using' the minority might have been. The right to the self thus protects the liberty of the individual with a minority opinion or view, and prevents the majority from coercively profiting off the exploitation of others.

This understanding of the liberty of the individual from the collective is central to the theory of self-ownership. Each agent must be considered separately, as a whole concern in themselves. As justice may therefore only be considered individually, it would appear from our discussion of rights that a violation of self-ownership is an unwarranted, coercive or forced exploitation of an agent's natural right to their selves; this suggests that justice as self-ownership may be understood as the absence of unwarranted, coercive exploitation of an agent's personal rights.²⁵ This idea of morality is assumed as fundamental block of the common question “Was that (property) yours to do that (action) to?” If you did not possess the right to perform an action on the specific property then you have violated the actual owner's right; and in a theory founded entirely on the sanctity of private property laws, this is the only possible form of wrongdoing. The rights to property being exclusive and inviolable entail a relationship between owner and owned in which only the rights holder may

25 This natural bar on external interference is classically referred to as negative liberty in libertarian texts, for example the theme dominates in I. Berlin, *Two Concepts of Liberty*, contained within *Four Essays on Liberty*, 1990, Oxford University Press, Oxford.

decide what, if anything, to do with the property the right relates to.

It is obvious now where the similarities between the right to property and the right to the self spring from. Both are a specific moral relation between what the owner is and what is owned, and both place a great deal of moral value in the notion of rightful control and ownership. Self-ownership, in its most basic form, can be justified in two ways; firstly, that potentially exclusive ownership rights to all resources, objects and property exist, and so in the case of humans, that agents and justice itself are best served by the ownership rights to their selves originally residing within them, by being “owner-occupied”. Secondly, it has been argued that self-ownership is what informs the existence of any property rights, and is prior to ownership of any external object as its existence within agents is what is utilised to create titles in objects. From either of these accounts, to own the self in any meaningful sense agents must possess the right to their selves, and from the moral imperative for there to be exclusive ownership of the self will come the legally based rights needed for the protection of individual permissions and liberties.²⁶

As was suggested by the second potential argument for the existence of self-ownership, self-ownership has been used to justify very strong property rights in external objects. If I own myself, then exertion of my self and expenditure of energy creates titles in what I labour on (subject to prior ownership).²⁷ For example, I own my labour power and the right to profit from employment of my faculties, and so I fully own any rewards I receive from such actions. This principle has been used,

26 Cohen will argue later on that this train of thought eventually renders self-ownership a formality when combined with land-ownership provisos.

²⁷ A point made most forcibly by Lockean self-ownership and private property values, and later adopted as a fundamental part of Marxist labour theory, as Cohen points out.

most notably by Nozick, to deny that redistribution of property can ever be just. The state does not have the power to override the rights of self-ownership, and my ownership of property directly derives from my application of my right to self-ownership. Thus, it is unjust for the state to collect tax, and indeed taxation is seen as theft, the interpretation being that theft is the violation of property rights in an object. From this, self-ownership has come to be associated with the minimal state, the idea that a very small state, committed only to the upholding of property rights, is all that can be justified. This is because property rights are all that exist to the self-owner; not only does the state act unjustly when it violates the property rights of agents, there are no other rights it is appropriate, or even possible, for the state to uphold.

Given these rights must necessarily apply to all persons, what Nozick seems to be suggesting (and, at the beginning of this passage, that Overton explicitly stated) is that the rights of self-ownership are natural rights which exist outside of and pre-political organisation. Indeed, the reason Nozick follows the string of logic that leads him to create his infamous minimal state is that he believes there are certain things that no human may do to another human, no matter what the level of political organisation or protection is – our rights apply whether within political organisation or not.²⁸ The principle of self-ownership is not imposed on us and we are not absolutely compelled to follow it. These ideas simply exist; in much the same way that we might feel an individual living in a jungle in a simple tribal village still has the right to personal integrity. For instance, an adventurer in the jungle may not simply kill tribal villagers for sustenance, as they are still human. His action is immoral despite the absence of a government or system of laws to enforce such a morality. This belief is present despite the tribe evidently not living under any sort of

28 Nozick, *Anarchy, State & Utopia*, p. ix.; Wolff, *Robert Nozick: Property, Justice & the Minimal State*, p.6.

quantifiable legal system that protects their rights or gives them a ground for retribution.

This said, the idea of rights existing outside the political schema that by definition enforces those rights is a troublesome one for many moral philosophers, and it would appear that without political organisation the rights take the form of a moral imperative or duty and nothing more.²⁹ This is not a massive blow to self-ownership, as any theory existing outside a proper legally-based organisation of some sort is nothing more than an improperly policed moral imperative. Legal rights cannot exist outside the structure normally required for their existence, namely law policed by a body with a local monopoly of force. The question of whether a right considered outside of political organisation can still coherently be called a right is a thesis in itself. Nevertheless, the moral notion that coercing agents is wrong is promising grounds for the rights to the self existing outside right-supporting state apparatus, and so I will use 'right' in the normative, universal sense rather than the sense in which the word is legal shorthand for a right present in the laws of society.

To own the self, then, I must have a right to myself. This seems a self-confirming statement, and therefore rather redundant until we observe the restrictions placed on the liberty of many individuals. The task of viewing self-ownership as a basic right entails respecting and upholding its associated freedoms to the fullest possible extent. The right to own one's self incorporates the right to not only freedom of thought as mentioned above, but the right to (reasonably) enact what it is that has been thought as long as one holds the property rights over the objects in question. In this

29 As Rex Martin claims in *Human Rights and Civil Rights, Philosophical Studies*, vol. 37, no. 4, p.391-403, this is the idea of rights as no more than social constructs, meaning they have no real power if not enforced by a structure with a monopoly of force.

way, the mental and physical rights to the self that self-ownership comprises blur into each other. It is difficult to say which of the specific rights to the self a violation of self-ownership breaches, if there were such a thing as a standard violation of self-ownership, but it is easy to give examples of different rights to the self and how they could be violated. If you physically restrain me, you violate my right to physical non-interference. It is clear that this right springs here from a right to control the use of my body. If you censor me, you violate my right to free expression. This right comes from the same justification as the right against physical coercion (I must not be subject to coercive actions that may use me in ways I object to), yet, in legal terms, it is quantified as a different right. Prevention of the use of coercive force or aggression is thus fundamental to self-ownership as it is classically imagined. Indeed, as Rothbard claims, “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... ‘Aggression’ is defined as the initiation of the use or threat of physical violence against the person or property of anyone else... In short, everyone has the absolute right to be ‘free’ from aggression.” This, he claims, implies that such a theory is based around the respect of “civil liberties: (such as) the freedom to speak, publish (and) assemble.”³⁰

We might think, at this point, that we are developing what looks like a basic framework of natural human rights, and indeed that seems to be what sits most comfortably with a principle of self-ownership, because a construction of rights to protect the self does the same job as the relevant rights that make up self-ownership, and ensure reasonable individual liberty. Without rights as protections for the self, self-ownership is hollow and its dictates easily 'numbed'. Thus, self-ownership, far from being nothing more than a right-wing free-market principle that is the cause of

its consistent dismissal from academic discourse by liberals, socialists, communitarians, and conservatives who believe justice demands at least a basic redistribution system, can be viewed as (and is viewed as so by left-libertarians) another way of approaching the human rights debate, this time from the perspective of the greatest possible preservation of individual freedom.

Overview of Thesis

Nozick's Right-Libertarianism

The originator of the modern debate over theories of self-ownership must be Robert Nozick. To begin, I will explain the classic perception of Nozickian self-ownership. As the most prominent work of its kind, the topics and problems it raises will form the basis for the rest of the thesis. I will use Nozick to explain why self-ownership, and its associated political theory right-libertarianism, is synonymous with a society of gross material inequality and a structure that liberals associate with freedom for those with resources and a constant struggle for those without. He takes aspects of preceding political philosophy and combines them into a theory which is based on property rights in the self and a moral maxim to use agents as ends and not means. Using these important aspects of moral philosophy, Nozick then pursues them, through rational choice theory, to a political conclusion in the form of the minimal state, which is all that is permitted by the primacy and importance of the rights to the self. This state, to Nozick, is the political expression of self-ownership, and since it is the most well-realised, reasoned and understood conception of explicit self-ownership in the field, it will form the centrepiece of my investigation into self-ownership. This

chapter reflects the common understanding of Nozick, as portrayed by his liberal critics, and especially theorists we will encounter constantly throughout the thesis, Cohen, Ingram and Wolff, all of whom concur on the suggestion that self-ownership is central to his work, and is the main value which underlies and informs all of Nozickian right-libertarianism.

Nozickian self-ownership is not without its problems, however. As I mentioned above, the conclusions Nozick draws result in some theories with intuitively negative connotations, especially in relation to social justice and egalitarianism. It is evident from Nozick's reasoning that strong rights to the self play out in the form of a system that forbids state redistribution in any form for any reason, as this would contradict individual rights. This results in a theory replete with gross material inequalities, and as such has been heavily criticised by liberal and socialist thinkers since its publication.

While many outraged by Nozick's lack of concern for the worst off and those in need of support have argued that the problems with the consequences of self-ownership mean that the theory itself is not redeemable or worthy of further consideration, some thinkers have reasoned that self-ownership and strong rights to the self can still be upheld with mechanisms in place to ameliorate inequality. These theorists believe that social ownership of scarce and desirable resources creates a situation where the poor and needy are not left to fend for themselves, and while they may not be supported as completely as in a Rawlsian state, for example, they are still not 'abandoned' as they would be under Nozickian self-ownership, or what we shall refer to as right-libertarianism. These other theorists, left-libertarians, thus offer internal criticisms of self-

ownership, as they uphold its rights but believe it must work in harmony with some form of egalitarianism.

Left-libertarian Critics of Nozickian Self-Ownership

Foremost amongst these, and wielding a similarly strong form of individual rights, is Hillel Steiner, whose book *An Essay on Rights* is a response to the problems posed by Nozick, alongside the acceptance that a form of self-ownership must be present in a theory of justice. In chapter three, I show that Steiner believes that rights should be structured around avoiding the problems of impossibility, that is, that different individual's rights must be compatible with each other in their execution or they are not really useful rights. This interpretation of self-ownership, as Steiner sees it, is a derivative of the more basic value of liberty, and so when self-ownership rights restrict an individual's liberty in this way, they must be altered to better respect liberty. The importance of the avoidance of impossibility leads to the institution of strict private property laws, very similar in nature to strict Nozickian property laws. However, private property laws as Nozick interprets them will lead to future generations being unable to acquire any resources, and so having rights which are impossible in relation to the rights of already existing persons. The only way to solve this is to consider natural resources something which requires those that own a greater than average share to pay compensation to a fund which is then redistributed amongst everyone, providing them with the resources to make their rights properly actionable once more. This introduces a further secondary principle derivative of liberty, which stands alongside self-ownership, a freestanding

principle of the equal ownership of natural resources. He supposes that shared land-ownership, in the form of a global land rent payable to every member of every society, will serve to lessen inequality while still respecting the trinity of Nozickian libertarianism, the rights to the self, not treating agents as means and the right to ownership of resources produced via the labour of agents. Furthermore, he feels we can lessen the burdens of the poor and similarly decrease inter-generational inequality by examining in greater detail what happens to rights and ownership as a life ends, and concludes by denying the justice of posthumous resource and object transfer, or bequest.

Another vital internal criticism of Nozickian self-ownership comes from Phillippe Van Parijs, who is the focus of the second half of chapter three. In the same way that Steiner believes liberty must underlie a theory of private property, Van Parijs believes that individual freedom must be the most prominent part of any libertarian theory. He crucially suggests that the freedom provided by theories of self-ownership is not really freedom, but just the formal components of freedom. To regain real freedom, along with self-ownership to prevent coercion and slavery as discussed in the introduction, we need some basic redistribution of resources to ensure that each has the freedom to live their favoured conception of the 'good life', their idea of what exactly it is they would like to do with their futures, something that is often endangered by a lack of resources, a problem for some caused by the rights of self-ownership in abstract. He achieves this basic redistribution by considering jobs to be scarce resources, and thus arguing that a certain amount of wages should be paid by each employer into a pot which is then redistributed between everyone. Taxing the difference between what employed agents are paid and what they would be paid in "market-clearing" conditions results in a fund being created which is then distributed equally and

unconditionally between all agents, regardless of their desire to actually enter into the job market or not. He calls this payment a “Universal Basic Income”. So, both Steiner and Van Parijs consider self-ownership to be an essential feature of a theory that proposes to value freedom or liberty highly, but that it needs in addition a separate and potentially controversial principle of equal ownership of resources to underpin some basic redistribution if it is not in some way to contradict the values they consider it derivative of.

Other Critics of Self-Ownership

Thus, libertarians have found it possible to work with the concept of self-ownership and produce a system that is not as unappealing as leaving the most vulnerable unsupported. Nevertheless, various critics have argued that self-ownership itself, quite aside from the validity of any attempts to 'mend' it, is an illogical, unsupportable or simply mistaken attempt to understand justice, freedom and liberty. In chapter four, we see that G.A. Cohen believed that, in fact, self-ownership's interpretation of the word 'slavery' is a misapprehension, and that subsequently, self-ownership is a morally empty theory that actively prevents the freedom of some for the benefit of others. Thus, it cannot support universal freedom. He claims that the theory leads to inherently immoral outcomes, and that while the idea that we each own ourselves is difficult to refute, its consequences are such that it is virtually impossible to support and still claim to be 'moral'. Furthermore, self-ownership is incoherent when it comes to division of ownership of natural resources.

In the second half of chapter four, Attracta Ingram takes up this line of criticism, attacking the right-libertarian link between freedom from coercion and slavery and self-ownership. She claims that the language used by self-owners actually puts the possibility of slavery into play, and that it is a very specific and unhelpful conception of private property laws that is being used by libertarians. Furthermore, the idea of welfarism, she claims, provides a much better approximation of justice than strict private property laws. Ingram believes individuals should perhaps accept that there is a 'glass ceiling' of reward that their labour can accrue for them, and accept a basic tax on earnings system. Ingram also believes that self-ownership is a 'hollow' concept without some sort of right to external resources, as Steiner and Van Parijs do. She goes further however, saying that the lack of resource entitlement at the heart of self-ownership is actually a paradox that makes some people incapable of being self-owners.

Restatement of Nozick's Account of Self-Ownership

From this, I suggest that the major criticism Nozick has to answer which his theory does not contain the tools to do so must be that his theory formalises the freedom of some individuals to the point where self-ownership *prevents* them from performing actions, and in fact can ensure that they are effectively coerced into a line of action that they may not freely choose, meaning that another system may provide better freedom from coercion or slavery when we consider the main features of these. I will then show that Nozick's work already contains the tools to answer these criticisms, although to use them would be to undermine the fundamental position of the Nozickian account rather than restructure it. Rather than understanding self-ownership as the sole political principle of Nozickian thought, we can learn from left-libertarians that self-ownership is an expression of a

deeper principle. While, for left-libertarians this more fundamental principle is liberty or freedom, a closer inspection of Nozick reveals a theory rooted in the values of moral agency. This conception of agency has fatal consequences for Nozick's political theory when it is fully cashed out. On this basis, I will go on to outline a newly adapted theory of self-ownership as a derivative value to a more basic conception of moral agency or autonomy, and one that now contains the tools to overcome the major criticisms levelled at it by those who consider right-libertarianism and self-ownership to formalise its own conception of individual rights at a basic level, and is coherent with its properly understood justificatory foundations. While this might appear to be a left-libertarian conception of self-ownership, it does not rely on the controversial appeal to the shared ownership of scarce resources in the same way Steiner and Van Parijs' accounts do, and so self-ownership is defended against both left-libertarians and those who believe in generalised redistribution, the welfarists. Indeed, a right-libertarian account that takes seriously not just self-ownership, but the *basis* of self-ownership, will end up with political implications similar to left-libertarianism, or some aspects of liberalism. I hope that this will prove that a justified reading of a concept of self-ownership does not need to bear association with many of the negative implications it is regularly tied to, and as a theory is of more importance than had previously been imagined.

The core of this thesis, and its original contribution to the field, is therefore an examination of what aspects of Nozickian self-ownership can survive the attacks on his exposition of its key premises, and an analysis of Nozick with the aim of highlighting his own misunderstanding of the moral basis of self-ownership. This basis is largely absent from his work, and highlights his misapprehension of the necessary consequences of his self-ownership, that is, the minimal state. My aim is to explain how we can arrive at a state that shows greater logical consistency with the basic

justifications and problems of self-ownership and that demonstrates less gross material inequality and all the negative connotations those suppositions bring. I shall begin, as I stated, by demonstrating how Nozickian self-ownership is classically understood.

Nozick's Self-Ownership

Why Nozick?

Self-ownership does not come ‘out of the blue’; its formative ideas and concepts have been present within philosophical and political debate for centuries, as I highlighted in the influential work of John Locke. However, self-ownership and the very strict private property laws it entails have largely been pushed aside in debate in favour of a broadly redistributive conception of justice, in which the state imposed heavier tax burdens so it could do more for the most vulnerable members of society. This notion of welfare found its strongest philosophical expression in the work of John Rawls, whose 1971 classic *A Theory of Justice* was, and remains, the most important work of political theory for decades. From this unlikely background, self-ownership was reborn, in opposition to the strongly redistributive principles that were so comprehensively described by Rawls. Where Rawls saw society as a co-operative venture for mutual advantage, Robert Nozick’s *Anarchy, State and Utopia* warned against the loss of individual liberty in favour of what Rawls considered to be a common good. Thus, rather than self-ownership arising as a response to slavery or the mistreatment of agents by the state, as was previously the case, it finds its strongest contemporary restatement as a denial of the possibility of redistributive justice.

What makes a hugely controversial polemic from 1974 such a vital text? Again, it is the intuitively appealing deployment of the concept of rights. While theories of rights in the self are hardly a new concern, they are largely, like Overton or Locke, centuries old, philosophically

simplistic, and ill-equipped to respond to modern concerns such as the ever-expanding state, nationalised goods, and so forth. Furthermore, libertarianism arguably lacked a strong philosophical basis until Nozick – Nozick was the first to explicitly tie self-ownership as an abstract philosophy with libertarianism as a real politic, giving it a philosophical justification, and one that was easy to understand and argue in favour of. Really, the argument's tenacity is the main reason that self-ownership never went away, despite being derided as capitalist or a breeding ground for inequality – its central ideal, that agents own the rights to themselves and should thus be entirely free from coercion by other agents or from the state is a very difficult one to repudiate, and even its most vehement critics have struggled to refute the central idea that we are owner-occupied, as we shall see in the later chapter regarding G.A. Cohen's work on arguing against self-ownership. Despite an inability to defeat its central thesis, the right-libertarian consequences of self-ownership have led to its relative obscurity.

Following on from his appealing deployment of strong personal rights, Nozick's formulation is one of the most influential, far-reaching and strongest philosophical conceptions of individual rights in the field. Vitaly, it does not shirk from visualising justice in terms of strong individual rights; Nozick is prepared to pursue the consequences of extremely strong rights to their logical conclusion. This is a fundamental reason for its place at the top of the tree of right-libertarian philosophies – not only do we possess strong rights (something readily jumped on by political theory) but these rights have some extreme implications which are, frankly, morally unsettling (something rarely admitted by those who espoused rights theory previously).

Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state?... Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified, that any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right.”³¹

This conclusion, that redistribution by the state violates agents' rights by essentially coercing individuals into 'slavery' or more accurately forced labour, and that any form of coercion relating to property (including our property in our selves) is the definition of injustice, is so controversial when compared to the rise of redistributive justice over the last hundred years or so that, rather than being seen as an investigation into the just extent of individual rights, academia has seen Nozick as the ultimate right-wing philosopher of capitalist thought. As Nozick himself says, “many persons will reject our conclusions instantly, knowing they don't *want* to believe anything so apparently callous towards the needs and suffering of others.”³² To this end, strong right-libertarianism, of which Nozick is the foremost contemporary theorist, has been relatively ignored by the academic establishment, but I think a re-appreciation of the key themes that help Nozick arrive at his conclusions is long overdue. Rather than seeing Nozick as simply a competitor to Rawls within the welfare state debate, it is time we gained a full appreciation of his work in the philosophical establishment of the importance of individual rights.

This is not to say that the basis or justification of Nozickian self-ownership is entirely

31 Ibid, p.ix.

32 Ibid.

present – it obviously is not, and Nozick admits as much himself. The absence of an explicitly stated moral account to back up the rights to the self makes his theory a difficult one to fully appreciate, but he playfully suggests that in leaving out the moral basis of his argument, he is only following in the footsteps of John Locke, who left out the moral basis of his argument from the *Two Treatises*.³³

“The completely accurate statement of the moral background, including the precise statement of the moral theory and its underlying basis, would require a full-scale presentation and is a task for another time... The task is so crucial, the gap left without its accomplishment so yawning, that it is only a minor comfort to note that we here are following the respectable tradition of Locke.”³⁴

Nozick never completed this task, despite further hinting at the basis of self-ownership in another of his books that stray into political philosophy, *The Examined Life*. The basis of a theory of self-ownership is obviously present, however. Nozick claims that, when individuals or organisations lay claim to resources agents have control over despite a lack of consent on the part of the agent, it makes them a “part-owner” of the agent,³⁵ and that such a claim is in fact necessarily an illegitimate one. Given that this demonstrates a clear basis in analysing justice in terms of the presence or absence of property rights that are due to you, and that a claim over an agent's property is essentially a claim of the ownership rights relating to that agent, Nozick's work rests on *who owns*

33 Arguably, however, Locke's justification was the divine law of God, in the form of Holy Scripture.

34 Ibid, p.9. This raises the interesting question of what came first to Nozick - the moral basis of self-ownership, or the political outcomes of holding a concept of self-ownership. Did Nozick put together the moral basis of his argument and then never publish it, or was it enough for him to work from a general position of Kantian autonomy without ever fully reasoning his justification through?

35 Ibid, p.172.

specific control rights over property. This property, as was suggested by Locke, is not only both external resources and the self, but that these easily separable concerns (my self and my property) essentially amount to the same thing. My claim over your private property is a claim over you, and given that this enables me to make decisions regarding you that you did not voluntarily agree to, is thus unjust.

My aim in this chapter is to comprehensively lay out Nozick's assessment of the nature and political consequences of self-ownership, and show its association to right-libertarianism. We will get into specifically what informs and grounds the existence of natural rights later in the thesis; for this chapter it is enough to lay out Nozick's conception of self-ownership and its associated rights, and then subsequent chapters can assess the relative value of the work of his most prominent critics and supporters.

Anarchy and Natural Rights

Whilst it is the aim of this chapter to discuss the extent of Nozickian self-ownership, it is of vital importance to note that Nozick's discussion of natural rights finds first expression in a refutation of the idea that anarchist principles can be consistently upheld without the development of some body equivalent to a state. As such, any exposition of Nozickian self-ownership must do the same. He famously begins his book by with a strong statement of natural rights, non-dependent on government organisation, which agents possess simply through virtue of their existence.

“Individuals have rights, and there are things no person or group may do to them (without violating their rights).”³⁶ As Wolff points out, in his seminal book on Nozick, such a naturalistic depiction of individual morality would often indicate a strongly anarchistic theory, and he draws parallels between Nozick’s introduction and the work of Benjamin Tucker, a nineteenth-century anarchist.³⁷ While Nozick’s completed project retains central aspects of anarchy in terms of a ban on coercive influence, he firmly believes that a minimal state will naturally arise from the classic political theory conditions of a state of nature, and the gradual enforcement of Lockean natural rights within the confines of such a structure. Interaction in a state of nature necessarily ends in what Locke called war in the Hobbesian style caused by “inconveniences”. According to both Nozick and Locke, the rational actions of agents living socially within a state of nature, acting in reaction to the intuitive moral law that they possess the rights to their selves, will always result in an organisation whose powers are analogous to that of a state, even if it is not a state as contemporary readers might recognise it. This means Nozick occupies the middle ground in terms of political organisation; while anarchists will attack his formation of a state, those who believe in the modern conception of the state will probably believe that the minimal version of it, limited as it is to protection of property rights, does not go far enough. Let us now explore how Nozick refutes both sides, and as such observe the extent of his natural rights and self-ownership.

Firstly, Nozick commits himself very early in his work to an explicitly Lockean view of the state of nature, and thus we find a rights-based conception of morality which hinges on the

36 Ibid, p. ix.

37 J. Wolff, *Robert Nozick: Property, Justice and the Minimal State*, p.6.

application of the rights to the self-present from the very beginning.³⁸ “We shall begin with individuals in something sufficiently similar to Locke’s state of nature so that many of the otherwise important differences may be ignored here.”³⁹ What does Nozick believe the extent of Lockean self-ownership rights are? On page ten of *Anarchy, State and Utopia*, he lists treatment of agents as just when they are free to “order their actions and dispose of their possessions and persons as they think fit... without asking leave or dependency upon the will of any other man”; and when “no one... harm(s) another in his life, health, liberty or possessions”; when agents have a right to “punish the transgressors of that law to such a degree as may hinder its violation”, but “only so far as calm reason and conscience dictate... what is proportionate to his transgression.”⁴⁰

Thus, Nozick begins his work by upholding, respectively, the absolute right to freedom of action over private property (including one’s person or self), the right to freedom from aggression and coercion, and the right to (reasonable) retribution upon these laws being violated. These three rights, to Nozick, form the very basis of Lockean thought, and thus become the foundation of Nozickian libertarianism. Self-ownership, in the form of the right to the freedom to dispose of one’s person, is thus explicitly present in Nozick’s natural rights. All subsequent rights spring forth from this original and natural property right in our selves. Thus, only *I* have the freedom to decide what happens to me. As the stated freedom is to dispose of specifically *my* self (or *their* selves), the property right relating to each agent must reside within that specific agent. Furthermore, it is

38 Nozick approaches rights from this angle to give the anarchist the most charitable possible reading of their account of rights – his original task is to prove that the individual rights espoused by anarchists will still always result in a state.

39 R. Nozick, *Anarchy, State and Utopia*, p.9.

40 All these quotes are taken directly from Locke’s *Second Treatise* (respectively sections 4, 6 and 3), but ordered and arranged by Nozick on page 10 of *Anarchy, State and Utopia*.

another declaration of the similarity between rights to owned property and rights to the self. Both are considered to be of the same form. This is a classic visualisation of self-ownership as taking the form of a property in our selves, and conclusively proves that the Nozickian state must be organised around the rights of self-ownership as Locke imagined them.

Given that this property right in the self relates exclusively to the relationship between the owner and what is owned and that such a freedom forbids any body, from individual agent to powerful state, from coercing agents into a particular course of action, this plays out as absolute separateness of persons, enforced by rights. Agents are entirely politically distinct, and there must be no trade-offs or exploitation of them. As Nozick suggests, one of the consequences of self-ownership is that natural rights present 'side-constraints' on any decisions that are taken which affect agents. In this sense “we all lead separate lives. We have separate existences. It is wrong... to sacrifice one person for the sake of another.”⁴¹ Or “there are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more.... To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has.”⁴² Self-ownership equips us with a property in our selves, and this property right makes us individual units of moral concern, rather than just a utilitarian unit of utility. J.W. Child illustrates this point ably, from a discussion of libertarian principles: “I, and I alone, am responsible for myself. My claims on others are limited to the negative duties my rights to person and property impose upon them and contract duties they voluntarily assume. I call this... the principle of self-

41 J. Wolff, *Robert Nozick: Property, Justice and the Minimal State*, p.7.

42 R. Nozick, *Anarchy, State and Utopia*, p.33.

responsibility.”⁴³ Self-ownership makes us responsible only for ourselves, and the only operative principle in regard to other agents is that they refrain from interference, a classic statement of ‘negative freedom.’ The only way positive obligations can be imposed, rather than voluntarily given, on an agent is through their free agreement to the impositions in the form of a binding contract.

This being the case, we can take from just looking at the starting point of *Anarchy, State and Utopia* that Nozick believes agents as individuals have specific, natural rights, which are bestowed upon them simply by nature of their existence. He believes these rights give them the sole freedom of disposal over their selves and their possessions in a morally identical manner, and that subsequently all agents must be free from coercion, assault or aggression, and that they possess the freedom to proportionately punish those that transgress these rights. A freedom of disposal over one's self is a statement that implies the presence of two aspects of self-ownership; the self being owned by the agent occupying it (*one's* self or *their* persons – both terms imply strictly exclusive ownership), and the freedom of disposal over this owned person, suggesting the ownership is visualised in terms of property rights which equip the rights-bearer with the liberty to act upon and with their property as they, and only they, see fit. This is a moral conception of a person found exclusively within theories of self-ownership, as outlined previously. Nozick concurs with Locke when Locke suggests we each possess a property right in our selves that prevents others from acting upon them. Nozick's account therefore appears to rest on a Lockean conception of self-ownership, secularised into a moral proscription of rights. While Nozick entirely ignores the fact that, in Locke, the moral weight of the obligation to respect every other agent's rights lies in the fact that we are

43 J.W. Child, *Can Libertarianism Sustain a Fraud Standard?*, Ethics, Jul. 1994, p. 729.

each the property of God, our creator, this need not fatally undermine his project – the rights themselves become the deontological object of duty.

To further illustrate Nozick's reliance on simply the rights of self-ownership for a moral basis to his theory, it is arguable that the latter two rights (freedom from physical coercion and right to punish transgression) are consequential from the employment of the former right, the right to the self. This is evident from noting that aggression against an agent interferes with their “disposal” of their self; unless it is the case that the agent expressly wishes to be the subject of aggression (presumably a rare occurrence), intimidation or aggression coercively alters the preferred course of action an agent may wish to take. If you assault me, you violate my right to my self by coercively enforcing your chosen course of action upon me, denying my right to freedom of disposal of my self. Similarly, the right to punish transgressions can be interpreted as a function of self-ownership; without this right agents' original self-ownership rights would be impossible to enforce, as the term 'enforce' suggests a natural relationship between doing wrong and receiving a punishment for doing wrong. As Nozick says, “a system forbids an action to a person if it imposes... some penalty upon him for doing the act, in addition to exacting compensation from him for the act's victims.”⁴⁴ Without the right to retaliation, it becomes less clear to what extent a particular action is forbidden, and there would be no deterrent preventing agents from violating each other's rights beyond a weightless moral proscription.⁴⁵ So, while there are nominally three rights that apply naturally to all

44 R. Nozick, *Anarchy, State and Utopia*, p.57. Italics are mine. Nozick also discusses at length the need for punishment to be present to promote a general feeling of security amongst agents, p.65-71.

45 This would presumably spark a debate over whether agents were naturally moral or whether, without fear of punishment, they would act with disregard for morality; I would suggest that by listing “inconveniences”, as Nozick and Locke go on to do, they believe that some agents are less able than others to use their reason to become fully aware of the moral code, and the rules are there to stop them spoiling it for everyone.

agents that form the basis of Nozick's political philosophy, it is apparent that the latter two follow from the first; that is, to respect each agent as the legitimate owner and operator of their self.

This ably demonstrates how Nozickian right-libertarianism fundamentally relies on a conception of self-ownership as its, so Nozick and its critics have interpreted it, its sole underlying value. It would be prudent to note here that these rights are alienable from the self. By 'alienable', I mean that rights can be separated from the self if done so willingly – they are not inextricable, and we may choose to give them up. In fact, giving up our rights may be the rational course of action in some cases. Indeed the alienation of our right to punishment forms Nozick's account of how agents overcome the inconveniences of the state of nature and form an alliance roughly analogous to a state simply through largely, in terms of a bigger social picture, directionless interaction; agents in this case do not have to operate with the formation of a state in mind. Nozick believes this 'invisible hand' explanation of the state⁴⁶ arises from simple agent interaction insofar as agents will rationally opt for a series of logically imperative choices which, without them specifically striving to do so, will reach an 'end' removed from the location where the reasoning began. Nozick calls this account 'backing into a state without really trying.' His account of natural rights influencing state formation, and thus of the just amount of state interference, is as such almost an accident on the part of the actors operating within it. I turn to it now to further illustrate how the basic rights of Nozickian self-ownership play out in a non-hierarchical social setting, and to show why Nozick believes these rights form a specific and controversial kind of state.

46 Ibid, p. 17-22.

The Dominant Protective Agency

Nozickian agents have rights; this we have established. They are self-owners. As previously stated, this raises the question of what, if anything, agents may be allowed to do to each other. This leaves us with a quandary. If agents may do anything they wish to each other, then individual rights of this form are an aimless construct, allowing no personal inviolability. If rights are so strong as to forbid any interaction with an agent, then there is no possibility of a state being able to do anything, and so no point to the formation of the state that Nozick believes is both necessary and implied by the rights of self-ownership. Neither of these outcomes are desirable, and indeed either would largely invalidate not only my claim that Nozick's theory is the apex of political understanding of self-ownership, but in turn this thesis altogether. As such, we must observe the extent and exact content of Nozick's self-ownership rights, otherwise our appreciation of Nozickian rights will simply be that given to us by the limited understanding it is possible to glean from the first paragraph of *Anarchy, State and Utopia*.⁴⁷

Nozick further concurs with Locke when he talks of the “inconveniences” present in a state of nature that prevent agents' rights being fully realised. Essentially, the lack of objectivity involved in the expression of the right to punish upon violation of the rights of self-ownership causes agents to “overestimate the amount of harm or damages they have suffered, and passions will lead them to

47 I think it would be fair to say that this limited understanding has coloured a number of criticisms of Nozick, showing why a fuller appreciation is necessary to a coherent understanding of Nozickian self-ownership.

attempt to punish others more than proportionately and to exact excessive compensation.”⁴⁸ Once this happens, it will lead to “feuds, to an endless series of acts of retaliation and exactions of compensation. And there is no firm way to *settle* such a dispute, to *end* it and to have both parties know it is ended.”⁴⁹ While the right to punishment resides within a subjective party, all parties involved in a dispute will fear further retribution. In this sense, enacting the natural rights of self-ownership in a state of nature, while not impossible, will lead to widespread and never-ending insecurity, rights being unfairly acted upon and more generally the classic justification for the existence of a social contract, passion outweighing reason.

So far, so Lockean. Agents naturally own themselves, but the rights they possess will cause quarrel as we cannot rely on individual reasoning being objective in cases where those involved necessarily hold a subjective viewpoint. It is the response to this problem that differentiates Nozick from Locke. While Locke believes “that civil government is the proper remedy”⁵⁰ to the incorrect application of the natural law (in the sense that we require an objective judge to solve quarrels), Nozick thinks Locke is too quick to move straight to a hierarchical government, and that he could do more to retain individual sovereignty. Wolff interprets it thus - “Nozick's approach to the Lockean predicament is to present the case that, if one looks at it hard enough, one will find that it does not exist.”⁵¹ Nozick wants to question why the logical jump is straight from inconveniences to government, with no intervening steps between the two in which agents try to retain their broadly anarchist individualism. Rather than make one giant, purposeful leap, Nozick wants to show how

48 Ibid, p.11, and *Locke, Two Treatises*, sections 13, 124 and 125, as referenced in this discussion by Nozick.

49 Ibid. Italics are Nozick's.

50 J. Locke, *Two Treatises*, sect. 13.

51 J. Wolff, Robert Nozick: *Property, Justice and the Minimal State*, p.42.

agents make a series of smaller steps, and yet 'accidentally' end up under the power of something analogous to a state. While both theories suggest a system of government that respects the rights of self-ownership, Nozick's takes greater care in demonstrating that the power of individual choice by outlining the rational choices individuals will make. In both a Lockean and Nozickian state of nature, agents must use their reason to try and understand the bounds of the natural law. This being the case Nozick uses the key to Lockean social progression, the act of reasoning, to great effect, and argues that reason will drive progress down a quite different path.

To begin with, agents in a state of nature will seek strength in numbers. Those that “lack the power to enforce (their) rights” will ally with others to make sure their rights are upheld, for surely in what is essentially a state of anarchy, the stronger individuals, or those with the greatest resources, are the ones who will 'get away' with most; they will violate the rights of others, as they are safe in the knowledge that, when they violate the rights of those weaker than them, meaningful retaliation is unlikely unless greater force than that which was wielded by the aggressor can be brought to bear. As Nozick states, “In union, there is strength.”⁵² In return for assistance, Nozick presumes all members of the group will work together to uphold all other members of the group's rights, which will be centralised into some sort of organisation. As such, a mutual protective agency is formed for the obvious benefit of all its members, with a shared ethical code that is their attempt to interpret the natural law, and this is the first step of Nozick's reasoning. We can see from the employment of centralised, less subjective groups of peers the beginnings of a system of law and arbitration in these mutual associations. This is not to say such an association is yet remotely

52 R. Nozick, *Anarchy, State and Utopia*, p. 12.

analogous to a state's legal apparatus, which must have “a monopoly on the use of force.”⁵³ Several such associations, all different in character, may reside within the same area. Essentially, then, the state of nature will progress to a situation where it is entirely rational (and arguably necessary) for agents to alienate their right to punishment or retribution to a more objective third party, to a) stop themselves being easy prey for the stronger or more aggressive violators of natural law and b) prevent the constant disproportionate and subjective response of the agents whose rights get violated. This is a loose association, not a social contract; agents will be directly involved in the defence of property rights and no more, as to do more would be to violate the individual rights of self-ownership that the associations were set up to protect.

A simple mutual protective association is not without its own inconveniences, however; members of the same association may come into conflict with each other, or paranoid members will use the association's powers disproportionately and without reason, consuming resources necessary for the protection of all. Obviously, as well, different associations will react to rights violations in different ways; some might be largely non-interventionist, some might actively pursue violators through all possible channels, some might, as a whole, act like the individual outlaws that caused the move to a protective association to start with. This is where the concept of choice driving agents towards a non-chosen end really comes in – given the diverse protective associations available for agents to join, agents will opt, Nozick claims, for the association they judge to be 'best'- best at applying the natural law, best at client service, fairest in their objectiveness and best at enforcing the outcomes of their judgements. In this sense, we arrive at a competition between agencies that possesses the essential character of the free market; a series of similar products doing fundamentally

the same job as each other to varying degrees and qualities, competing on various criteria to dominate the marketplace and thus driving each other to be better products. To skip over a lot of reasoning, Nozick believes one of these associations, be it by force or quality of product, will eventually achieve a monopoly of customers within a specific geographical area, for three main reasons.⁵⁴

The first is that, when two agencies come into conflict, one agency might often win. The clients of the losing agency will act in a self-interested manner and opt to transfer their retributive right to the winning company, as there is then a greater chance of their self-ownership rights being upheld. Secondly, two associations might be more evenly matched, each winning an equal amount of battles, and a disputed zone between the two conflicting agencies will be established near their centres of power. In this case, “people who deal with one agency but live under the power of the other either move closer to their own agency's home headquarters or shift their patronage to the other protective agency.”⁵⁵ The third case occurs when two agencies fight “evenly and often” in roughly similar territories, like in the second case, but here, to save on “frequent, costly and wasteful” skirmishes, the executives of the agencies agree to arbitration in the form of a third party, presumably some sort of independent court or judge, who can decide between the two agencies when they come into conflict and have them both abide by the ruling. As such, the agencies’ arbitration powers, judgements and their interpretation of natural law, if not necessarily the agencies themselves, merge into a unified system.

54 Ibid, p.16.

55 Ibid.

The crucial point to take from these possible courses of action when there are numerous mutual protective associations is that “almost all the persons in a geographical area are under some common system that judges between their competing claims and *enforces* their rights.”⁵⁶ Thus, a system approaching (but not quite a) virtual monopoly has come about in contained geographical areas without this specific end being willed. It is simply the product of rational interaction on behalf of agents, and the groups that represent the rights of those agents. “No express agreement and no social contract fixing a medium of exchange is necessary.”⁵⁷ This is an independently reasoned progression which claims that, much like Locke's interpretation of the imposition of a state on agents, that the right to punishment must be contracted out to a third party that is an objective arbiter between *both parties*; both sides in a quarrel cannot bring in their own arbiters, no matter how objective they may consider their arbiter to be towards the dispute. The need for an objective arbiter is the only real similarity in terms of progression towards a state as, unlike Locke, Nozick's ‘state’ is formed while still operating under anarchy.

Nozick's organisation does differ from a state in one crucial aspect, though – it cannot have a monopoly of force without covering all agents in the specific area, and yet it cannot physically compel agents to ‘sign up’ to the protections it offers. Some will presumably choose to retain their right to punishment, and the agency coercing them into alienating their right would violate the agent's right of self-ownership. These lone rights-enforcers are referred to as “John Wayne” figures, as they reject the common protective agency in favour of their own providence. Wolff explains why such a figure would be an issue, as 'John Wayne' “presents exactly those problems found with the

56 Ibid. Italics are Nozick's.

57 Ibid, p.18.

original state of nature. In exercising his rights to self-defence and punishment he maybe blinded by self-love, or the revenge motive, and so exceed the decrees of the law of nature.”⁵⁸ The security that the dominant protective agency provides its clients cannot be assured while there are still John Wayne figures, subjectively enforcing their natural rights. Thus, to maintain security for its clients the agency must forbid John Wayne from enforcing his own rights, in the sense that “the agency seems entitled to announce that it will punish anyone who uses force against its clients, unless they can demonstrate that such force is legitimate.”⁵⁹

With this statement, the dominant protective agency finally claims to be the sole arbiter of the natural law in the area, and furthermore, like a state, claims a monopoly on coercive force within that area. Any independent who tries to enforce his own rights against a client of the agency will now be aware that their system of judgement and punishment has to cohere with the dominant protective agency's system, or they will find that the agency retaliates to the independent's procedural natural law violation appropriately. All agents using their right to punish are now answerable to the dominant protective agency.⁶⁰ This is the ultra-minimal state. One minor step remains, from the ultra-minimal to the minimal state – as the agency must prevent John Wayne from enforcing his rights for the sake of stability, it owes him equivalent compensation, and otherwise it in turn violates his rights. The simplest way to compensate John Wayne and to prevent insecurity is to offer John Wayne protection from the agency, paid for out of the contributions of all the other

58 J. Wolff, *Robert Nozick: Property, Justice and the Minimal State*, p.46.

59 Ibid.

60 Excluding John Wayne on John Wayne conflicts, although presumably the DPA will step in should these conflicts in any way endanger their clients. However, a conflict like this could still feasibly occur within the boundaries of the DPA's territory and not be any of their concern, and this is another reason the next step in Nozick's argument is necessary for a true monopoly of force.

members of the agency. Thus, there is a redistributive element to the minimal state, but redistribution is done on the grounds of defence of natural rights or law, not concerns of fairness or equality like a Rawlsian redistributive welfare system. The state now claims a complete monopoly of force within a specific geographical area, and all agents within that area are under a unified, non-subjective system for enforcing their natural property rights. As Nozick famously says, we have “backed into a state without really trying.”

As Nozick has shown, the rights of self-ownership, when considered from the perspective of the state of nature, will lead agents into a minimal state as this is all that can be justified without the violation of our natural rights. Indeed, the rights which anarchists believe us to possess (the strongest possible rights against coercion) lead into an organisation with a monopoly of force over all agents living within its boundaries. The rights of self-ownership have shown that this minimal state is both the most and the least we can do, and consequently that self-ownership must imply and entail a state organisation. This is why self-ownership is often interpreted as an ultraminimalist, right-libertarian theory.

While this is, in Nozick's terms, recognisably a state, we must now examine the consequential problems the minimal state derives from the laws of self-ownership, and thus observe the reasons for its relative modern obscurity – the lack of a generalised redistributive function and therefore its perceived coldness in the face of human suffering, as well as the vast inequalities created by strict private property laws. Essentially, now that we have a minimal state, why can't our state get any bigger? Why do our rights entail one kind of state, but not another?

'Equality' and the Minimal State

The most compelling argument against the minimal state is to highlight the features the minimal state does not possess. The quickest and most illustrative method of doing this is, predictably, to compare it with Rawls' liberal democracy. The stated purpose of society in his theory is as a co-operative venture which shares social benefits and burdens more evenly for the mutual advantage of all; to this end, "all social primary goods – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any of these goods is to the advantage of the least favoured."⁶¹ Contrast this with Nozick's depiction of the state. "Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right."⁶² The two depictions bear very little resemblance to each other. The only discernible similarity is that they are both trying to describe the purpose of their ideal state; while Rawls suggests that its main purpose should be imposing fairness on its citizens, Nozick's vision is of a far starker society, where the state simply upholds property laws, derived from the natural law of ownership of the self. As we have seen in the previous section, any state theory based on the laws of self-ownership may do no less, but also no more. Rawls' state is concerned with redistributive matters, while Nozick's is there to uphold only

61 J. Rawls, *A Theory of Justice*, p. 303.

62 R. Nozick, *Anarchy, State and Utopia*, p. ix.

individual redistribution in the form of voluntary property transfers, not to redistribute resources itself. Thus, as I suggested, the prime argument to dismiss the minimal state is what it lacks, which would be any desirable social goods provided by the state rather than reliant on the charity of private individuals – healthcare, public roads and infrastructure, education, a welfare state to assist the disabled and destitute, any control over markets, banks or generally private enterprise in favour of the consumer, or indeed any of the state services paid for out of tax revenues that Western liberal democracies now largely take for granted.

Essentially, then, the disagreement between Rawls' and Nozick's vision of the state boils down to one simple Nozickian statement – state redistribution of, or interference with, property violates our natural rights.⁶³ As Nozick said, any redistribution will “violate persons' rights not to be forced to do certain things”; in this case, our right to retain control of our property, which no agent or organisation can coerce us into giving up (without violating our rights). The reasoning here is obvious in reference to what has been outlined previously – if we are to base justice around the freedom agents have in their property rights, both in the self and in objects, then those agents must be the sole arbiter of such rights. Without these rights, property is no longer strictly private; it takes on a social element, in the sense that society, or the state, becomes the ultimate arbiter of at least some of your property. I will now briefly explore why Nozick infamously believes this to be unjust, and therefore why self-ownership rights cannot justify anything larger than the minimal state outlined in the previous section. Furthermore, Nozick's suggestion that the minimal state is “inspiring as well as right” requires further elucidation – given everything the minimal state lacks,

63 It might be said by the Rawlsian that failure to redistribute property is unjust to the least well off, who are entitled to expect the 'basis of self-respect'.

what could possibly “inspire” us to uphold the abstract concept of self-ownership rights when the alternative offers us so many appealing and helpful services aimed at improving the quality of life of all members of society?

To begin with, Nozick attacks the very notion of redistribution - “we are not in the position of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no *central* distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out.”⁶⁴ The subject of redistribution, that is, agent's property, did not “fall like manna from heaven”⁶⁵; it does not come into this world unowned, ready to be neatly distributed amongst individuals by a centralised force. Rather, natural resources are already present, and freely chosen transfers derived from the use of these resources following their just acquisition form the basis of social interaction. Indeed, the concept of a patterned distribution embodying justice (such as, distribution in terms of need, IQ, or even quantity of hair or some other arbitrary method of ranking members of society) is another one of Nozick's objections, and state adoption of any such method of redistribution is ruled out by a crucial element of Nozickian self-ownership – the principles of justice in holdings.

These principles form Nozick's major objection to an increased state – for the state to gain powers above those given to it by the minimal state, it must violate one of these three principles (most normally the second) -

64 Ibid, p.149.

65 Ibid, p.198.

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by repeated applications of 1 and 2.⁶⁶

The principle of acquisition in point 1 is worth briefly explaining here. Nozick begins by explaining that “Locke views property rights in an unowned object as originating by someone’s mixing his labour with it”⁶⁷ and this is justified because “one owns one’s labour, and so comes to own a previously unowned thing that becomes permeated with what one owns.”⁶⁸ This is further proof of the self-ownership at work in both Nozick and Locke. Furthermore, while this sort of acquisition is fine for things of which there is abundance (the labour of drinking from a stream privatises the water than I drink, for instance), it seems to Nozick that a lot of acquisition can only be allowed when I *improve* the object I labour upon in some way. Nozick then goes on to make a curious claim regarding the relationship between improving an object and acquiring it – “it will be implausible to view improving the object as giving full ownership to it, if the stock of unowned objects that might be improved is limited.”⁶⁹ This suggests a dimension of the consideration of the opportunity of others to exercise their rights to acquire unowned resources, which is very important to our discussion in the final chapter. For now, it is enough to say that, in line with Locke, Nozick

66 Ibid, p. 151.

67 Ibid, p. 174.

68 Ibid.

69 Ibid, p.174.

proposes an acquisition principle in which one must mix one's labour with unowned things to come to have ownership of them, as long as "there is enough and as good left in common for others."⁷⁰

To return to the theory of justice in holdings, point 3 is an acknowledgement of non-ideal theory, or that practically the world is not entirely just, and thus sometimes holdings will not meet with the specifications of points 1 and 2 and thus will need to be rectified. The second point, which states that objects may justly pass from one agent's possession into another's (voluntarily but never coercively), is the point of Nozick's theory that restricts the expansion of the state beyond minimal lines. Indeed, it is again derivable from the self-ownership discussion above, in that it upholds the primary importance of individual free consent over property disposal, as we shall see. Of course, the second point is not itself a theory, it merely states that all transfers must be in line with the principle of justice in transfer. So what is this principle? Nozick is characteristically reticent with a discussion of the theory's governing principles, but rescues himself with some famous examples, one of which is perfect for helping us understand how property may be justly transferred.

Let us suppose... distribution D1⁷¹... now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction. He signs the following sort of contract with a team: in each home game, twenty-five cents from the price of admission goes to him. The season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it... Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has. Is he entitled to this income? Is this new distribution, D2, unjust?

70 Ibid.

71 This is a distribution of the reader's choice; it is irrelevant to the outcome of the reasoning.

If so, why?⁷²

Nozick goes on to suggest this new distribution is indeed just, and interference with it is not, even though a Rawlsian government would redistribute a portion of Chamberlain's earnings to those less well off. There are several vital comments to make about this example. Firstly, on what grounds would Rawls claim D2 was an unjust distribution? For this, he would appeal to the second of his two principles of liberty, the difference principle, which states "Social and economic inequalities are to be arranged so that they are both a) to the greatest benefit of the least advantaged and b) attached to offices and positions open to all under conditions of fair equality of opportunity."⁷³ To further break down the basis of his and Nozick's disagreement, we need only concern ourselves with point a), which is an egalitarian statement claiming that society must be set up so that any inequality that is created is only permitted if its creation in some way improves the conditions of all, and especially those with the least. In reference to the above example, the creation of inequality in distribution of resources that occurs when Chamberlain receives his extraordinary wage packet is not paired with a greater share for all, and so Chamberlain's wage should be taxed, and the proceeds redistributed throughout society. Thus, an inequality (the concentration of money in Chamberlain's possession) actually furthers equality (the amount of money available for redistribution to those in need of it). Society is, essentially, a co-operative venture which produces a social product able to benefit everyone involved in it, and so the benefits (and burdens) from living and working within society must be fairly shared.

72 Ibid, p.161.

73 J. Rawls, *A Theory of Justice*, p. 302.

Nozick's response to this is obvious and illustrates his theory of justice in transfer. As Chamberlain naturally possesses liberty of action over himself and his property, any coercive, un-agreed or paternalistic action regarding his property will violate the rights which protect his liberty. This would forbid any redistribution of Chamberlain's property by any party, even one claiming a monopoly of force as in the minimal state, without his express consent, for any reason. Indeed, any such action would essentially force Chamberlain into slavery at the hands of the state, by forcing him to work a certain amount of hours at the behest of the state, who decide where the product of Chamberlain's labour from those hours goes. Again, 'society' is a collection of free and distinct individuals, not a collective where one person's concerns may be traded off for another's. The only way the difference principle could be acceptable is if Chamberlain *agrees* that his income is unfair, and voluntarily commits a portion of his earnings to the least well off. So what can Rawls say to Chamberlain to make him agree that it is just that Chamberlain redistributes his property? His approach here appeals to two diverse but related justifications; firstly, that his place in society as a high earner is dependent on the existence of society as a co-operative venture, or that he would not be able to profit from his talents to such a degree without society. Second, that Chamberlain's skills are essentially arbitrary, distributed at random in the lottery of birth, and so he cannot lay any special claims to them. Instead, they should be considered as part of a 'social pool' of talents for the advantage of all.

To deal with the first justification, Nozick expresses puzzlement with the suggestion that society is a co-operative venture, as well he might. If you remember from the discussion above, the two theorists' stated purposes of their ideal societies are entirely incompatible with each other. Surely, Nozick claims, if society is to be a co-operative venture that improves the lot of all, it must

rationally be appealing to everyone involved, that is, it must be advantageous to each citizen to the extent that they would be compelled to agree with the view of society Rawls puts forward over any other comparable system. Is this necessarily the case for both of the groups considered, the best off and the worst off? Nozick says “Rawls devotes much attention to explaining why those less well favoured should not complain at receiving less. His explanation, simply put, is that because inequality works for his advantage, someone less well favoured shouldn’t complain about it; he receives *more* in the unequal system than he would in an equal one. But Rawls discusses the question of whether those *more* favoured will or should find the terms satisfactorily *only* in the following passage...”⁷⁴ He then goes on to quote a passage from *A Theory of Justice* in which Rawls admits the difficulty with making his theory have universal appeal is showing that the better off in society have no grounds for complaint. His two responses to any claims of unfair treatment of the better off, contained within the Nozick quotation, would be “it is clear that the well being of each depends on a scheme of social co-operation without which no-one could have a satisfactory life”, and that “the difference principle... seems to be a fair basis on which those better endowed, or more fortunate in their social circumstances, could expect others to collaborate with them (as) a necessary condition of the good of all.”⁷⁵

Nozick objects that this does not show us *why* the better off should consent to redistribution of their property, beyond the theoretical point that any of us could become the worst off at any time; Rawls in fact “merely repeat(s) that it seems reasonable; hardly a convincing reply to anyone to

74 R. Nozick, *Anarchy, State and Utopia*, p. 195.

75 J. Rawls, *A Theory of Justice*, p. 103.

whom it doesn't seem reasonable."⁷⁶ Thus, he believes that it doesn't seem that such an arrangement *is* favourable to the better off, or that they couldn't get a better arrangement under a different system. Beyond an appeal to the suggestion society helps *everyone*, there is little reason to assume that the better off could consent to such an arrangement without a more detailed explanation as to why a co-operative society brings them greater benefits than any other model of society. As Wolff says in his relevant discussion, "If the Difference Principle is supposed to be a fair division of the surplus generated by co-operation, then it appears to fail, for it is biased in the favour of the worst off."⁷⁷ Given the seeming bias involved, for the difference principle to be successfully justified, it would need to be drawn out into a wider account of the benefits accrued to the most well off. Again, we can see that self-ownership and right-libertarian denials of the possibility of a redistributive system are inextricably linked in the work of the foremost right-libertarian political theorist.

An attempt to overcome the basis for the bias apparent in the difference principle brings us to Rawls' second justification, in which he goes on to state that the only fair method of arranging society would be chosen by agents in the original position, and in this position all those affected by society and involved in its planning would have no knowledge of their individual circumstances, skills or talents during the planning stage. Rawls hopes this argument will overcome Chamberlain's objections, because it will place him on a neutral footing and force him to see society from all the social positions he might potentially occupy. Without any knowledge of personal circumstances, agents will plan society so they are not disadvantaged, no matter where they end up. Thus, everyone

76 R. Nozick, *Anarchy, State and Utopia*, p. 196.

77 J. Wolff, *Robert Nozick: Property, Justice and the Minimal State*, p.120.

will agree to redistribution, as there is a chance they might be in the group most in need of assistance. This conscious suspension of personal characteristics is called the “Veil of Ignorance”, and the contractarian stance from which citizens plan society the “Original Position”. So why does Rawls think it is just for social circumstances to be ignored in the formation of a social contract? Largely because talent is the product of chance, and that no one can therefore be said to truly deserve their talent to the extent they are the sole owners of it, and thus themselves. Chamberlain was born at a greater natural advantage than everyone else; this is the sole reason he is the most in-demand basketball player, his natural aptitude for the skills necessary to be a great basketball player. His reactions, dexterousness and speed, for example, are the products of his genetic make-up, and any advantages he derives from these skills are luck-based.

Indeed, anyone in a position that requires specialist talent is, to some extent, relying on the favourable endowment they received at birth. Can we really say that these more talented individuals have earned their talents in any way, and should we, as Rawls thinks, label the distribution of talent as arbitrary? This question holds special significance for self-ownership; to shift his argument into the terms of Nozickian rights, Rawls is claiming that agents cannot be treated as the full owners of their selves, because a crucial aspect of their selves which has massive bearing on their life prospects, their natural endowment, is itself decided by a natural lottery, the outcomes of which no agent can justly be held responsible for. Furthermore, when deciding the optimum kind of society, knowledge of these characteristics biases planning in favour of the most well off. This is a key liberal point – justice dictates that agents can be held responsible for their *choices*, but not for their *circumstances*. We can have a distinct influence on the former, but the latter is entirely beyond our control. For the sake of justice as fairness, then, agents cannot be allowed to fully own themselves.

Nozick obviously cannot let Rawls' argument regarding the implications of treating natural endowments as undeserved stand; if he does, he cedes ground to Rawls which allows him to treat individual talent as part of a totality and individuals as part of a social entity and thus, when they exercise their talents and create inequality, legitimately seize individual's property, violating the rights of self-ownership. Indeed, such an action would make agents work for no compensation for certain amounts of time. If Chamberlain was taxed at forty percent of his earnings, then forty percent of the time he was playing basketball, he would, in some sense, be working for the benefit of the worst off, which has coerced him into this position with the threat of prosecution upon non-payment. As Nozick says in one of his few explicit references (and in a paragraph that serves as the source of Nozick's infamous claim that taxation is forced labour or slavery) to literal ownership of the self,

If people force you to do... 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. Just as having partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it.⁷⁸

Nozick's counter-argument begins by quoting a passage from *A Theory of Justice* in which Rawls states there can be no just connection between holdings and moral desert. "There is a tendency for common sense to suppose that income and wealth... should be distributed according to moral desert... justice as fairness rejects this conception. Such a principle would not be chosen in

78 Ibid, p. 172. Italics are Nozick's.

the original position.”⁷⁹ This is crucial, as the common statement that agents do not *deserve* their holdings seems intuitively linked to the suggestion that, morally, agents do not deserve their natural endowments. Indeed, it makes the positive argument, that “the distributive effects of natural differences ought to be nullified” a difficult one to properly characterise, as now, what are Rawls' grounds for demanding arbitrary endowments must equal redistribution of the product of those endowments? Presumably, Nozick believes, we must now base the outcome of the original position on the rational, self-interested calculations made by agents when considering what would best serve *them*.

Nozick's footnote on pages 196-7 is a fascinating insight into this discussion.

Are we to understand this as: someone in the original position wonders what to say to himself as he then thinks of the possibility that he will turn out to be one of the better endowed? And does he then say that the difference principle *then* seems a fair basis for cooperation despite the fact that... he is contemplating the possibility that he is better endowed? Or does he say then that even later if and when he knows he is better endowed the difference principle will seem fair to him at that later time?... Isn't the answer to any later complaint “you agreed to it (or you would have agreed to it if so originally positioned)”?”⁸⁰

If this is the case, why does Rawls concern himself with trying to justify to the best of that the difference principle is a fair basis for cooperation, as discussed above? Nozick believes that fairness does not come in to the original position; the fairness is structured by the absence of

79 Ibid, p. 217, taken from J. Rawls, *A Theory of Justice*, p.310.

80 R. Nozick, *Anarchy, State and Utopia*, footnote p. 197.

personal knowledge. Given this imposed fairness, all that individuals in the original position will need to do is make rational calculations regarding *themselves*, along the lines of “which kind of society would prove the best for me, given I know very little about myself beyond my basic needs?”

But Rawls also seems to want

a consideration apart from the original position that will convince someone who knows of his inferior position in an unequal society. To say, “you have less in order that I may prosper” would *not* convince someone who knows of his inferior position, and Rawls rightly rejects it, even though its subjunctive analogue for someone in the original position, if we could make sense of it, would not be without force.⁸¹

Nozick clearly believes Rawls wants the original position to be justifiable to people who are aware of whom they are, and that rational acceptability for all affected parties *without* the veil of ignorance is a fundamental part of the justifiability of the entire venture. Although the principles that arise from the Original Position are subsequently justified by the fairness and equality of bargaining within the position itself, Nozick's conception of justice does not believe that such considerations can justify a principle that fails to respect individual rights. Fairness is not a concern that enables us to override rights – it is a social value which involves involuntarily trading off the self-ownership of some for the benefit of disassociated others.

While Nozick's objection to the more-than-minimal state in terms of Rawlsian justice is, on

81 Ibid. Italics are Nozick's.

these grounds, debatable⁸², it ably illustrates self-ownership's theory of justice in transfer, which is founded on the notion of *voluntary agreement*, or the absence of coercion. Without the freely given agreement of all affected by a transfer, the transfer violates his second holdings principle. A 'metaphysical trick' like that deployed in the original position, which specifically removes the basis for disagreement in what is essentially an unfair transfer, is not, Nozick would claim, a truly *free* agreement; the agreement is only made possible by ignoring irreducible aspects of the self, ones which would make the 'fair' redistribution of wealth and income impossible.⁸³ This is not to characterise Nozick as a social contract theorist, one whose state relies on the free agreement of all parties involved, as indeed was shown above, where the minimal state occurs without any of the actors necessarily explicitly agreeing to such a body's formation (although Nozick does admit on p.137-8 that the three fundamental principles of self-ownership can be viewed as contractual, in the sense that agents lose their right to immunity when they violate a particular clause). However, *transfer of property is only possible with the free agreement of the involved parties.*

Why should this be the case? J.W. Child perfectly sums up how voluntary action, and only voluntary action, legitimises property transfer in the following quotation:

First, self-ownership entails the right to do with myself as I will, to manage and dispose of myself. I freely entered the marketplace and freely bargained while there. Second, my right to personal security has been

82 Especially as the bias Nozick appeals to seems to be the exact bias that Rawls is trying to eliminate in the original position; if this is the case, then why would Rawls need to appeal to an account of justice that encompassed and overcame that bias while it was still present?

83 As Wolff (*Robert Nozick: Property, Justice and the Minimal State*) and Sandel (*Liberalism and the Limits of Justice*) note, Rawls' reliance on an absence of individual characteristics, due to their originally arbitrary distribution, might result in a 'diminished conception' of the individual, and result in us being unable to coherently punish criminals.

respected. No one overpowered me and removed my property. Nor did anyone threaten to do that. Third, my right to own and control my property was not violated. No one stole it while I was away. I freely disposed of it as I chose.⁸⁴

These are the absolutely crucial aspects of justice in transfer within Nozickian self-ownership to take from the work above, and it shows why, interpreted as they classically are, the laws of self-ownership cannot support a state larger than the minimal state. For a state to become larger, it has to collect greater contributions from its members so it can perform more functions. ‘Coercing’ its citizens into greater contributions with the threat of punishment or imprisonment, as is the common approach regarding compelling agents to pay taxes, is a violation of justice in transfer. While it is unclear if this is qualitatively identical to forced labour, as goes the infamous Nozick claim that taxes make the state a part-owner of those it taxes (“just as having such partial control, and power of decision, by right, over an animal or inanimate object would be to have a property right in it”⁸⁵), it cannot be denied that, if we are to award an agent total and absolute control over themselves and their holdings then the threat to redistribute their holdings is a violation of the property laws which seem to be a necessary function of the self-ownership Nozick builds his state upon.

It has now become obvious why most academics and students dismiss Nozick's account of the state; without redistribution we are faced with some tough moral choices, ones that, socially considered, intuitively seem to require the attention of all. To Nozick's critics, it seems dogmatic to

84 J.W. Child, *Can Libertarianism Sustain a Fraud Standard?*, Ethics, Jul. 1994.

85 R. Nozick, *Anarchy, State and Utopia*, p. 172.

cling to the entirety of one's holdings while a small percentage of that total could go into the advancement of society, or on an even more basic level assuage the great suffering of those without enough to subsist, taking place all around. As was mentioned above, the best argument against the minimal state is not on the grounds of what it has, but to highlight what it does not possess. Nozick's state is the target of every major argument against capitalist justice; that it promotes massive inequalities, exploits those unable to lay claim to the means of production by forcing them on pain of death to sell their labour, and that it leaves the infirm and disabled at the mercy of charity and philanthropy. Nozick admits that, morally, we may, or perhaps even should, *feel* compelled to aid the worst off members of society, but that no agent or body *has the right* to compel us to do so.⁸⁶ This is precisely what I meant at the beginning of this chapter when I talked of Nozick's rights as fully imagined – few would be brave enough to follow through with their conception of justice to a conclusion so far removed from moral intuitions and social norms. This distinction between duties we *should* perform and duties we can be *compelled* to perform is absolutely key to self-ownership. Our strong individual rights mean that almost all actions (apart from those laid out in the previous section on the Dominant Protective Agency) absolutely must be voluntary on the part of the agent performing them. Self-ownership is the sole value of Nozickian right-libertarianism, and its violation must be avoided at all costs, no matter how seemingly great these costs are. We may feel we are obliged to perform some actions, such as supporting the needy, donating the money for public infrastructure, buying healthcare for loved ones, and so forth, but, crucially to the common perception of self-ownership as a theory which denies the justice of a redistributive system, *no one can oblige us to perform them.*

86 See Nozick's discussion of philanthropy, in *Anarchy, State and Utopia*, p.265-8.

Rights as Side Constraints

It would appear, then, that self-ownership must reject a patterned conception of distribution such as Rawls', in other words a view of society as one in which various resources must be distributed in relation to a particular characteristic of each agent. These conceptions fail to respect self-ownership and separateness of persons by treating society as an entity to be 'fixed' by a better distribution of resources. An unpatterned distribution of resources is, to Nozick, an expression of individual freedom, and to redistribute this into a specific pattern involves "appropriating the actions of other persons"⁸⁷, and as mentioned, gives them a property right in you. The notion of a patterned distribution, then, is incompatible with Nozick's theory of justice in holdings.

Proponents of patterned conceptions of justice... often will face head-on clashes... between moral side constraints on how individuals may be treated and their patterned conception of justice that presents an end state or other pattern that *must* be realised.⁸⁸

The consequences of Nozickian self-ownership are stark. The reason for this is that Nozick's structure of rights is far-reaching; indeed, for Nozick, rights concerns are present within every decision made by agent or state. Before we can arrive at a decision and enact its consequences, we must consider whether any of an agent's fundamental rights have been breached. This view, as Nozick calls it in the above quotation, is of rights as *side-constraints* on all decision-making. The

87 R. Nozick, *Anarchy, State and Utopia*, p. 172.

88 Ibid, p.173.

presence of rights literally constrains the variety of options available, and makes some outcomes impossible to opt for (without violating rights and thus making the action unjust). While this theory can be presented in positive terms, as almost a theory of inalienable natural human rights as considered in the section where I outlined why self-ownership implies a more-than-minimal state, it similarly lends itself to ruling out a series of seemingly overwhelmingly desirable outcomes by placing constraints on what agents may do when acting in a paternalistic manner towards other agents and their property. The two demonstrations that show why no less and yet no more than the minimal state are allowed by the laws of self-ownership also ably illustrate the intuitively positive and negative consequences of adoption of Nozickian rights.

So why view self-ownership's entailed rights as side-constraints on every single action?

Fundamentally, natural rights and the respect for the individual they imply are, in Nozick's work, of inherent power, not a particular end that agents are drawn towards. For instance, in utilitarianism, we strive to maximise the overall good. In liberalism, we act so as to equalise as much as is logistically possible the condition of all members of society. In Marxism, we push towards the goal of freeing the property-less worker from the chains of capitalist exploitation. Self-ownership does not specify a goal; any goal is as worthwhile as any other goal as long as each goal was achieved without the violation of rights. You might aspire to be the first President of Earth, while I might desire to build a town entirely out of toffee. As long as, in pursuance of our goal, we are not coerced by others and our rights are not violated (and that we do not coerce others or violate their rights), then self-ownership has no further input, as to interfere would imply a perfectionist morality. Social concerns should never override natural rights, as this would be to treat individuals as a means to a shared end, rather than an end in themselves.

While rights might preserve, to the largest possible extent, our *capacity* to live our lives to our conception of the good, the rights themselves are not the good that agents should be striving for. All individuals naturally have rights, but these rights are nothing more than that – a agent's self-ownership rights are not classically underwritten by any conception of a particular moral value or worth, they are simply inherently to be respected, and given to each agent by virtue of their being. Rights are at the basis of all of self-ownership; the rights that, for Nozick, comprise the notion of self-ownership constitute self-ownership itself. Nozickian self-ownership is fundamentally a statement of the separateness of persons, one that promotes absolute independence and denies the justice of forced interdependence. The commonly cited problems of a capitalist theory arise from the denial of the justice of interdependence; tax revenues are required to run an education system for children, to provide healthcare for the ill, a welfare state to prevent the poor from starving and enable them to find work, and to create infrastructure in the form of public roads and communal spaces. J.W. Child claims Nozickian self-ownership rights preserve, to the fullest extent possible, individual conceptions of the good as long as they conform to a general principle of “self-responsibility”.⁸⁹ Self-responsibility extends as far as, obviously, looking out for yourself – beyond that, those that require help to achieve a certain quality of life cannot be centrally assisted by the state. These agents must fall on the mercy of private philanthropy.

Thus, individual conceptions of the good are not immediately accessible even though liberals argue that the best form of society must include support for those that need it; many will

89 J.W. Child, *Can Libertarianism Sustain a Fraud Standard?*, *Ethics*, Jul. 1994, p. 729.

require some provisions in the form of resources, but in a right-libertarian society they will not receive it. Indeed, side constraints as stringent as the ones Nozick has devised will impact hugely on some agent's life prospects, and in this way the sole purpose of the state, upholding the rights of agents, will imperil some while making others far more comfortable than they would be under a government which even minimally redistributed wealth – the preservation of individual rights must override the promotion of social concepts of the good. There can be no trade-offs, and no agent can be compelled to give up what the rights of self-ownership dictate to be justly his. How, then, can the disabled or infirm aspire to live any reasonable quality of life under a state upholding the laws of Nozickian self-ownership? Their disabilities, which are no fault of their own, leave them unable to sell their labour power and thus unable to earn resources; without these resources, the disabled agents cannot raise themselves above subsistence level. This is to say nothing of those with notably fewer talents and skills than those who would profit out of a society arranged around Nozick's entitlement theory to a greater extent than a society with a redistributive element. Many academics have concluded that Nozick's system, while challenging to argue against on Nozick's terms, simply flies in the face of the intuition of basic human decency towards one's fellow man to such an extent that it cannot truly be an account or justification of society which is able to compete on a level with any theory that provides a better situation for the worst off.

This is the classic interpretation of self-ownership, and the one that has, by association, coloured all further debate of the idea. Characterised as an extreme right-wing theory, self-ownership has struggled to ascend beyond a simple discussion over whether or not we should support the needy, a discussion which always ends in moral outrage over the idea that the needy could simply be left to their fate by an uncaring government, when an alternative arrangement of

the state could provide sustenance and care for these individuals. As I have shown, though, Nozick's theory of justice in property ownership appears to leave no theoretical room for coercive or forced intervention to redistribute to those without the resources to live any recognisable quality of life – the rights of self-ownership are, to Nozick, the only just way of organising the state, as they stop the rights of some being traded off for the advancement of disassociated others. Individuals have these rights, and we may not do any of these things to them.

However, even if we accept that there are certain things we may not do to self-owners, is there any way to move away from the association with the stridently capitalist theories of enforced poverty that could be solved under a different form of government? The theorists presented over the next chapter believe so – they believe that, not only can self-ownership come to be more of a theory of human rights rather than the classically characterised interpretation of capitalism, but that there is a value underwriting self-ownership, and that this value means a different organisation of the state, allowing some basic redistribution to ameliorate the condition of the poor. Their conception of self-ownership is richer and more developed, as it is derivative of a moral value, and not simply a stark statement of the separateness of persons. Thus, self-ownership understood as the Nozickian construct classically has been, is criticised on the grounds of its natural association with the lack of a morally desirable redistributive function, and the following theorists go on to show how we can develop a deeper conception of self-ownership which means that we can have an idea of very strong rights, but rights that do not preclude self-ownership's inclusion in a debate of worthwhile political theories.

Left-Libertarian Interpretations of Self-ownership

Hillel Steiner on Natural Rights

Given the unpalatable, but not unworkable, conclusion that we may have to rely on private charity to fulfil any sort of desire for equality, contemporaries of Nozick sought to ask the question “must the laws of self-ownership fundamentally equate to gross material inequalities?” If a redistributive state can be said to offer the poor a greater opportunity for social advancement or mobility, is liberty from patterns therefore liberty from opportunity? These are complex questions, and the discussion of them has sparked a debate which continues to rumble. Firstly, we shall analyse the political theorists who claim that self-ownership can be allied with some form of resource distribution without denying the basic idea that we are each the owners of our selves, and leaving a lot of the libertarian consequences of self-ownership in place. Our first port of call in the investigation of whether self-ownership is a necessarily right-libertarian theory should be those who affirm its coherence but see it as part of a richer, deeper political theory whose basic values deny self-ownership must necessarily entail leaving those with fewer resources to their fate when simple redistribution could alleviate so much suffering. This would have the advantage of making self-ownership more palatable to many than the Nozickian conclusion that coerced giving in the form of taxation is theft from the individual, and so is unjust.

Foremost amongst these left-libertarians, and editor of a number of books collating the

important left-libertarian texts, is Hillel Steiner, whose key 1994 book *An Essay on Rights* incorporates a wide-ranging discussion of ownership of the self with, amongst other things, the difficulties of intuitive moral judgements, “impossible” rights, an interesting take on bequest and a stance on natural resources claiming that each should be entitled to an equal share. The latter two points are used by Steiner to refute the above question and claim that ownership of the self is compatible with redistribution justified within the boundaries of libertarianism itself. These proposed modifications cause enough radical change to the consequences of Nozickian self-ownership to shift what is, in essence, the political right’s take on justice to the political left, where a lessening of social inequality can hopefully move the spotlight in the direction of the libertarian commitment to a strong and easily understood account of the justification of individual rights. “What emerges”, claims Steiner “is an historical entitlement conception of justice with some reasonably strong redistributive implications. My hope, of course, is that this will succeed in capturing a fair proportion of your intuitions.”⁹⁰

Like Nozick, Steiner takes self-ownership to be a non-negotiable aspect of the correct moral treatment of agents. However, there is a deeper value, that of individual liberty, to which self-ownership is subservient. Self-ownership upholds Steiner’s rights (as we shall see, it defines the ‘best’ structure of civil rights for him), but it cannot be all there is to justice, like in Nozickian self-ownership. Self-ownership requires a richer conception of liberty. Nevertheless, I shall go on now to define why Steiner feels self-ownership is an appropriate feature of a theory of justice.

90 H. Steiner, *An Essay on Rights*, p.5.

If you recall my original description of the idea of self-ownership, Steiner was quoted as claiming agents were “owner-occupied”; that is, that agents *must* possess the rights (which are the “elementary particles of justice”) which relate to ownership of their particularly inhabited selves. Again, these rights are not created, they are natural. He takes this as self-evident, given the alternatives to self-ownership rights. These alternatives seem to be either a) rights do not have to reside in the relevant self or b) no such rights to the self exist. As Steiner says, critics of self-ownership “contend that the (justice-based) impermissibility of assaulting other persons, murdering them or confiscating their transplantable body parts can be alternatively grounded in the various protective prohibitions implied by civil liberties and such like.”⁹¹ If this is so, then either a) or b) are understandable and defensible theories of justice. He goes on to say “this contention... either is false or poses no genuine alternative to self-ownership”, thus denying that civil liberties in the forms of rights that prescribe “allowances” of freedom can be grounded in anything other than a conception of self-ownership.

My analysis of the reasoning behind this statement shows why Steiner refutes both the alternatives to self-ownership and will go on to form the basis of the first part of this chapter. This account of the primacy of self-ownership is then developed by Steiner into a political theory largely consistent with, but internally critical of, Nozickian self-ownership.

Steiner's brief proof of his dismissal of alternatives to self-ownership proceeds thus -

91 Ibid, footnote p. 230.

(Alternatives to self-ownership are) false if those prohibitions (which constitute civil rights) are insufficient to create the dense network of impenetrable perimeters needed to render each of those liberties “vested” rather than leave any of them “naked” and exposed to “numbing.” Conversely, and if they *are* sufficient to create that network, then... such a set of perimeters itself implies a set of compossible rights and correlative duties that are fully equivalent to civil liberty-holders having property rights in their own bodies, as extensional components of actions exercising those liberties. The duties implied by a fully vested set of civil liberties are correlatively constitutive of a right of self-ownership”⁹²

This complex quotation incorporates all of Steiner's thoughts regarding the necessity of self-ownership within a discussion of justice. To deal with the first half of the statement, we must turn to the sections of *An Essay on Rights* which deal with the set of rights Steiner feels are dictated by justice, and are thus necessary if we are to understand the structure and justificatory basis of rights equivalent to self-ownership.

Quite aside from concerns of intuitionism or perfectionist morality, Steiner points out that for a set of rights to embody justice, or at least aspire to, it must be possible. We normally associate impossibility with physical actions, like the impossibility of you levitating to work today, or the impossibility of me licking the tip of my elbow. This notion of impossibility in terms of rights does not, in fact, lie far from the truth; when analysing the possibility of a right being enacted, Steiner wants us to consider the spatial and temporal components of rights, which means to visualise them in terms of physical actions and therefore within the nature of interaction. When we have previously used the term interaction, it has largely stood for *exchanges*, in the sense of dialogue or market-

92 Ibid. Italics are Steiner's.

based interaction between two agents. Here it should be taken to mean the physical components of rights as the rights are acted out. We might interpret from our natural rights that, given the freedom to move or place my self suggested by self-ownership, I possess freedom of movement of my person, subject to my legitimate access to the space I wish to occupy. It does not seem troublesome to claim “I have a right to go for a walk”, for example. If we accept such extensions as a right, justice visualised as self-ownership might licence a great deal of duties to others that can be derived from our rights, that, for instance, I possess a liberty denying the justice of anyone preventing my movement. For a right to be a possible action, I must possess the right to each component of the action which comprises that right. If my action necessarily includes using something under your exclusive possession, then it cannot be said I have a right to perform that action, as I do not have the liberty to freely use your possessions. Thus, for something to possibly be a right, all necessary actions involved in its application must be simultaneously possible.

Such claims over the extension into material objects of self-ownership rights and their corresponding duties is to misunderstand the necessary compossibility of rights, Steiner claims, where compossibility means two or more 'sets' of rights, the spatial components of which are simultaneously actionable. “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.”⁹³ Furthermore “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 that set of rights.”⁹⁴ My right to hammer a nail into a piece of wood is compossible with the rights of others if I own the hammer, nail and wood. I already own my self.

93 Ibid, p.5.

94 Ibid.

Thus, I own all the rights required to justly hammer a nail into some wood.

Thus, my right to go for my walk down a particularly narrow public path and your right to walk that same path are impossible rights; if you are already standing there, I may not occupy this spot without forcibly removing you, thus seemingly nullifying your liberty. Our rights to that particular position, the proposed spatial extension of our natural rights, clash and are therefore illogical. To refer back to the original quotation subject to this analysis, in this case, my right to stand in this spot has been “numbed”, as it was not properly “vested”. We can now deduce that Steiner's discussion of the nature of rights requires a proposed right to always be actionable; if it not actionable, it is subject to “numbing”, in the sense that the freely performed actions of others may render the 'right' devoid of content, rendering it “naked” or physically impossible to perform. “Any (action) which depends for its fulfilment on the exercise of a naked liberty stands in danger of being non-fulfillable due to that liberty being numbed.”⁹⁵

To briefly take the discussion a step further, it is possible that the action components of some 'rights' may prevent an entirely separate action by other agents taking place, or a “knock-on” effect, rendering entirely different proposed sets of rights impossible, as well as the previously explained two agent's right to the same action being incompatible. As Steiner puts it,

Suppose there is a set of rights such that action A1 falls within the range of rightful actions that X possesses and action A2 falls within the range of rightful actions that Y possesses. And suppose that the occurrence of A1

95 Ibid, p.92.

interferes with or prevents the occurrence of A2. What is the deontic status of A1? It is at once a permissible action because it is an exercise of X's right, and an impermissible action because it is a violation of X's duty not to interfere with or prevent the exercise of Y's right. This contradiction implies that the set of rights in question are logically impossible.⁹⁶

Clearly, logical impossibility is not a desirable feature of a set of rights. When rights clash, we become, through no fault of our own, incapable of performing actions we considered it to be our inviolable right to perform. For instance, were I to know some scandalous facts about you which I desired to share, it might be impossible for me to exercise my right to free speech without violating your right to privacy.

The only way to make a right immune from numbing, or to make it a fully vested right, is to surround it with further rights. For example, both you and I have a duty to make a particular phone call to a friend at a certain time, and we decide to fulfil this duty by using a public phone box. If I am on the phone in this box, you still have a liberty to use the box but cannot, because the enacting of my liberty has 'numbed' your liberty to the phone box. Our separate liberties to occupy a phone box are impossible, because as soon as one of us enacts our liberty the other is unable to fulfil his, and thus your duty to make the phone call becomes impossible to carry out.⁹⁷ Imagine now that you possess a mobile phone from which you plan to make the call. Your liberty to use your mobile phone, of which you are the sole owner, is protected to a much greater extent. Your duty to make the call does not now rely on the easily numbed liberty of the phone box. No other individual has a

96 Steiner, '*Structure of a Set of Compossible Rights*', *Journal of Philosophy*, Dec 1977, p. 767-8.

97 This example is taken from H. Steiner, *An Essay on Rights*, p.75-6.

right to interfere with what is strictly your property, meaning that you are not relying on the (in) action of others for the possibility of carrying out your duty. You thus hold a right against all other agents, which imposes a duty on them forbidding them from using your phone without your consent. This structure of rights, essentially privatising rights in property to the fullest possible extent, means that the right is properly vested. This is a compossible set of rights – all the actions required for this right are privately and exclusively within my power.

Note that compossibility, and therefore the legitimate performance of actions, generally requires ownership of some external resources. In the preceding examples, the structure of my rights would be impossible if you owned the piece of wood I was trying to hammer a nail into, or if I could not afford to purchase the requisite credit from the phone company operating my mobile phone. Only through private, exclusive ownership do these actions become possible. Thus, truly vested liberties are maximised when all property is private, and are not shared or communal property. Shared property, as I have explained, will lead to a series of potential impossibilities meaning that no one person can claim a specific right to an action incorporating a piece of shared property at any point in its performance. This system will necessarily yield a greater degree of liberty compared to any other scheme of ownership rights, as liberty is maximised when there is no possibility of others using an item that you require to complete your action. The greater the amount of private property, the more actionable the liberty.

We are now in a position to understand the language used in the first section of Steiner's affirmation of self-ownership, which was “(Alternatives to self-ownership are) false if those

prohibitions (which constitute civil rights) are insufficient to create the dense network of impenetrable perimeters needed to render each of those liberties “vested” rather than leave any of them “naked” and exposed to “numbing.”” Any structure of rights is necessarily false if the civil liberties it ensures can be subject to being overridden by another agent or group while they are rightfully exercising *their* civil liberties. In other words, civil liberties must be constructed so as to be universally applicable at all times, regardless of the actions of others. Self-ownership is a rigorous enough structure of rights that it can ensure all the civil liberties it protects are properly vested.

You may notice that, in accordance with the example pertaining to the correct method of “vesting” the obligation to make an important phone call, the most efficient method of making sure you could make the call was to use a privately owned mobile phone. Steiner seems to be suggesting that liberties, unless fully privatised in the sense of exclusive individual ownership, are not really liberties at all. “Vested liberties exist in one-man's land, naked liberties inhabit no-man's land.”⁹⁸ Thus, for a right to be reliable or indeed fully actionable, the objects involved in the exercise of that right (the phone and your body) must be *privately owned*. This in turn implies that self-ownership is a necessary part of the best structure of rights for fulfilling the requirements of compossibility, as it is, by definition, private ownership of the self, and the operation of the physical self is a necessary component of action. “Interference by one individual's action with another's occurs *if and only if* at least one of the material or spatial components of the one action is identical with one of the material or spatial components of the other action.”⁹⁹ Given the previously unacknowledged spatial and

98 Ibid, p.76.

99 Steiner, *Structure of a Set of Compossible Rights*, Journal of Philosophy, Dec 1977, p.768-9. Italics are mine.

temporal components of rights, it is apparent that without private ownership of the self Steiner feels that any right may not be properly vested.

Similarly, the notion of compossibility, and the implied relationship between logical consistency and justice, can pare back the rights it might have been thought possible to derive from self-ownership. As the quotation suggests, this does not dismiss alternatives to self-ownership, as they may simply cover the same ground and justify themselves with reference to the inherent value of the civil liberties themselves. It merely underscores that the alternatives must possess a logical structure if they aspire to be a theory of justice.

However, as the next part of the quotation *does* suggest, if these alternatives manage to pass the compossibility test, they are then arguably equivalent to the private ownership of the self implied by self-ownership, as they must necessarily involve private ownership of the physical components of rights to make the civil liberties that Steiner believes comprise self-ownership fully “vested”. So, to summarise, Steiner argues that, for a right to be fully actionable, the action components of that right must be exclusively privately owned. As the action components of any exercise of a right must necessarily include the relevant parts of the self, then these too must be exclusively privately owned, or the structure of rights involved must be identical in content and thus indistinct from self-ownership. Given this, Steiner believes self-ownership to be the only method of grounding rights which fully protects the individual liberties that comprise the rights. Furthermore, this justice of self-ownership and its associated liberties must refer to the distribution of rights. An equal distribution of self-ownership rights will necessarily equate to an equal distribution of liberty,

and in turn deny the chances of some people's rights of self-ownership being impossible in relation to others with fewer rights. If rights must be compossible, then all rights must be equal. Unequal rights will equal greater impossibility.

Equality in Resource Ownership

How does Steiner's self-ownership play out in a social setting, given it is subservient to the value of liberty? We saw with the starker Nozickian rights to the self that strict application of individual rights seems to play out into a state concerned only with the upholding of property law, and therefore a society replete with gross material inequalities. Is Steiner's society of self-owners any different? Briefly, Steiner believes that the boundaries of self-ownership still allow for some basic form of redistribution to overcome the effects of strict materialism on society, and this is necessary for the sake of liberty. If you recall from the previous chapter, we investigated Nozick's conception of justice in holdings, which specified how an object could be justifiably owned, or how the ownership title relating to that object can be declared a legitimate one. This consisted of three distinct dictates on the nature of object ownership, and we investigated at length the second one of these, the idea of justice in transfer. However, the first of the justice in holdings laws, "a person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding", was not relevant to our discussion then, which involved the denial that the extent of the state's powers incorporated the power to conduct a forced resource transfer. This principle, however, is the area of self-ownership where Steiner believes, regarding the more basic value of liberty, it is necessary to identify some form of basic redistribution that will result in a society where those without resources are not left relying on the philanthropic charity of the more successful.

To analyse where Steiner believes he can find a redistributive 'loophole' in self-ownership, we must first outline Nozick's conception of justice in acquisition. This, like Nozick's state of nature and his theory of justice in transfer, leans heavily on the work of Locke. So, imagine we are back in the state of nature once more, and trying to figure out who can legitimately lay claim to the privatisation of land. What do agents' natural rights dictate is the most appropriate method of privatising the unowned natural resources available to them?¹⁰⁰ Locke and Nozick believe that two basic rules would best encapsulate the natural law. The foremost of these is that each may take whatever they want, as long as they do not worsen the situation of anyone else.¹⁰¹ This is because "he that leaves as much as another can make use of does as good as take nothing at all."¹⁰² This simple rule prevents loss of liberty for non-acquiring agents, as their situation remains the same as it was before the appropriation. Thus, no one is disadvantaged by the actions of others, and natural rights have been respected. Nozick, in line with other right-libertarian theorists, would in fact argue that, where the privatised land is then cultivated and used to make produce, everyone else's situation improves in relation to the privately acquired land, with jobs created, value added to the area, and exchangeable goods produced too. In fact, as any system of private property would leave people better off than in a state of nature by Nozick's logic, almost all acquisition is justified. A limit of acquisition based on opportunity is acknowledged, and shall be discussed later, but has little practical effect outside more extreme cases of acquisition.

100 Obvious alternatives to privatisation include social (shared) ownership or denying the justice of private land occupation itself. These are not schemes that could be countenanced by Locke or Nozick, though, committed as they are to exclusive ownership of resources as a method of increasing the strength of agent's liberty.

101 Nozick, *Anarchy, State & Utopia*, p.174-5; Locke, *Two Treatises*, (2) §31-3. The Lockean version is leaving "enough and as good" resources for others, but they are similar enough here for our purposes.

102 Locke, *Two Treatises*, (2) §32

Another important feature of justice in acquisition is the “mixing of labour”, to use the Lockean term. I may come to justly own something that is unowned if I mix my labour with it, bearing in mind the proviso outlined above. Therefore, simply declaring something is yours, even if that declaration fulfils the first proviso by not worsening anyone's condition, is according to Locke, not the full picture of just acquisition.

The basic argument in favour of labour mixing creating claims over property is that mixing labour with a resource, such as picking (labour) an apple (resource), ‘privatises’ that apple and makes it wrong for any other individual to then claim that specific apple as their property. Thus, man can create entirely personal and private rights in any unowned object simply by acting upon it in some way, no matter how trivial. In reference to man’s expenditure of effort, Locke says “The labour of his body and the work of his hands, we may say, are properly his... Whatsoever he removes out of the (natural) state... hath by this labour something annexed to it that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to.”¹⁰³ This is another idea crucial to self-ownership, the suggestion that when we exert ourselves, we put something of *our selves* into the task we are labouring on. This part of our self, say the energy expended moving the arm that lifted the apple from the tree, makes the object we are acting on ours. Our claim to our selves can create claims in external objects. This is almost viewable as an entropy, or energy transfer, argument, in that the actual act that creates the right is the exertion of effort on the part of the acquirer.

103 J. Locke, *Second Treatise*, V, 27-8.

Steiner has a view on the legitimacy of title creation by self-owners which is almost an entropy argument, thus –

Our bodies produce energy. They convert body tissue into energy, some of which gets expended in our acting. A good deal of this expended energy is simply abandoned by us in the course of this acting. It's absorbed into parts of the external environment that we make no consequent claim to. Other portions of our expended energy are infused into parts of the external environment, transforming their features in various ways... we claim these things for ourselves as the fruits of our labour.¹⁰⁴

The main thing to note here is that, as far as *acquisition* is concerned, labour mixing only applies to unowned objects, or in essence, natural resources. If I polish your silver because you asked me to, I do not subsequently create an ownership claim over your silver aside from any agreed compensation for my labour, as you retain the control rights to it. If however, I tend to some unowned land, perhaps by raking the soil or planting crops, then as long as my acquisition of this land damages no one else, I may rightfully lay claim to privatising this natural resource. The labour mixing proviso seems just as undefined as the “enough and as good” principle of acquisition, as it seems to have a very loose definition of what constitutes labour. Indeed, Steiner has a number of problems with the idea of self-ownership legitimising titles in unowned resources.

While self-ownership is a sufficient basis for creating unencumbered titles to things produced solely from self-owned things, it cannot do a similar job for products whose factors include unowned things. Nothing can be

104 H. Steiner, *An Essay on Rights*, p.233.

produced by labour alone. Nothing can be made *ex nihilo*. All labouring, simply by virtue of being action, requires extensional (material, spatial) factors which are either already owned or as yet unowned. Yet as the earlier discussion of rights-compossibility - and more specifically, of its historical dimension in title and duty pedigrees¹⁰⁵ - indicates, any current set of domains, to be valid, must derive from a set of original rights and duties concerning things which were ipso facto antecedently unowned. Initially unowned things must be justly ownable. But how? The evident answer is that our equal original property rights entitle us to equal bundles of these things... the correlative original duties vesting that liberty are ones not to appropriate more than this amount. We are each entitled to an equal share of (at least) raw natural resources.¹⁰⁶

Why is this answer 'evident' as Steiner claims? Firstly, as established in the preceding section, we have equal rights. Without these equal rights, instances of compossibility will be fewer in number, and so liberty will suffer. Unequal rights would mean greater infringements on the potential liberty of some as opposed to their liberty under a structure of rights in which everyone's rights were equal in number. By extension from the perspective of one of our original rights being permitted to become involved in the acquisition of resources, then, I must possess a right to acquire resources equal to that of everyone else's. Steiner quotes Spencer on these grounds - "all men have equal rights to the use of the earth."¹⁰⁷ Unequal acquisition rights would result in greater impossibilities and a loss of liberty on behalf of some agents.

Self-ownership is, then, a sufficient basis for creating unencumbered titles both to things produced solely from self-owned things and to things produced from this equal portion of unowned things. We each own the fruits of

105 Steiner's discussion of rights is very similar to Nozick's theory of historical entitlement, only with a compossibility dimension.

106 Ibid, p.235.

107 H. Spencer, *Social Statics*, quoted in H. Steiner, *An Essay on Rights*, p. 281.

our labour inasmuch as all the factors entering into their production are either things already owned by us or initially unowned things amounting to *no more than an equal portion* of them. These titles generate a set of continuously compossible domains with each title, as a right *in rem*, having its correlative counterpart in the duty of each person (other than that title's holder) to respect that title, as well as all titles successively derived from it through exercises of the powers and liberties attached to them.¹⁰⁸

Natural resources are to be dealt with in an egalitarian way; conversely Nozick wishes to portion them out on a “first come, first served” basis, but to compensate those whose condition is worsened. Steiner will allow agents to own land, but any land they own above the average amount, or an equal portion in respect to all other agents, they are to pay a rent or tax on, equivalent to the market value of that land at the current time. This land rent is to be paid into a fund which is then redistributed amongst those who own *less* than the median amount of natural resources. Therefore, as redistribution of resources is constant, dynamic and focuses on those most at danger of their self-ownership rights being violated, it both makes self-ownership compossible and assuages some of the concerns generated by the gross material inequalities inherent in Nozick's approach to the least well-off of any society.

Steiner therefore believes that, rather than simply being *at liberty* to acquire unowned resources, that in fact the nature of natural rights *entitles* us to an equal share of natural resources. There is a crucial difference between these two points, and one that Steiner's account of left-libertarianism will lean on – in Nozick and Locke, agents may acquire unowned resources; it is not necessary for them to do so, but doing so seems like a good idea, given the benefits accrued by

108 Steiner, *An Essay on Rights*, p. 236. Italics are mine.

those in possession of resources. In Steiner, agents are due an equal share in natural resources; that is, they are born with a claim over a division of natural resources equivalent to a fair share of the current distribution. In the same way agents are born wielding the rights of self-ownership, which are naturally accrued by virtue of their existence, so they are born with a right to a certain amount of land extinguishable only by them, not by past, present or future agents. The reasoning behind this is similar to Nozick's theory of justice in transfer, as it is a historically based theory which traces title transfers back to the object in question's original unowned state to show how the contemporary title is legitimate. However, and the point at which this differs from Nozickian historical entitlement, is that Steiner believes, due to the nature of compossible rights, that the never-ending procession of future agents will eventually render rights to natural resources impossible – all resources will be claimed, and the rights of future agents will be unequal compared to previous generations, and thus, as we established, an unjust distribution of rights. If there is a drastic shortage of unowned natural resources, my right to unowned land and your unborn grandchild's right to unowned land are an impossible set of rights.

The way I have presented this explanation highlights the obvious quandary posed by the basic libertarian theory of acquisition – what of future generations? How can we possibly work out what an equal right is when we cannot know how many agents there will be in future? An equal right in comparison with my contemporaries is easy to understand, but an equal right in relation to every agent that will ever exist in the future is a right that is impossible, in our current libertarian terms, to define.

So how must original landowners act when they acquire resources? Do they have to think of future individual's rights, even though they do not know their number, needs or wants? Alternatively, as future agents do not presently 'exist' as such, can those alive today rightfully dismiss their claims knowing that future agents will be born into a situation in which a necessary right, that of resource acquisition, is irretrievably compromised?¹⁰⁹ Steiner believes that if we portion out all land to all currently living individuals, we will create a future generation of self-owners who will not be able to survive and prosper without the express consent of others, who are, on no account, obliged to help them. Even if we do reserve land for future generations, how much do we set aside? Setting aside as much as 95% of our unowned land will seem useless after a few hundred generations arrive and divide it up between themselves. In another paper, Steiner points out that the original requisitioning agent would have to compensate more people than could possibly have been expected to actually be able to have used the resource.¹¹⁰ Obeying Locke's proviso is also troublesome here, as surely, there will come a 'point' at which no more land can be allocated because the situation of all will be worsened. Nozick's theory is preference sensitive in that it promises compensation to all of those who desired an unowned resource. Working out whom (across the span of time) is disadvantaged, to what exact material extent and therefore exactly how liable the original owner is a 'logically impossible' task for the original appropriators to attempt.¹¹¹ However, we clearly cannot leave the vast majority of land completely untended, and await future generations' arrival. So what is Steiner's solution?

109 Another important point to take from the preceding quote is that without some private ownership of resources, at least some of an agent's bundle of natural rights will be impossible, as production without private ownership of the resources needed for production will violate another agent's rights.

110 Steiner, *Nozick on Appropriation*, *Mind*, Jan 1978, p. 110

111 Steiner, *Natural Right to the Means of Production*, p.47-8.

Regarding Steiner's previous claim, that impossible rights cannot aspire to be a just set of rights, he therefore believes that the right to acquisition, as stated by Nozick, is not a set of rights that will be compossible in perpetuity, and yet these rights must be operable for the theory of self-ownership to work, as without it no objects can be acquired. Therefore, alteration isn't just advisable in the sense of "improving" self-ownership, it is *necessary* that self-ownership changes. If equal rights are to be possible (and justice dictates that they *must* be possible), then self-ownership must take into account the needs of all future potential rights-bearers or risk future agents having a less than full right set compared with the original self-owning agent who privatises the land. To ensure all present and future individuals will be capable of wielding the same set of rights in an on-going manner, inter-generational egalitarian land-ownership must be enforced, and this itself entails some basic redistribution that will make sure that all agents have equality of their original rights, and so the basic resources necessary to survive, rather than leaving them to sink or swim as in Nozickian self-ownership. On this reading, Nozickian right-libertarianism fails to understand the liberty inherent in self-ownership, that is, that an equal distribution of rights can only ensure equal liberty for all if we ensure the rights of every current and future agent are actionable. Liberty, in the form of an equal distribution of compossible rights, underlies Steiner's structure of self-ownership – without this basic appreciation of liberty, self-ownership is a structure that is liable to become formalised for future self-owners.

Funding the Global Redistribution Fund

Nature gives a man no power over his earthly goods beyond the term of his life; what power he possesses to

prolong his will beyond his life - the right of a dead man to dispose of property - is a pure creation of the law, and the State has the right to prescribe the conditions and limitations under which that power shall be exercised.¹¹²

Steiner has another method of redistribution that is consistent with the laws of self-ownership, and is tied in to an extent with the above reasoning. A follow on question from Steiner's logic above, which concluded that all are entitled to an equal share of natural, originally 'unowned' resources, might be "Surely given the potentially infinite number of new agents entitled to be taken into consideration, eventually an equal share will itself be a negligible amount?" This fails to take into account that agents will be exiting as well as entering the scenario in question. The validity of the question therefore relies on the nature of resource inheritance between generations of agents.¹¹³ Problems may arise when the nature of bequest is considered, Steiner believes, as agents are usually regarded as being able to bequeath their share of land to their descendants. Inheritance is often, if not always, considered a natural right of agents; possessions do not become "unowned" after an agent's death, but it is normally considered the responsibility of the owner of the possessions to say what happens to the ownership titles of the resources when they are no longer around to wield the titles to the objects.

With the right to bequeath resources intact, the left-libertarian project of self-ownership is threatened by the concentration in the hands of the few of resource shares over time. Indeed, Steiner

112 W. Harcourt, introducing the first bill for graduated death duties in Parliament in 1894.

113 Unless, of course, there is a massive surge in population. This does not necessarily invalidate the model however, as the resources of subsequent generations will be redistributed on a greater scale.

believes that the power of bequest is a “pure creation of the law” and not itself a natural right.¹¹⁴

“My argument is simply that the power of bequest cannot be included in the bundle of incidents that constitute property rights as described in previous sections.”¹¹⁵ Rather than it being defended in terms of what is 'due' to each agent in terms of their natural property rights, Steiner claims that the right to bequeath is almost always defended “in terms of the needs of the deceased's dependants and his or her presumed overriding concern for their welfare.”¹¹⁶ The obvious libertarian complaint about this sort of defence is that it fails to take into account separateness of persons, although as Steiner rightly points out “many natural right thinkers, Herbert Spencer and Robert Nozick among them, treat the power of unfettered bequest as presenting no more conceptual difficulties than the power to make gifts inter vivos, which they correctly regard as being an unimpeachable incident of natural property rights.”¹¹⁷ It is straightforward to see where Nozick and Spencer are coming from; if agents are free to transfer property when alive, and the property is theirs alone to transfer, why should the death of the transferring party make any difference in regards to the free wishes of that agent as to what should happen with the property when it is no longer possible for them to possess it?

So how can Steiner defend denying a right to bequest? In the same style as when defining the exact content of a right, where Steiner turns to Hohfeld's famous pseudo-legal analysis of duties and obligations, he turns to some other legal theorists to point out what a strange phenomenon the

114 W. Harcourt, quoted in H. Steiner, *An Essay on Rights*, p.252.

115 Ibid, p.251.

116 Ibid, p.252-3.

117 Ibid, p.253. “Inter vivos” is simply a term describing the consensual transfer of property between two living agents.

idea of bequest really is.

The rights, duties, and powers involved in testamentary succession are, as most texts in jurisprudence confirm, necessarily founded upon a fiction. J. W. Salmond explains: “The rights which a dead man thus leaves behind him vest in his representative. They pass to some person whom the dead man, or the law on his behalf, has appointed to represent him in the world of the living. This representative bears the person of the deceased ... Inheritance is in some sort a legal and fictitious continuation of the personality of the dead man, for the representative is in some sort identified by the law with him whom he represents ... To this extent, and in this fashion, it may be said that the legal personality of a man survives his natural personality ... Although a dead man has no rights, a man while yet alive has the right, or speaking more exactly, the power, to determine the disposition after he is dead of the property which he leaves behind him ... This power of the dead hand (*mortua manus*) is so familiar a feature in the law that we accept it as a matter of course, and have some difficulty in realising what a singular phenomenon it in reality is.”¹¹⁸

The nature of transfer via bequest from one party to another requires the presence of a third party, normally a practitioner of law, who acts on the pre-death wishes of the deceased after their passing. Essentially, Steiner is arguing that the on-going justice of the title to the property depends on something bigger than the simple transfer of a right from the deceased to the executor of the deceased's will; it in fact depends on the executor of the will adopting the entire personality of the deceased party. The deceased party evidently cannot be an active part of any rights-based situations, in the sense that a right requires an active moral agent to possess it. For, if the will as wielded by the executor is the same as that of the deceased, as it must be for a legitimate property transfer, then it must include the opportunity for the executor of the will to change his mind as to the further transfer

118 Ibid, p.256.

of the right to the property.

What Steiner is arguing, through the quoted legal theorists, is that the accepted legal form of a right involves the liberty to alter one's wishes at any time before the object is transferred (and that it is impossible for a deceased person to wield a right; all powers over objects must reside with the living). Say I told you I was going to give you my football shirt tomorrow, but in fact I gave it to someone else that evening. While you might be cross at my deception, you could not deny I am within my rights to do such a thing, given my unfettered possession of the football shirt up until its point of transfer. According to Steiner (and originally Hohfeld), the liberty to change one's mind, to use one's agency in regards to alteration of one's legitimate title, is a necessary feature of a right, and its presence is required in all just titles to property.¹¹⁹ This is because all duties must be correlative to the rights of other agents – it would make no sense to say I have a right everyone refrains from interfering with my property if there is no one around who could feasibly interfere with it.

Red has appointed (a) living person, White, as his executor and authorized him to perform the (posthumous) transfer. But here we encounter the problem of how White's duty, if he has it, can be understood as a correlative one: a duty owed to another person. For a correlative duty, it will be recalled, is one which another person holds powers to waive or demand (and enforce) compliance. Who has these powers in respect of White's duty? Obviously not Red, since *ex hypothesi* White's duty cannot be performed until Red dies and is not merely contingently, but rather necessarily, incapable of waiving or demanding anything.¹²⁰

119 Ibid, and W. Hohfeld, *Fundamental Legal Conceptions*, Yale University Press, New Haven, p.92

120 H. Steiner, *An Essay on Rights*, p. 255.

The idea of the right to bequest being a natural right identical to gifting is thus a misnomer, Steiner is claiming. This is for two reasons, firstly that the transfer of property must involve a living will executor adopting the titles to all the deceased's property and business, and secondly that these titles are not complete titles; the executor of the will does not possess the liberty to do as he wishes with the property. In the first case, it is a 'fiction' that the executor can adopt the 'personality' of the deceased; can the rights to the self really be waived to the extent that, upon your death, you can pass all those rights to another agent? Can another agent really 'be' you? Steiner concludes once a particular physical body is no longer with us, the rights to that body, and thus the rights to the ownership of any aspect of that body, die with it.¹²¹ As for the second reason, Steiner states that all duties, rights and obligations are necessarily held in respect to another agent, but that this cannot be the case with bequest. The executor of the will owes it to the deceased to distribute his property and affairs as the deceased sees fit, but, as you cannot be held to a duty owed to someone who was a moral agent but is no longer a moral agent, this is not a recognisable duty on the part of the executor. Given that there is no agent who holds the duty over the executor, the executor may seemingly, in legal terms, do as *he* will with the property of the deceased. It would be fair to say, in terms of what is considered 'the norm', that the executor of a will may not alter the wishes of the deceased as he sees fit; indeed, this would be seen legally as interference with a binding legal document. Steiner's point is that the document should cease to be binding upon the death of the agent to whom the duty is owed, and given that, perversely, this is the entire point of the document in question (it is not to be acted upon *until* the death of the agent), a will cannot be treated in the

121 The transfer to an external agent of ownership rights to the self is a highly contentious point anyway, even while an agent is living; see the "happy slave" discussion in the chapter on G.A. Cohen.

same way as a contract. Steiner thus believes that the right to bequest cannot be considered in the same way as the natural rights to property and the transfer of property we have been analysing, and that this legitimises treating it in a different manner.

How, then, should we treat the property of the deceased, if we are not to let them distribute it as they see fit after their demise?

...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, as we've seen, each person has an original right.¹²²

So, when an agent who necessarily owns himself dies, the titles to property and resources he held *die with him*. As the title to the property is, for all intents and purposes, extinguished, the property then reverts to being unowned. So, Steiner has developed an argument separate to the need for an equal share of natural resources which states that agency ends as life ends, and given that a non-agent cannot hold resources, these resources become unowned. This argument is distinct from the one in the previous section, but both arguments lead to the justified removal of some resources from an agent's possession, and together these resource streams can be used to fund a distributive program. This again makes them distinct from Nozickian self-ownership and avoids the problems of resource-poor agents being unable to utilise their rights in a meaningful fashion.

122 Ibid, p.258.

The Nature of the Global Fund

To look at the specific nature of Steiner's redistributive powers in greater depth, a further vital point to make, similar to the statement that every agent must have equal rights, is that *everyone* is due a share of these resources – every agent has a right to an equal share.

All persons are justly possessed of original rights to *initially unowned things*: that this, those things which are originally unowned (natural resources) and those things which have come to be unowned (through abandonment and death)... no specific person originally holds a title to any specific such thing. Nevertheless, each is entitled to an equal portion of them.¹²³

The obvious conclusion to draw from the two descriptions of which agents are eligible for receiving redistributed funds (“all persons” and “each is entitled”) is that this fund is *global* in scope. It must not discriminate between agents based simply on their location, especially as the fund refers to *all* unowned things. While all may be receiving the payment, clearly some people will own greater than their fair share of resources. In reference to resource ownership, these “over-appropriators”, as Steiner calls them,¹²⁴ will pay an amount correlative to the amount of land they have privatised over the average, so this amount is itself related to the number of agents (meaning it adjusts itself relative to births and deaths). While everyone will receive a payment, anyone who owns any land will have to make some sort of payment. Those who own the average amount will find their payment into the fund is cancelled out by that which they receive from the fund, and so predictably the payment owing to over-appropriators will not cover the amount they have to pay

123 Ibid, p.268.

124 Ibid.

into the global fund, while under-appropriators will make a net profit. The fund will also pay out as a one-off lump sum payment to those attaining the age of majority, not in terms of smaller payments over a certain time period, as a welfare state is generally imagined. To offer payment in smaller sums would be to suggest that the agent was incapable of sufficient planning so as not to waste the resources all at once, and essentially, to use a Nozickian term, infantilises them. It also gives them less liberty in terms of resources – those given a lump sum as opposed to a regular payment will be able to achieve their resource-based goals faster. This means the fund remains neutral towards differing conceptions of the good life (if I wish to do something expensive now, I am penalised by smaller payments; essentially the fund withholds money from me as if I cannot be trusted to use it wisely), and avoids a lot of the problems of constant recalculation necessarily involved with a constantly shifting level of redress. The specifics and minutiae of the global fund are discussed in *An Essay on Rights'* epilogue, but these are the important points to be going forward with.¹²⁵

Combined, the two “loopholes” that constitute shared global resource ownership, which are both consistent with the laws of self-ownership, form a basis for a left-libertarian theory formed around the liberty of agents that must incorporate both a strong commitment to natural rights and to financial support that ameliorates to some extent the gross material inequalities within a society which avows any form of taxation on earnings. Libertarian rights are ‘impossible’, or formal, without guaranteed access to resources necessary for their exercise. With Steiner’s redistributive program, formal rights are transformed into actionable or ‘real’ rights. That they can do this without fatally damaging any of Nozick's moral premises shows that there are promising grounds for the resurrection of self-ownership as a serious contemporary theory of justice.

125 The epilogue runs from p. 266 to p.282.

The Self-Ownership Labour Paradox

Steiner has one further major problem with Nozick's theory of self-ownership; he believes, given that an agent bears the title to any object or resource that is solely the product of their labour, that, within a Nozickian account of libertarianism, childbirth (which is only possible through the labour of the parents) creates a paradox which means it is impossible for any agent to own themselves. Essentially, in Nozickian self-ownership, no agent can be a self-owner; they are the property of their parents, who are the property of their parents, and so forth. It is important to overcome this seeming paradox if we are to claim that anyone is capable of being a moral agent who rightfully owns themselves.

Labour gives title in self-ownership, as we have already established. The input of individual labour is also an unavoidable part of creating and nurturing any child. Given this, does self-ownership imply that each agent is the property of their parents? Without an intergenerational separation of ownership rights to the self, we are left with a self-ownership structure closely resembling Filmer's divine right of Kings, the paper that Locke was rejecting when he wrote *Two Treatises*. In Filmer's work, the only true self-owner was Adam, and his title was passed down through generations to a rightful ruler. Thus, this individual was the only individual with a justified case for having dominion over everyone else.¹²⁶ Relating this to our paradox, the 'first individual' would have legitimate title over themselves, and every other title would have to be directly derived from this, denying the plausibility of universal self-ownership. If individuals became self-owners

126 R. Filmer, *Patriarcha and Other Writings*.

automatically, we would obviously face no problems in the coherency of using labour to create self-owners. Okin elaborates on the paradox thus: “The assumption that each person owns himself... can only work so long as one neglects (this) fact... persons are not only producers but also the *products* of human labour 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 others things are, by whoever made them.”¹²⁷ No agent is immaculately conceived and brings themselves up; each requires the input and resources of another to survive and prosper.

Steiner's example to illustrate the problem is a man who owns a machine he uses to make bricks. He uses this, by himself, to sell bricks for a profit. As he owns the machine, and all of the materials he puts in which are necessary for the machine to make the bricks, he would expect to be the rightful owner of the bricks the machine produces. As he owned the machine (X) and the necessary materials (Y), he must be the title holder of the product (Z). Thus, in a broader sense, when we consider the product of objects already subject to ownership titles, title over X and Y must give title over Z.¹²⁸ It would appear from this that the status of the ownership of the bricks and the status of an agent's offspring are the same. In both cases, self-ownership seems to support the title to the 'products' being owned by their creators. Given our commitments to agents being the natural bearer of *their own rights*, this statement is a contradiction in terms. Self-owners cannot, upon the occasion of their coming into being, immediately be subject to another agent's ownership. It then follows that “if persons do not even ‘own’ themselves, in the sense of being entitled to their own persons, bodies, natural talents, abilities and so on, then there would appear to be no basis for

127 S.M. Okin, *Justice, Gender and the Family*, 1991, Basic Books; New York. p.79. Italics are Okin’s.

128 H. Steiner, *An Essay on Rights*, p.240.

anyone's owning anything else."¹²⁹

Applied retrospectively, this makes self-ownership regress through the generations. Steiner lays out the problem thus:

1. It's logically possible that all persons (originally) are self-owners.
2. All self-owners (originally) own the fruits of their labours.
3. All persons (originally) *are* the fruits of other persons' labour.
4. Therefore it's logically impossible that all persons (originally) are self-owners.¹³⁰

Observing the steps Steiner takes to set out this paradox, it is clear that the only real promise for a rebuttal dismissing this paradox lies in the logic connecting the second and third points. Denial of the first point is equivalent to upholding the fourth point. It is not as if the second point is easily dismissed either; if labour mixing is impossible, so is acquisition or development of just title, and thus an historical entitlement theory is rendered unjustifiable. Abandonment of this pillar of self-ownership would result in incoherency just as pronounced as that presented by the paradox in question.¹³¹ Our attack must therefore be focused on the logic which takes us from step 2 to step 3, which would involve a discussion of what constitutes labour in the conception and rearing of a child, with a view to modification of point 3 which can eliminate its progression into point 4.

129 S.M. Okin, *Justice, Gender and the Family*, p.86.

130 *Ibid*, p.244.

131 Nevertheless, abandonment of this point is the foundation of the welfare state in Rawlsian liberalism, for example. Only the extremely strong rights to the self present in libertarianism thus necessitate this discussion.

Taking a Lockean view of labour mixing creating individual entitlement, there seems no way around the statement that child rearing involves the labour of the parents. Locke's definition of the amount of labour one needs to exercise to be able to claim control rights in an object is notoriously soft, as drinking from a stream (or at least the labour involved in doing so) is enough to claim right over the water you have consumed. Similarly, Nozick's conception of the amount of labour required to make a claim is little more than a trivial amount of input.

As such, it is not difficult to back up the claim that labour is what goes into the conception, birth and continuing existence of agents. The literal existence of the self must have derived from a moral agent. To put it another way, Fred is only here because his parents conceived him, as are you, or any of us. If we ignore any preceding generations, Fred's parents are self-owners. As such, when his parents labour on something they should expect to be rightful owners of the product of their labour. This is an uncontroversial premise within theories of self-ownership when applied to objects they by using their wages, for example. However, their labour certainly went into creating Fred, as he was conceived, borne and brought up by his parents. Fred, as a physical object, is directly attributable to the labour of his parents. Does this mean Fred's parents entirely own him, as they would any other object they mixed their labour with? It seems, given our concessions to a) the genealogy of complete ownership of labour power and b) our commitment to bestowing ownership rights by way of justifying natural rights, we must concede they do. There is little prospect of simply dismissing the paradox on the grounds that the effort involved in raising a child cannot be defined as 'labour', at least in the sense the most famous proponents of self-ownership wish to appropriate the word. Indeed, the sheer amount of resources, which are presumably to be obtained by labouring for compensation, that go into the upbringing of a child, to feed and clothe them and

so forth, means that there can be no object-title separation of the act of labour from the act of purchasing the resources necessary for the continuing existence of the child.

However, let us not confuse maintenance with creation. Steiner feels the only possible solution to this problem comes from analysing the 'creation' of the child, so to speak. For the child to be fully the property of the parents, the creation of the child must be entirely imputable to the parents. Can we say this is entirely the case? While 'labour' is doubtlessly expended, can we truly link conception to Steiner's example of the brick machine? In this example, the owner of the brick machine contributed all required 'ingredients' as well as the technology required to create the bricks. While parents of a child may expend their labour conceiving it, can it be said they 'make' it in the same way the owner of the machine 'makes' his bricks? It seems too simple to try and relate ownership of a brick via its creation to ownership of a being via its creation. One is created wholly, and definitively, while the other is 'fertilised' by the parents, and then grows, mutates and alters entirely out of the control of the 'owner'. Nature, in the form of the germ-line genetic information, plays a part in the conception of a child that is not within the control of the parents, and so Steiner suggests that the critical role that nature itself plays means that the labour the parents put in does not constitute a complete picture of the contributing factors necessary to analyse rightful ownership.

Steiner believes that, rather than the direct creator of the brick, the parents' labour represents a position much like Aristotle's "unmoved mover" conception of God, simply the being that "made the first move" in creation narratives. The parents, rather than directly moulding and creating the child, have simply taken the first step, and nature has done the rest. Is this enough to create a natural

right (which self-ownership dictates must be held by the agent it refers to)? Steiner talks at length about how DNA and evolution are controlled more by nature than the being itself - “a hen is an egg's way of making another egg.”¹³² This means that the 'actions' of the DNA itself dictate much of the nature of the being produced, as opposed to the parents' direct input. He feels that the labour that goes in to the child's conception is not entirely attributable to the parents, and that the presence of natural factors contribute enough to the conception and development that it is unrealistic to attribute everything that occurred solely to the parents. In terms of self-ownership, the parents of the child do not 'own' the DNA or natural processes that went towards the creation of their offspring. Indeed, a proper statement of this theory might be enough to create theoretical space for ownership of the self within the rights of a child, or in a sense, to nominate 'nature' as the font of 'natural' rights.

Steiner attempts this by way of a complex example involving a photocopy. Imagine I make a photocopy of a drawing you have made, without your permission. Even though I have contributed the ink, copier machine and paper, can I now have an unencumbered title to the photocopy? No, because the drawing itself, present on the paper I used to make the photocopy, is yours. Bearing this in mind, imagine now that someone else comes along, steals my photocopy, and photocopies it onto a drawing they have sketched. This creates a new picture. Does this new picture solely belong to the person who stole my photocopy? Yet again, it does not. This shows that those involved in the process of 'making a copy' cannot ever claim full ownership over the original they are copying, unless that also belongs to them.¹³³ Returning to the matter in hand, Steiner then asks us to imagine

132 Samuel Butler, quote in H. Steiner, *An Essay on Rights*, p.250.

133 H. Steiner, *An Essay on Rights*, p.245-7.

the first two people, “whom we'll unimaginatively call Adam & Eve.”¹³⁴ They are the first people, by merit of their parents (who must have existed) not being recognisably 'human'. Therefore, the parents are not the product of an individual's labour, and are a 'natural resource'. Steiner then describes the basic process of DNA evolving and mutating, saying

The DNA strands within their parents' germ cells were, so to speak, separately photocopied and two of the photocopies were then superimposed on two others to yield two zygotes, each of which then got very busy generating an extended sequence of DNA-strand replications and recombinations which, with the concomitant cell divisions and differentiations, resulted in two sizeable clusters of somatic and germ cells whom we call Adam and Eve.¹³⁵

The drawings in the photocopy example are the original genetic code, and we, the self-owners, are the copiers of this code from generation to generation. We can only own our children if we own all the processes that went into creating the children, as well as the labour involved. So is Cain, the son of Adam and Eve, a self-owner? Steiner feels he must be to some extent, as he owes his existence to a 'natural resource'. Steiner feels his highlighting of the importance of natural factors in childbirth and evolution is enough to show that, while it is impossible to deny parents put their labour into creating their child, nature does enough of the work, in terms of a labour mixing proviso, that a parent's relationship with their child cannot be termed ownership. Nature endows the children with their natural rights over themselves, and in the case of Steiner's work, the right to ownership of an equal amount of unowned things, as we have established. Nozick can use Steiner's theory about nature endowing self-owners with natural rights as far as giving them natural

134 Ibid, p.247.

135 Ibid, p.250.

ownership over themselves, even if he does not want to go as far as an equal right to natural resources, to overcome Okin's complaint about the coherency of self-ownership.

Conclusion

Now that we can at least move past this paradox, it is possible to appraise Steiner as an important critic of Nozickian right-libertarianism. In summary, Steiner has a more analytical approach to proving the necessity for the existence of self-ownership than Nozick, but still ends up defining justice in terms of strictly negative rights. However, the exact content of these negative rights take a slightly different path, as I have highlighted in the passages following on from his depiction of justice as rights denoting "allowances" of personal freedom. These allowances are equal in size, and furthermore, according to Steiner, they should incorporate an equal allowance of unowned things, as otherwise our natural rights themselves become unworkable. Essentially as it stands, Nozickian self-ownership will render some agents unable to enact their natural rights, due to the lack of a guarantee of access to resources. In short, Nozickian rights will be rendered formal for a notable amount of the population. Agents should have an equal right to scarce natural resources, or essentially to unowned things, and this is funded, consistent with the principles of self-ownership, in the form of a "land rent" that pays into a global fund which is distributed equally amongst all agents. Furthermore, the idea that agents can still wield control rights over objects posthumously is a fallacy which contradicts the nature of rights themselves. Thus, their former possessions join the ranks of unowned things which must be equally distributed if rights are to remain compossible.

This redistribution serves to ameliorate the main problems that have prevented self-ownership achieving greater prominence by disassociating it from strict right-libertarianism. In other words, it is a form of self-ownership that does not contradict any of Nozick's cherished libertarian positions, but simply draws out their logical implications into a theory which does not leave those with few resources at the mercy of those with more than enough. It also makes self-ownership a derivative of a basic value of liberty, represented in Steiner's argument by the need for rights-sets to be equal, as maximum compossibility equals maximised liberty for all. There is a cost to this move, however, as the principal of shared resource ownership used to give agents greater liberty than in a structure only concerned with simple self-ownership is a controversial one, and undoubtedly one that Nozickian libertarians would struggle to support. In terms of justifying his these by reference to liberty, though, for Steiner it is not just the award of natural rights, it is *how useful* those rights are when we come to action them, a major theme (although presented very differently) of the work of our next theorist.

So, there is another prominent left-libertarian who, on a structural level, agrees with Steiner in that he bases his theory on the need for self-ownership as a derivative value to respect some other value, but uses this to develop a method distinct from Steiner for moving past the simply formal rights that they both come to associate with Nozickian self-ownership. After surveying his position within the debate, I will move on to general criticisms of self-ownership itself, before using the results of these chapters to justifiably modify and hopefully improve on Nozickian self-ownership in the final chapter.

Phillippe Van Parijs

Phillippe Van Parijs, like Steiner a left-libertarian, famously made his entry into the self-ownership and distributive justice debate with his book *Real Freedom for All*. Throughout his work, Van Parijs wants us to draw a more thorough distinction between the freedom inherent in right-libertarianism and a more nuanced and richer conception of freedom. He suggests that the type of freedom Nozickian self-ownership has focused on, freedom from bodily incursion, assault, coercion and so forth, should be labelled 'formal freedom'. This is as opposed to the separate kind of freedom he believes he has identified, 'real freedom'. His book is an attempt to illustrate what 'real freedom' is, which to Van Parijs is (partly) the freedom from the absolute need to work to acquire the goods to subsist on.¹³⁶ Van Parijs accepts Nozick's argument that formal freedom is intrinsically related to self-ownership, and a necessary part of real freedom. In this chapter I will explain why self-ownership and formal freedom are vital components of Van Parijs' free society, but to achieve real freedom they require supplementation with a redistributive principle enabling equality of opportunity, which, while consistent with the principle of self-ownership, enables the maximisation of individual freedom. Like Steiner, Van Parijs assumes there is a basic principle underlying self-ownership, and that self-ownership is a necessary but derivative part of it. 'Real freedom' is a useful term for embodying the primary concern of this thesis, that Nozickian self-ownership rights leave some unable to utilise their rights at all. Formal freedom may not be useful freedom, but can be the

136 Van Parijs also partially defines real freedom on p.4 of *Real Freedom For All* as "(un)restricted by any limit to what a person is permitted or enabled to do." This brings up the controversy discussed in the introductory chapter, that when you prevent an agent from assaulting a second agent, you make the first agent less free simply by virtue of denying his freedom to assault the second agent. This seems intuitively correct when talking about freedom as the cardinal virtue of a theory, but flies in the face of self-ownership. In-depth discussion of this point will occur in the chapter on G.A. Cohen.

building blocks for a universal conception of individual freedom.

One: Our capitalist societies are replete with unacceptable inequalities. Two: freedom is of paramount importance... One of [this book's] most central tasks... is to provide a credible response to the libertarian challenge, that is to the claim that these two convictions are mutually exclusive, or that taking freedom seriously requires one to endorse most of the inequalities in today's world – and more.”¹³⁷

Under a state that embodies the virtues of self-ownership (as Nozick sees it), agents must sell their labour power in the job market, as this is the only way they have (bar original rights to an equal ownership of natural resources as Steiner suggested) of obtaining the basic goods they require to survive, such as shelter and food. Being in this situation can be described as setting the grounds for formalised freedom and extreme poverty, a scenario that Nozick does not deny occurs, but denies that any other agents can be held to blame for in a rights-based individualist theory. While Nozick suggests this problem is not the concern of the state, this answer has not proven satisfactory to any theorists of a more liberal persuasion, Van Parijs amongst them. If we are to be serious about the freedom that Van Parijs claims libertarians must take so seriously, then we must strive for 'real freedom', which involves awarding every agent the basic opportunity to act freely.

[A free society] is, first of all, a society whose members are all formally free: there is a well-enforced structure of property rights which includes the ownership of each by herself. And it is, secondly, a society in which opportunities – access to the means for doing what one might want to do – are distributed in maximin (or, more pedantically still, leximin) fashion: some can have more opportunities than others, but only if their having

137 P. Van Parijs, *Real Freedom For All*, p.1.

more does not reduce the opportunities of some of those with less. In other words, institutions must be designed so as to offer the greatest possible real opportunities to those with least opportunities, subject to everyone's formal freedom being respected.¹³⁸

They are 'really free' in the sense that they are free from having no option but to sell their labour on pain of death. This 'real freedom' ensures all agents are equally able to act without the worry of being rendered 'less free' by demands on their time in the form of labour that they must perform to subsist. The distinction between real freedom and formal freedom is vital to us here as Van Parijs is saying that a classic libertarian conception of freedom provides us only with formality – we have rights, but these rights cannot themselves provide freedom, as we need an extra dimension, that of opportunity in the form of guaranteed property, which we require before we can usefully utilise our rights. Van Parijs does this by offering every agent a universal basic income, or UBI, which involves giving every agent an unconditional (that is, for example, not dependent on whether they are in work, or out of work, or the amount of resources they currently possess) monthly stipend for them to spend as they will, and provide them with the resources to exist independently of labour if they wish. The UBI provides the *opportunity* Van Parijs feels is missing from right-libertarianism by allowing agents to follow their life plan, or to do whatever it is they want to do, without being coerced into labour for subsistence. Van Parijs's basic criticism of right-libertarian self-ownership is that it consists of the rights without the freedom the rights should be trying to promote – self-ownership rights are crucial for self-protection, but they cannot go any further than self-protection, that is, they cannot be considered the best tools for giving an agent liberty, without a guarantee of access to the resources necessary to be able to enact one's will, or to

138 Ibid, p.4-5.

enable one to do what one might want to do.

Essentially, one of the cardinal values of Van Parijs' state would be equality of *opportunity*, or the freedom to pursue any course of action I wish relative to my life plan. Agents in a Nozickian state may have less opportunity to pursue their conception of the good, as they may not have the resources to support themselves while they do so. The question is thus how might the state go about promoting opportunity for all agents, achieving real freedom and not just the formal freedom of right-libertarianism and Van Parijs' answer to this is that the state might go about funding a UBI. However, Van Parijs' account of why there is a need to safeguard every individual's livelihood explicitly invokes a conception of self-ownership, and so he is unable to directly tax the product of labour given that self-owning agents have a right against the coercive confiscation of their property.

Like Steiner, Van Parijs sees self-ownership as a derivative of a more basic value, in this case freedom (often expressed as security). So, again, we find a libertarian theorist making self-ownership both a major and necessary part of his theory, and a principle which is subservient to a deeper ethical value. Unlike Steiner, Van Parijs allows this higher principle, and also equally important dimension of opportunity, to impose some restrictions on the extent of self-ownership's personal rights structure, as I shall show in the following section.

Given this particularly libertarian starting point (although he calls it real-libertarianism), he goes on to provide a more fully realised account of how to provide conceptual room for a 'welfare state' model than that of Steiner's that we discussed in the previous chapter. Although Van Parijs'

account is more vividly depicted, and expounded in far greater depth over the length of the book, that does not make it a more apt solution than Steiner's. Both theorists agree that, while self-ownership is of paramount importance to a theory of individual liberty or freedom, it must be supplemented with a theory of resource distribution that respects the basic aim they feel self-ownership is a vehicle for the protection of, otherwise self-ownership as they interpret it risks contradicting itself on a basic level.

Self-Ownership and Real Freedom

Although we have made enquiries into the general nature of what it is to own one's self, what we have been discussing (or at least the concept derived from the work of Locke and Nozick which I outlined in the introductory chapter) should, in comparison to Van Parijs' conception of self-ownership, strictly be termed a strong concept of self-ownership. This is because self-ownership as Nozick explained it would entail a remarkably strong (some might say dogmatic) 'sphere' of protective rights for the individual and the individual's property. Where the actual explicit theory of self-ownership diverges from other rights-based theories is to use the right to the self as a justificatory basis for rightful ownership of other objects that the self has come into contact with.

A free society should give a priority to security over self-ownership, and to self-ownership over leximin opportunity... this priority is of a *soft* kind. It does not amount to a rigid lexicographic priority... 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... justice may be only one of many desirable properties of a society. Perhaps one should depart from strict or maximal

justice, for example, if doing so would enable us to make social relations more fraternal.¹³⁹

The shift Van Parijs makes between 'hard' and 'soft' conceptions of self-ownership seems to refer to self-ownership's position as a derivative value of freedom. Hard self-owners hold that income tax is illegitimate, as I own myself and therefore I am the rightful 'owner' of any actions I choose to make, including those that accrue me rewards from my labouring. Van Parijs' soft conception would say that, while it is clearly true that we own ourselves, and that when we labour we should be entitled to compensation for it, labouring does not entail being entitled to one hundred percent of the surplus value created. It simply creates a legitimate 'claim' which we must have good reason to override. This is generally due to a counter-proposition to the idea that we are the rightful owners of our labour, such as the common objection 'labouring is impossible without entering into a market, and to enter into a market implies a number of rules and laws which override your self-ownership that must be accepted before entrance into such a market is feasible.'¹⁴⁰ Such a conception of self-ownership questions the rightful appropriation of labour enough as to leave the exact division of resources up for debate. Van Parijs' soft conception of self-ownership imposes clauses on self-ownership to subjugate it to a state whose purpose is to maximise freedom by creating opportunity, which itself is maximised by way of the UBI payment.

He begins his book with a brief investigation into the different ways socialism and

139 Ibid, p.26-7.

140 James W. Child, *Can Libertarianism Sustain A Fraud Standard?*, Ethics, Vol. 104, no. 4, 1994, p. 730, & Jeffrey H. Reiman, *The Fallacy of Libertarian Capitalism*, Ethics, Vol. 92, No.1, 1981, p. 90-1. The market-based counter arguments to self-ownership seem to take either this form, or the related form 'a market relies on a social structure, and thus a strong individualist theory such as self-ownership cannot be held to apply within a market that necessarily involves interaction with other agents.' Which source is this quote from? Also look at reference style again

capitalism affect the freedoms of agents, with a view to showing which method of governance makes us 'more free'. Again, this demonstrates his primary concern being with freedom, not self-ownership as a prime value in itself. Socialism cannot, Van Parijs claims, be an “adequate” depiction of a free society. To show this he suggests two scenarios, one (A) in which everyone may scratch their own nose when it itches, and a second (B) where everyone must obtain permission from everyone else to scratch their nose. Situation B is analogous with a situation where the means of production are in public ownership (that is, they are equally or communally owned by all – profits from goods production are held by everyone) and not private ownership. Van Parijs is telling us that in situation B, despite being 'free' in the sense that I have access to the means of production and thus seem freer than if I did not, I am in fact unfree, as my use of it depends on everyone else. This objection is also an efficiency-based objection; situation B is inefficient because it will take time to obtain everyone's permission, time which could be spent utilising the means of production. Giving everyone a say in every decision does not make anyone maximally free as it leaves the lives of individuals to the whim of other, unassociated individuals. Much like liberty in Steiner's more technical account of impossibility, we see here that private ownership of resources is the method that is most likely to maximise individual freedom, and make us really free.

Van Parijs says this simple example suggests the usefulness to a theory based on the importance of freedom of a system of self-ownership, and thus private ownership of property, in modern political thought.¹⁴¹ A free society must include a the laws of self-ownership, making it “one which leaves each of its members to decide what does and does not happen to herself”¹⁴² by

141 Phillippe Van Parijs, *Real Freedom for All*, p.9

142 Ibid.

giving agents the rights to themselves. Self-ownership, according to Van Parijs, is an essential part of a free society, as through it agents can be consistently free to act according to their desires, without depending on the decisions of other agents for the fulfilment of their desires. This does not entirely rule out socialism as the best basis for maximising freedom in tandem with a theory of self-ownership, Van Parijs claims, as while it may be true that the public ownership of the means of production makes individuals less free in terms of labour, it does not prevent them from doing what they wish with their selves in the private sphere. He believes that labour market mechanisms could redress the problem of efficiency in a socialist market, even though, as Van Parijs admits, this would almost certainly require an authoritative figure for decision-making on allocation of labour to means of production.

It is important to define where Van Parijs feels self-ownership fits into a structure that defines a free society and thus how it goes towards aiding real freedom itself. If we can do this, we will be in a better position to judge the extent to which Van Parijs' perception of self-ownership coheres to our Nozickian concept of self-ownership, and how it establishes a left-libertarian basis. Van Parijs realises this is an important job, as the academic persuasiveness of his theory rests largely on its justificatory basis, and he explicitly spells out the fundamentals of his theory in the first chapter.

“What is, then, a free society? It is a society whose members are all... as really free as possible. It is a society that satisfies the following three conditions:

There is some well enforced structure of rights (security).

The structure is such that each person owns herself (self-ownership).

The structure is such that each person has the greatest possible opportunity to do whatever she might want to do (leximin opportunity).”¹⁴³

Given that we are committed to the base idea that each person owns themselves, that the correct way to express this thought politically is through a structure of rights, and that it is right to enforce the implications of this statement with a monopoly on force, then the only condition that leaves us any room for analysis is 3, and what limits are set on its structure by 2. Thus, as we are trying to understand the implications of self-ownership we shall try to analyse the limits set on 3 by the employment of 2. The way this statement is formulated here is extremely vague, but the phrase “greatest *possible* opportunity” suggests that the ideal (or 'most free') society must definitively provide more opportunity than any other comparable society. Specifically, on Van Parijs' terms, “the person with least opportunities has opportunities that are no smaller than those enjoyed by the person with least opportunities under any other feasible arrangement.”¹⁴⁴ The least well off member of society must be maximally free, but only if freedom is defined in terms of opportunities. Thus, we are searching for the preferable choice of society, on Van Parijs' terms, and a brief sketch of it should suffice to be able to compare it to Nozick and Steiner's models of a structure of laws that embodies self-ownership.

The first issue to tackle is the interplay of these three conditions within a free society. How

143 Ibid, p. 25.

144 Ibid, p. 25. Vallentyne, in his review of *Real Freedom For All* (Ethics, Vol. 107, no. 2., 1997, p.326-7) suggests that Van Parijs' condition to define the best society is Dworkin-esque 'envy-freeness' amongst agents in terms of comparative opportunity sets. Van Parijs discusses this on p. 51-4 of *Real Freedom For All*.

do we decide which condition takes precedence in situations where the dictates of the conditions clash? Van Parijs suggests paternalistic government actions, like a law forcing the wearing of a seatbelt or compulsory education, as examples of self-ownership being reasonably overridden by the dictates of the other points. Compulsory education, for example, would surely increase the opportunities available to agents by increasing their skill set, and even if they wish to opt out of such a system, Van Parijs believes it is our duty to them to override their self-ownership and force them to undergo education. Furthermore it is our duty to fund this education, and it is acceptable to make us fund it, although we shall get on to methods of doing just that which are consistent with self-ownership soon. Of more interest to us than what we can force children to do for their own good is the law that forces the wearing of seatbelts, and other laws affecting strictly personal safety of adults. Van Parijs believes we can legitimately restrict self-ownership rights in cases of rights violations (imprisoning an agent guilty of murder reduces him to non-agent status in some respects, but we do this to protect the rights of others and punish for his infraction), so why should forcing an individual to wear a seatbelt be different? It overrides his self-ownership, but only in a far more trivial way than imprisoning him.

The difference here is surely protection of other unassociated agents; the imprisoned agent is imprisoned because he is liable to punishment having violated the rights schema, and the security of all is prioritised over the rights of one agent.¹⁴⁵ The offending agent is thus imprisoned for the security of all as he may offend again, whereas the pro-seatbelt law is ostensibly a case of personal protection rather than preservation of others.¹⁴⁶ Is it legitimate to override self-ownership to insist

145 Although this is debatable, there is no room to enter into philosophy of punishment literature here.

146 Obviously it could be argued that one person not wearing a seatbelt is likely to injure others in the car wearing

individuals are as protected as possible, even if they are the only individual at risk in the event of an emergency? Other examples include the law on wearing life jackets, cycling helmets and so forth. Should self-owners be able to weigh up the personal risks they are taking and decide which safety equipment to wear when undertaking dangerous practices? Van Parijs agrees gentle restrictions of self-ownership or personal safety should be in place, and simply insists on a soft lexicographical priority structure amongst the three conditions. “A free society is one in which people's opportunities are being leximinised *subject* to the protection of their... self-ownership.”¹⁴⁷

Seemingly, then, self-ownership takes priority; opportunity is only the prime concern once all the concerns of self-ownership have been exhausted. Primarily, of course, security takes precedence over both self-ownership and opportunity. However, given the “soft” structure of lexical priority, Van Parijs allows the chance of overriding self-ownership in cases where “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.”¹⁴⁸ A good society will give priority to security over self-ownership and self-ownership over opportunity. While the upholding of other individual's rights in a social setting is obviously important, legitimising such rules as imprisoning criminals or restricting freedom to pollute the air, there does not seem to be the same theoretical support within self-ownership for imposing rules regarding strictly personal safety. Similarly, the paternalism inherent in the institution of the

a seatbelt, or that drivers not wearing a seatbelt are more likely to come through the windscreen in the result of a crash, and thus the seatbelt prevents accidental rights violations of other agents anyway. For the purposes of this section, imagine all drivers are alone in their car and that they will not hit other cars, only obstacles.

147 Ibid, p. 27. Italics are Van Parijs'.

148 Ibid, p. 26.

provision of healthcare or the forced contribution to individual pension plans would not chime with a Nozickian theory of self-ownership. The overriding of citizens' rights 'for their own good' is a thorny issue for any rights-based theory. It seems from Van Parijs' example that in a good society I am unfree not to wear a seatbelt, and thus my freedom has been violated, even if to a barely detectable (and distinctly positive to my life prospects) extent. Given this, self-ownership in Van Parijs takes a different form. It is more relaxed due to the priority given to maximising individual freedom by way of aiding opportunity in cases where the individual good is best served by "small" violations of self-ownership.

On Van Parijs' side, an individual's opportunity set is clearly increased by remaining alive, in the cases of personal safety. Should we not dictate to an individual they should take all reasonable precautions to preserve themselves? Can we, as Nozick certainly would, really call this a violation of self-ownership if it can only impact positively on an individual's efforts to lead the 'good life'? It seems trivial, but encroachments on individual actions, when the rights of others are in no way at risk, do seem to overall lessen the power of self-ownership as Nozick discussed it, although he did not justify it in relation to personal freedom. Right-libertarians would probably want an individual to be able to rationalise a situation, such as riding a bicycle, and realise for themselves they needed to wear a helmet for their own personal safety, while still allowing them the option to not wear a helmet. Allowing encroachments on individual rights for the sake of that specific individual's safety becomes apparent in a culture in which many seemingly needless health and safety rules are imposed that can inconvenience an individual to a much greater extent than the enforced wearing of safety helmets. Imagine the government insisted before I went out that I must wear a helmet, kneepads, arm pads, a reflective jacket, goggles, high-density clothing, special gloves, particularly

expensive boots and several lights on myself for visibility. If I do not obey all these laws, the government fines me or takes my bicycle away. While these laws are justifiable in terms of personal safety, I am less likely to want to cycle as a result, as the government has made it far more inconvenient for me to do so. Nevertheless, all these laws are for prevention of my death or injury and thus aid me in my living of the 'good life'. Has this now become an unacceptable violation of my powers of self-ownership?

Van Parijs is obviously unwilling to create a fundamental distinction between violations of self-ownership that greatly inconvenience the individual and violations that barely do so, as this would require a complex and perhaps perfectionist moral argument. Nevertheless, he is brave to starkly spell out the core of his thesis and its relation to self-ownership. Certainly, security and the idea that each individual owns his or her selves are of central, but not overriding, importance to our thesis as originally stated. Security would only be of overriding value to Nozick if the 'thing' it was securing was the security of self-ownership rights themselves. Opportunity, measured on a social scale, could certainly never form part of Nozick's conception of self-ownership, as the most straightforward way to increase opportunity and thus ensure real freedom, as Van Parijs' central thesis states, is to provide each with a minimum income. Unless Van Parijs can provide a convincing account of equality of opportunity without damaging a central pillar of self-ownership, namely that each is entitled to the fruits of their labour, then Van Parijs' idea of self-ownership cannot entirely cohere with our developed perception of, I suppose, the 'spirit' of self-ownership. A libertarian justification for the UBI is his task throughout the rest of the book, as he feels this structure will maximise opportunity, and is possible consistent with his commitment to security and a concept of self-ownership which would be recognisable to Nozick.

A society with maximal opportunity that upholds the rights to the self will be a society that defines 'real freedom'. Creating a leximin structure where security or opportunity can override self-ownership dependent on the 'scale' of violation of each condition could, however, be seen as a danger to self-ownership – as we have seen, the structure is already subject to minor change due to its derivative nature. Can equality of opportunity be married to our rigid idea of self-ownership? To see if this is possible, or even desirable, we must continue with our sketch of Van Parijs' idea of self-ownership, and illustrate the desirable features of his UBI.

The UBI and the 'Self-Owning Poor'

Van Parijs' conception of self-ownership, as illustrated above, is weaker than a Nozickian one, but again is subservient to a higher principle. Self-ownership to Van Parijs is not the be-all and end-all. He does go on, in the second chapter of *Real Freedom for All*, to expand slightly on his beliefs. He acknowledges self-ownership's consequences and logical connotations, which have implications for other parts of his theory.¹⁴⁹ Moving beyond the statement 'each individual is the rightful owner of themselves', which only grounds personal safety rights without expansion; his self-ownership actually has another dimension to it, which Vallentyne calls "leisure self-ownership".¹⁵⁰ Vallentyne defines it thus – "No wealth tax on the value of *personal* endowments (e.g., skills and abilities) is legitimate."¹⁵¹ This is a re-statement of the basic self-ownership

149 P. Van Parijs, *Real Freedom For All*, p. 36-8 & 51-4.

150 P. Vallentyne, review of *Real Freedom for All*, *Ethics*, vol. 107, no.2, Jan 1997, p.325.

151 *Ibid.* Italics are mine.

principle, that agents are entitled to the fruits of their labour. 'Skills and abilities' are the basic qualities an agent needs to be able to labour, and given the random natural dispersion of these abilities, agents will end up with unequal initial endowments. These inequalities are not, in themselves, unfair, as the distribution was natural. As the distribution was natural, and individuals are the rightful owners of their selves, taxing their personal endowments would be to claim control rights over their resources and thus, to an extent, them. Abilities and skills are also learned by education, experience and practice, and Van Parijs wishes to avoid having to say that an agent who spends several years training for a job, for instance, should have to compensate others, when he nets a lucrative job, for the years of his life he dedicated to his training.

Nevertheless, this leaves us stuck in a situation Van Parijs refers to as formal freedom – the formal rights that give us the freedom to act, but not the resources we require to actually perform these acts – to make our freedom 'real'. Real freedom cannot be realised with self-ownership alone – by itself it will leave some agents in a situation where they are unable to act on their rights in a meaningful sense, and the opportunities available to some agents will be considerably less than those available to others. "Formal freedom can only be restricted by coercion... but real freedom can be further restricted by any limit to what a person is permitted or enabled to do... Unlike formal freedom... real freedom is not only a matter of having the right to do what one might want to do, but also a matter of having the means to do it."¹⁵² Vivalto Van Parijs, we require resources to be able to act in libertarianism. "If real freedom is a matter of means, not only of rights, people's incomes are obviously of great importance. But the real freedom we are concerned with is not only

152 P. Van Parijs, *Real Freedom For All*, p.4.

the freedom to purchase or consume. It is the freedom to live as one might want to live.”¹⁵³ Real freedom is the principle underlying Van Parijs’ conception of self-ownership, and to realise this fully, self-ownership will need to change, in the sense it will need additional principles to make it as worthwhile as Van Parijs believes it can be.

This is the principle that pushes us down the path of left-libertarianism. With no agents possessing taxable income, left-libertarians are forced to account for the redistribution necessary to maximise opportunity (and therefore real freedom) using other methods. These methods cannot affect the opportunity sets of agents because their level of opportunity is of paramount importance. Their justly held personal resources must remain in their possession, and in line with theories of self-ownership, cannot be justly coercively taken from them. Much like Steiner, Van Parijs wishes to make the next step in his theory relevant to social land ownership, and the appropriation of scarce natural resources. Natural resources are different to normal objects, over which we can hold titles, because no agent ‘made’ natural resources, they were present before agents. A simple claim made by the first claimant is not enough to ensure their exclusive possession. Natural resource titles must be treated in a different way to the objects we normally consider in questions of legitimate entitlement. Agents must be allowed only a more limited ownership of natural resources (although their exclusivity of access must remain intact), and those who exploit natural resources owe other agents a rate equivalent to the opportunity they have been denied by the first claimant’s occupation of the natural resource.¹⁵⁴ Van Parijs therefore assumes private ownership is paramount, but those

153 P. Van Parijs, *Real Freedom For All*, p.30.

154 Van Parijs affirms this viewpoint in *Why Surfers Should Be Fed: The Liberal Case For An Unconditional Basic Income*, *Philosophy & Public Affairs*, Vol. 20, no. 2, 1991, p.126. This viewpoint entirely coheres with the definitions of left-libertarian and Georgist thought set out by Steiner, Vallentyne & Otsuka in *Why Left-*

who own and utilise land and other natural resources need to pay a market-based rent on their possession of the resource to the rest of society. So far, Van Parijs' plan to fix the source of revenue for the welfare state to a concept that coheres with our settled ideas of self-ownership is effectively identical to Steiner's concept as laid out in the previous chapter.

In summary, left-libertarianism derives two principles from a concern for maximising individual freedom or liberty – self-ownership and the equal ownership of scarce natural resources. Self-ownership preserves a 'sphere' of individual liberty, to borrow a phrase from liberalism, whereas the equal ownership of scarce natural resources preserves a 'sphere' of individual private resources, enabling agents to act out of self-interest, as well as self-preservation offered by rights. So, true freedom or liberty to left-libertarians is ensured by two separate principles – Nozickian self-ownership, as it is simply concerned with the self-preservation aspect, is a single principle that is of concern in itself. Without a basic value which self-ownership is a derivative *of*, as in these two left-libertarian accounts, it cannot account for the separate principle of equal ownership of natural resources. For this principle to be present there must be a concern over and above that of self-ownership.

To further the separate principle of equal ownership of natural resources, the idea of Van Parijs' UBI is briefly worth explaining, to differentiate it from our settled conceptions of the welfare state. While its name describes fairly accurately its nature, it doesn't tell us anything about the motivations behind shifting support from those who need it most (the worst off) to a universal

Libertarianism is Not Incoherent, Indeterminate or Irrelevant: A Reply To Fried, Philosophy & Public Affairs, vol. 33, no. 2, p.201.

payment, made to all regardless of need or desire to work. The interesting part here is the reasoning for this shift. Our settled conception of the welfare state is a system that supports those unable to work or those in unemployment looking for a job.¹⁵⁵ These are the individuals most in need of state support, in that they would perish without support. Without getting into great depth surrounding the welfare state argument, the obvious motivation for this is an unwillingness to let citizens die, or at least suffer, when something could be done to save them, whatever that thing is. The other justification is that the individuals who find themselves in need of state support would never rationally opt to be in this position, as every other position in society is presumably preferable to it. Thus, their predicament is the product of bad luck, a deprived childhood, genetic deficiencies and so forth. Liberals hold that we cannot blame these people for any of these occurrences, as none of them can be directly attributed to the individual. Even if they were there by their own fault (a bankrupting business deal, for example), again, they would not choose to be poor. These individuals deserve our support because they deserve the opportunity to get back on their feet. Proponents of a UBI system view the relationship between the worst off and support in a completely different manner. A UBI would be universal because it would be value-neutral towards individual's choices.

To unpack this slightly, we call forth a classic example in political philosophy. Imagine a society of two individuals, both of whom are given a set amount of money to support themselves with. One chooses to commit entirely to leisure time, and builds a tennis court with his new-found wealth so he can spend his days playing tennis as much as he wants. The other invests in gardening materials, builds a garden and grows a large amount of fruit and vegetables. When they mature, he

155 But here, let us ignore the problems posed by those unable to work rather than unwilling; their specific problems are discussed in greater depth elsewhere.

sells them at market and re-stocks his garden, making a profit each time he does this. Two years down the line, the tennis player is destitute and the gardener is rich. The justice of the welfare state would dictate in this situation that part of the gardener's capital should be seized and re-distributed to the tennis player, to ensure he does not starve.¹⁵⁶ Why, libertarians say, should the gardener, who has made responsible choices, be held to account for the sake of the tennis player, who used his money irresponsibly?

This example presents us with a number of issues regarding the nature of choice and value of choices themselves, but let us push these aside until later in the chapter. The important thing to take from this example for now is that those on the receiving end of the welfare state's hand-outs are not always destitute by accident. The crux of this matter is the question of why the individual who made the 'good' choices (in that he was able to fund himself) should be penalised for making these choices, in the sense that the tennis player will receive a second hand-out, this time from the gardener rather than a third party. If the gardener had chosen to play tennis as well, he would have received more money overall than he actually originally received by making responsible decisions. A right-libertarian theory would hold agents responsible for the choices that led them into this situation. This example draws an important distinction between responsibility and luck; while original circumstances that might render agents resource-poor may well be the product of circumstance – the environment they were born into, for example – a resource-poor individual who has already been given one hand-out sufficient to meet their needs is more likely to have got themselves into a bad situation of their own making. To give the poor specific, targeted,

156 Will Kymlicka, *Contemporary Political Philosophy*, 1990, Oxford University Press:Oxford, p.73-6, & Jonathan Wolff, *Fairness, Respect & the Egalitarian Ethos*, *Philosophy & Public Affairs*, Vol. 27, no. 2, 1998, p. 99-101. This example originally arose in a debate between Dworkin and Rawls.

compensation for their bad or irresponsible choices treats them as if they were children, unable to look after themselves. In right-libertarian theory, this is the 'flipside' of self-ownership; self-ownership is universal, thus everyone is a self-owner, and should be treated as such. This means holding them responsible for the situation they have arrived in through free exercise of their rights – suffering brought on themselves by frittering away the resources they had already been given is their fault.

The self-owning poor are thus treated by the right-libertarian government the same as the self-owning rich, and receive nothing except their rights. The welfare state does not respect the self-ownership of the self-owning poor. The UBI thus eliminates the 'unfairness' of discriminating between our gardener and our tennis player; it mandates that, as we agree the ability to act in the way one chooses is of primary importance in respect to justifying rights and that certain agents' subsequent freedoms are under threat by a total lack of resources caused by unchosen genetic factors; it is right not to let our citizens perish if there is something we can do to prevent this, and the best way to do this is to fund them by some method. Thus, we should give each of them a certain basic income rather than 'reward' those who have made bad choices at the expense of those who made good choices. It is as such value-neutral towards agent's decisions, as it treats neither as 'good' or 'bad', simply as an individual in themselves worthy of support. In this sense, the UBI coheres better with our established ideas of the correct way to treat self-owners, that discrimination between individuals based on the lives they lead is unjust, even when the discrimination is skewed in favour of those who need the support most.

The above is more a happy outcome that will please the liberal critics of self-ownership. The major reason in terms of Van Parijs' theory for the imposition of a UBI is what it gives self-owners. This is the dimension of 'opportunity' on which real freedom is based. Imagine a further two individuals, Frank and Terry. Frank loves his leisure time; indeed, he values his leisure time so highly that he is determined to maximise the possible amount of time he can spend pursuing leisure activities. Terry, on the other hand, is a workaholic with little to no time for leisure. Under a 'welfare state' system, Frank's 'good life' would present a number of difficulties when considering its best method of execution. Most welfare state payments are conditionally based around a willingness to work, and the assumption is that all active agents supported by the welfare state are in the process of seeking gainful employment. Frank does not wish to find a job, he wishes, to use the clichéd term, to surf all day on Malibu Beach, looking for the biggest wave. A welfare state would deny that this is a legitimate use of Frank's time; if Frank is not contributing to society, why should society support Frank? On the other hand, given what we have learned about the liberal unwillingness to discriminate between plans for the 'good life' under self-ownership, if Frank's 'good life' is a quest for the biggest wave, can we as self-owners then say that Frank's path of life is of less value than Terry's? Is there not a contradiction here? If we should not discriminate based on life choices, as was shown above, why should we discriminate against those who choose not to work? This appears to just be the liberal state being biased towards one set of conceptions of the good over another. Arguments involving those who 'sponge' off society (in the sense they do not directly contribute to society's productivity) are obviously extremely emotive and polemic when deployed in a political setting.¹⁵⁷ Van Parijs eliminates this controversy by simply awarding a UBI to all agents. Even to

157 That this issue is so polemical is illustrated by Rawls' assumption that leisure is a primary good, and thus individuals with more leisure time (the voluntarily unemployed) should not receive support as their acquisition of a greater share of leisure entitlement cancels out their right to support. This issue will be discussed below.

those who do not need it, the extra money would increase their leisure opportunity set.¹⁵⁸

The UBI is, also, unconditional compared to the welfare state model for four reasons which illustrate why it better serves the notion of real freedom. Briefly, these are that the “absence of a constraint on the use of one’s time in the form of a restriction of the benefit to those to those willing to accept employment or training”¹⁵⁹, the “absence of a means test”¹⁶⁰, the fact that it would be pitched high enough to give one real freedom and not simply force one back into work through the comparative undesirability of relative poverty¹⁶¹, and that absence of administrative costs in deciding who requires what benefit and how much can greatly aid the amount of resources available to the scheme.¹⁶² These reasons demonstrate that a UBI is a better embodiment of real freedom than a normal welfare state, in that it provides citizens with a greater opportunity set in terms of the choices they will be able to make.

The 'opportunity' Van Parijs feels the UBI offers is the opportunity not to have to work to survive; to eliminate the fear that enforced absence from work will result in a lack of resources on which to subsist.¹⁶³ Thus, the amount of opportunity we possess to live our 'good life' increases as society no longer penalises its citizens for pursuing leisure-based activities by demanding they

158 This again hints at a problem to be tackled in the Cohen section; does more money equal more freedom? Van Parijs believes that it does (to a point), in the simple sense that if we provide agents with a basic income, they will be more free to pursue their conception of the 'good life', rather than have to spend their lives in work, earning the money to do so.

159 P. Van Parijs, *Real Freedom For All*, p.35.

160 Ibid.

161 Ibid, p. 36-37.

162 Ibid.

163 Ibid, p.20-1.

directly contribute to society in the form of being gainfully employed. Some might complain that this would destroy the job market; that no-one would choose to work when offered the choice between leisure and labour. The sustainability of the UBI will relate to this as explained in the next section – with not many agents actually working, the UBI payments will be very low; with high employment comes a high UBI income. As I have now set out the UBI's value and choice-neutral method of support, I shall illustrate the part which is crucial to libertarian theory if support is not to clash with unjust appropriation of the product of labour – how the UBI itself will be funded.

Job Rents and the Real Cost of Real Freedom

If we briefly recall Steiner's theory of funding for a left-libertarian state, it will be easier to compare it directly with Van Parijs' ideas. Steiner believed that ownership of natural resources is egalitarian in nature, in the sense that those who privately own natural resources will need to pay 'compensation' or 'land rent' on their property into a 'global fund'. The amount paid into the global fund is directly related to the amount of resources owned, and their specific value (an oilfield is worth more than a desert, for example). As everyone is universally entitled to compensation for being unable to own natural resources (and thus must pay a certain premium when purchasing items derived from natural resources to the resource owner, even though the purchaser may not have the chance to acquire natural resources themselves), the 'global fund' is divided up equally between individuals who do not own natural resources.

Given this reasoned account of redistribution in a self-owning world, it is vital at this point

to look at the nature of the ‘job rent’ scheme to fund the UBI. Van Parijs begins his description of job rents by looking at Rawls’ difference principle, which he describes as a system in which resources should be “distributed in such a way that the least-advantaged end up with at least as many such advantages as the least-advantaged would end up with under any alternative arrangement.”¹⁶⁴ Van Parijs interprets this as a requirement to impose a UBI, as imposition of such a scheme would cohere with the reasoning motivating it. Van Parijs is simply stating that, if his theory does indeed increase opportunity, and is the best way of universally doing so, then any theory committed to solving inequality by creating greater opportunity is, to some extent, committed to a basic income.

As soon as the highest sustainable basic income exceeds what [we] regard as the subsistence level, the maximising of income demands a basic income at the maximum level. If the minimum income guarantee were restricted to those willing to work full time and pitched at a higher level still, this would not prevent [workers] from working part-time and earning less than the minimum income guarantee. In a sufficiently opulent society... the Difference Principle would recommend a basic income even if it were exclusively concerned with income. ¹⁶⁵

Nevertheless, commitment to maximising opportunity for the worst-off in society seems to indicate that Rawls’ theory would be focussed on support for the worst-off, rather than a universal concept of support. This, as we have seen Van Parijs claim, is not the neutral stance between different life plans that a liberal authority is meant to adopt. Rawls’ original account is biased in favour of those with a preference for earning over leisure. Van Parijs suggests, by Rawls’ logic, that

164 Phillippe Van Parijs, *Real Freedom For All*, p.94-5.

165 Ibid, p.95.

any large exogenous change in a society that creates resources the state is willing to distribute would be distributed proportionally to the hours worked by an individual, and thus would favour those who work the most amount of hours. These would not only be the involuntarily unemployed, they would be those with a preference for leisure, or ‘the surfers on Malibu Beach’. Basic income is better, Van Parijs claims, because “there is no doubt that an unconditional income confers upon the weakest more bargaining power in their dealings both with potential employers and with the State, and hence a greater potential for availing themselves of powers and prerogatives, than a transfer contingent upon beneficiary's availability for work and/or the satisfaction of a means test.”¹⁶⁶

Rawls denied this, however, in a response to Musgrave’s criticisms in a paper in 1974. He claimed that the extra leisure enjoyed by those who voluntarily do not work was equivalent to any support they might receive; in so much as leisure is a primary good. Thus, individuals with a strong preference for leisure, the ‘Malibu Beach Surfers’, will have to support themselves, as their greater leisure time is qualitatively equivalent to the support those seeking work will receive. Therefore, treating opportunity as literally the hours available that the individual can work,¹⁶⁷ support will be distributed in accordance with ‘lost leisure time’, as compensation for those who lose a great amount of a primary good, their leisure.

Van Parijs suggests this would mean a subsidy proportional to working hours which would bias the difference principle, and indeed the employment market, towards full-time work. This leaves Rawls open to a series of objections regarding the nature of the difference principle’s

166 Ibid.

167 Ibid, p. 97.

distributive justice, such as the definition of work vs. leisure. Van Parijs asks how we find a consistent definition between even the simplest things, such as cleaning one's clients' shoes, cleaning one's own shoes, cleaning one's children's shoes or cleaning one's doll's shoes.¹⁶⁸ Which of these is to be defined as leisure and which as work, and why? Thus, the only idea we could get of hours worked versus leisure time enjoyed for each individual would have to be massively generalised, and such a question may be too much of an intrusion into the private sphere. Aside from tricky definitions, it seems that Rawls' re-statement of the difference principle to exclude those who seek leisure favours those who have the least leisure time; it is in some ways an anti-leisure metric, designed to compensate those who work the greatest number of hours. This is a major re-formatting of the difference principle, and Van Parijs believes it implies that any exogenous benefits acquired by a society that already embodies the difference principle (and thus provides maximal opportunity for the least well off) will distribute its surplus in line with this anti-leisure proposal. He also believes that this re-definition of leisure as a primary good, and thus a form of compensation equal to subsistence level payments, is a "semantic trick"¹⁶⁹ which robs those with a preference for leisure time of any opportunity of enjoying their leisure. Re-defining leisure as appropriate compensation for the voluntarily unemployed endangers both them and the involuntarily unemployed, while seemingly discriminating between people's ideas of 'the good life'.

Van Parijs needs to find a method of distribution for the leximinning of opportunity that is not perfectionist in the way Rawls' has been shown to be. We cannot continue to discriminate between individuals who afford differing priorities to work and to leisure. At this point, as a

168 Ibid.

169 Ibid, p. 98.

precursor to, and basis for, his job rent scheme, Van Parijs turns to the beliefs we saw featured in one sense in Steiner's work in the previous chapter, that one of the simplest and best ways of allocating 'real freedom' equally amongst individuals is to give them an equal right to an external benefit of some kind each, such as a plot of land. This gives them the necessary resources to be able to exist independently of each other. However, it does mean that our society is not optimal in terms of real freedom. To show why, Van Parijs uses two model individuals, Crazy and Lazy. Crazy is committed to maximising her work time, Lazy to maximising her leisure time. An equal distribution between the two will produce a similar result to the problems raised by the story of the gardener and the tennis player that was mentioned above. Crazy will easily exceed the market price of the land with the turnover made from the goods produced from the natural resources she owns, whereas Lazy will produce nothing of external value at all, and while she appreciates the natural resource, she would happily exchange all or part of it for all or part of what Crazy could produce with it.

This thought experiment, Van Parijs believes, "directly yields the following suggestion. There is a non-arbitrary and generally positive legitimate level of basic income that is determined by the per capita value of society's external assets and must be entirely financed by those who appropriate these assets....Thus,... the legitimate level of basic income is just the endogenously determined value of their equal tradable right to land."¹⁷⁰ Not only is everyone to be given a right to land, the right to this land in Lazy's case remains with her when she chooses to sell it, to the extent that she is consistently and unequivocally entitled to an income equivalent to the market value of land sold to Crazy. This example covers similar ground to the explanation of the UBI as set out above, in that it again is unbiased towards differing conceptions of the 'good life'.

170 Ibid, p. 99.

Van Parijs then goes on to claim that the actual resources relevant to such a calculation should include everything an agent needs to live their conception of the good life, from stamp collections to pumpkins to radiators.¹⁷¹ This is because all resources affect agents' lives, not only those, like land, that can be used perpetually to create new resources and that all resources are, essentially, natural. Even if they do not directly affect an agent's life, they are a resource for them, and almost certainly a resource that was itself derived from a natural resource. The only way to enforce the idea that all resources form part of every agent's natural allocation would be full (e.g. 100%) taxation on all gifts and bequests, or in other words, all goods that are not transferred in a market price exchange. Yet this amounts to discrimination between altruistic and selfish life plans, as the altruist will be thwarted when attempting to give any resources away. Van Parijs' objection to this is that "a 100 per cent rate conflicts with the real-libertarian concern for neutrality as between life plans... the altruist's intentions are thwarted by the systematic confiscation of whatever it is that she gives."¹⁷²

Van Parijs thus shows that any potentially privately owned resource-based funding for the UBI, claiming as it does to have a direct relation to individual's relative wealth and ability to sustain themselves, is misguided, especially when we draw logical conclusions regarding the relationship between land itself and resources that derive from other's ownership of natural resources. This lands Van Parijs back at square one. Objects, in their many guises, cannot be Van Parijs' source of income

171 P. Van Parijs, *Why Surfers Should Be Fed: The Liberal Case For an Unconditional Basic Income*, *Philosophy and Public Affairs*, Vol. 20, No. 2, 1991, p.117-9.

172 P. Van Parijs, *Real Freedom For All*, p.101.

for the UBI. So what does he do? He feels political theory needs to shift from analysing a world of independent producers to analysing the modern society. Penalising land owners is too complex; imagine the different types of land we would need to take into account before we could say our concept of land value was reasonable. The market seems like it can solve this but it cannot – analysis would be needed to carry out the productive capabilities of every piece of land, and this is an unrealistic prospect. Neither is simply analysing ownership of the means of production simple.

This brings us to 'job rents', a topic that was raised earlier. This concept requires a careful description of its method for raising a legitimate tax base for Van Parijs' UBI, which, if it is to subsidise all citizens, needs to acquire a huge amount of revenue. As land ownership and means of production analysis is out-dated, what tool can we use to analyse our current free market and ascertain where such resources could justly be raised? Van Parijs feels it is obvious that the free market is organised in terms of the employment relation.¹⁷³ Production now is based around not only who owns the method of production, but who is employed by that organisation and their specific role, even if they have little to do with the product.¹⁷⁴ Van Parijs asks us to picture a society in which everyone has equal talents, yet some are unemployed and some are gainfully employed. Nevertheless, the job market does not tend to clear, and there will always be jobs available and people out of work. This is a 'non-Walrasian' job market.¹⁷⁵ According to this theory, higher wages will be paid to those in employment than would be paid under a Walrasian economy where the job

173 Ibid, p. 122-4.

174 PR firms would be a good example of a valid form of employment that, while an arm of a company that produces goods, has little to no relation to the actual production of objects by that company.

175 A Walrasian job market assumes that the job market itself will eventually clear, that is that full employment can be achieved amongst those who want a job. There is a job for everyone, and in a perfect Walrasian economy, anyone who wants a job and has the requisite training for it will be able to attain a job.

market tends to clear. This is because of their increased value to a company; it is in the company's interest to pay each worker a premium because this saves on the cost of hiring, training or firing a new employee. A non-Walrasian economy assumes that exogenous costs created by the introduction of uncertainty for the employer in the job market will make it rational for the company to pay the individual slightly more than it would in a Walrasian economy, where their doubts and market-based overheads are removed. Furthermore, it is logical for the company to pay a premium over a typical Walrasian-economy wage because there is a definite link between higher wages and increased productivity. Van Parijs feels that if either of these two approaches to analysing the relationship between strict market value and actual employee wages can be shown to be true, then all economies must be non-Walrasian in the sense that these are impediments to the job market ever clearing. Van Parijs then goes on to claim that, given the non-Walrasian economy, it cannot be said that agents receive equal access to the main method of achieving their conception of the good life. The unemployed wish to be employed so they can earn a greater share of resources, but might find it difficult to get a job in a non-Walrasian economy despite their assumed identical skills to those of the employed. This means that “people's endowment is not exhaustively described by their wealth... and their skills: the holding of a job constitutes a third type of resource.”¹⁷⁶ A job is a scarce resource – holding a job enables agents to draw down a greater than equal share of natural resources. Furthermore, analysis of the jobs agents hold and their rewards for doing so are far more traceable and analysable (not to mention less intrusive) than the means-testing that would be required to judge the paucity or otherwise of their privately held resources. Thus we can derive a much more straightforward, modern and less intrusive method of left-libertarian support for our universal basic income.

176 Ibid, p. 124.

It is still not entirely obvious how Van Parijs intends to derive a tax from employment, but the key is in the difference between non-Walrasian and Walrasian wages. As was mentioned before, employment in a non-Walrasian economy results in an excess over the market-clearing wage being paid to the employee; either to save the company money on their human resources overheads or to motivate the worker to produce better work. Jobs, in this situation, are scarce. Similarly, we felt justified in treating natural resources as a resource that each agent has an equal entitlement to because it was scarce, and there was not 'enough to go around'. As Van Parijs says, "in the case of scarce land, we gave each member of the society concerned a tradable entitlement to an equal share of that land, and the *resource-equalising level of the basic income was given by the per capita competitive value of the available land.*"¹⁷⁷ In other words, we derived the level of basic income by the market value of the land that was privately owned. Van Parijs has exactly the same plan for sharing income derived from employment, in the form of 'job rents'. The last piece of this puzzle is the working out of how exactly we derive taxation from employment income. This is solved by the analysing the difference between a Walrasian and non-Walrasian economy, and the wages paid to those in employment within the respective systems. The 'employment rents' are therefore literally the difference between the two situations in terms of wages, or as Van Parijs puts it "the difference between the income (and other advantages) the employed derive from their jobs, and the (lower) income they would need to get if the market were to clear."¹⁷⁸

177 Ibid. Italics are mine.

178 Ibid.

The difference is therefore found by taking the actual market wage paid in a situation of involuntary unemployment where jobs are scarce and subtracting from it the wage that would need to be paid for the job market to reach full employment. This should leave a sizeable chunk of taxable income, justified on the grounds of occupation of a scarce resource, which can be fed back into the UBI. Those with a well-compensated job will receive a net loss, as their UBI payment will be smaller than the amount they have paid in tax, and those without a job will receive the exact same payment, derived from those occupying the scarce resource they need, but cannot obtain, to subsist. In a perfect world, an auction would be held to find the market clearing value of each job to determine its Walrasian market rate and thus its job rent. In practice, it would be virtually impossible to hold an auction for each kind of job, as jobs are rarely comparable in every detail of employment. Van Parijs thus implies that as a “handy second-best”¹⁷⁹ we should tax jobs as a function of their wages, or employ a non-banded income tax approach. The free market, unbounded competition, and the fact that individuals need no longer be scared to exit their jobs when met with unfavourable conditions, mean that job rents will always be pitched at the correct level for jobs to be appealing, and thus something at least approaching the 'correct' job rent will be derived from each one. Of course, paying of the job rent would be compulsory and enforced with the use of coercive authority. Proponents of self-ownership might argue that we have simply taxed agent's choices in a different guise, but again we are doing this for the reasons of real freedom and maximising individual opportunity.

This almost feels like we have come full circle – as if the income tax that we originally rejected as a violation of individual's rights to the fruits of their labour has been re-instated in a

179 Ibid, p. 125.

different guise. Van Parijs himself says that we cannot be far off the amounts raised by Rawls' schema in our acquisition of a legitimate tax base. Nevertheless, the theory is recognisably left-libertarian and includes a definite concept of self-ownership which is largely upheld and respected, although treated as a derivative principle. While the actual distinction between the physical funds raised by Van Parijs and Steiner is a discussion of semantics that could not be solved without considerable further exposition, there does remain one major difference between the two. As was mentioned in the preceding section, Steiner would give all our redistributed resources to us as one lump sum, with no further payments. Van Parijs, on the contrary, would pay in instalments throughout agent's lives. As discussed, Steiner does this so as to not discriminate between life plans – some will be more expensive than others, and to withhold the resources that some might require to fund their life plans would be to discriminate between agents with these plans and agents whose plans are cheaper and more easily achieved. Van Parijs, however, for explicit reasons of paternalism, wishes to stagger resource redistribution. His reasoning for this “simply consists in assuming a universal desire on people's part, when, 'in their right minds', to protect their real freedom at older ages against the weakness of their will at younger ages, and to do so pretty homogeneously throughout their lifetimes.”¹⁸⁰ In terms of providing for ourselves the necessary (or, if not necessary, then at least highly desirable) goods of healthcare, education and a pension, for example, it does appear that a monthly payment is a way of going about redistribution than ensures more agents will be “really free”, that is, that their freedom and choices will not be formalised by a lack of resources later on in life. Although, as Steiner would claim, staggering payments is a violation of our self-ownership rights, in the sense that it acts in a paternalistic manner towards agents, supposing in a sense that they need protection from themselves. The difference comes from

180 Ibid, p.47.

the metric the two are working from – Steiner aims to maximise liberty in terms of possible rights, while Van Parijs aims to maximise real freedom in the sense of opportunity. This is the only noticeable way that the two basic values, both of which support a derivative concept of self-ownership, are noticeably different. It is apparent, then, that Steiner's concept of self-ownership is 'stronger', in the sense that it does not allow the state to perform actions for the agent's own good, even if these actions might prevent agents formalising their rights later on. Again, this draws a distinction between luck and responsibility – Steiner's theory could be said to hold agents responsible for their choices to a greater degree, as there will be no further resources available once the entire original share is given in one lump sum. Van Parijs' major concern, though, is with the dictates of justice understood as real freedom, rather than maximising individual responsibility. The debate within this chapter has thus itself come full circle, as the most pertinent difference between Steiner and Van Parijs' ideas is their interpretation of the basic value underlying self-ownership, from which they derive a differing conception of how much income they can distribute at once.

So, I take these three philosophers to supply the key modern accounts of self-ownership and its implications – Nozick, Steiner and Van Parijs. Their accounts all impact on each other in specific and complex ways, and the latter two deny, albeit to differing extents, that self-ownership must necessarily cause the materialistic problems that Nozick seemed to believe it entailed. Their criticisms of self-ownership do not entail dismissal of the theory, but argue that it must be supplemented with a more basic principle to avoid becoming a self-defeating theory. It is time to turn to those who oppose self-ownership entirely, see how their criticisms chime with the different aspects of the theories purported by libertarians both right and left, and ultimately see what parts of self-ownership survive such criticism, and which parts Nozick must go on to answer.

Non-Libertarian Responses to Self-Ownership

G.A. Cohen

G.A. Cohen was a broadly Marxist political philosopher who was particularly involved in the self-ownership debate, consistently attacking Nozickian conceptions of ownership of the self. Much of Cohen's work within political philosophy focused on eradication of inequality and hierarchical relationships as cardinal virtues of government and institutions, and thus he was committed to tackling right-libertarian theories head-on. Cohen picked away at libertarian conceptions of self-ownership and freedom using his superbly analytical style allied with a flair for a thought-provoking example. In one sense, he disagrees with Van Parijs about 'real freedom' – he denies that *real* freedom can incorporate a conception of self-ownership. We should see him, then, as a competing account of freedom, one which denies that self-ownership and freedom can have a relationship. Freedom is his basic value, but its derivatives cannot include self-ownership. His work constitutes the most thorough and coherent series of objections to the concept of self-ownership currently in print.

The most important point (for our purposes) to take from an overview of Cohen's work is that, despite his disagreement with its consequences and implications, Cohen did not feel self-ownership could be dismissed when stated in its simplest terms, because of its intuitive

attractiveness. Cohen says, in reference to his attacks on self-ownership “such arguments do not *refute* the thesis of self-ownership: I do not think that it can be refuted. But, if the arguments are sound, they diminish the appeal of the principle sufficiently... to detach many people from their allegiance to it.”¹⁸¹ In the chapter on the classic interpretation of Nozick, I laid out all the most common right-libertarian implications drawn from the basic statement of self-ownership. Cohen believes that while the implications commonly derived from self-ownership are misguided, the central thesis itself is not. It is impossible, in his opinion, to rob the core of self-ownership entirely of its attractiveness, because agents tend to assume intuitively they have a greater right to their self than any other individual has to it.¹⁸² As long as we assume the existence of ownership rights over an individual, to say I am the property of an unspecified other and that I am not the rightful operator of my self seems arbitrary and unjust.

Cohen accepts that, on the surface, self-ownership seems like the most reasonable basis for a rights theory regarding an agent's 'sphere' of just possessions. It makes sense to give agents their relevant control rights, as few would freely agree to place their control rights in the hands of others, who may have different motivations to them. Cohen's objections attack the link between the central thesis of self-ownership and the logical implications of adhering to such a comprehensive doctrine. A classic self-ownership theorist's approach, for instance, would be to link the right to the self with the right to the fruits of labour, and this would lead to the conclusion that taxation was theft, forced labour and coercive slavery, due to the severing of this link implied by a tax structure. The suggestion at play within this link is that ownership of the self implies ownership of action, and thus

181 G.A. Cohen, *Self-Ownership, Freedom & Equality*, p.230. Italics are Cohen's.

182 This statement holds as long as we dismiss the claims of parents in the same way we dismissed the self-ownership labour paradox in the chapter on Hillel Steiner.

action used in labouring entitles one to the consequences of said actions. To boil this matter down to its simplest libertarian formulation, anyone taking value that I morally deserve out of my labour partially enslaves me. Cohen believes the central thesis to be irrefutable but the implications of it to be thoroughly debatable. So, while I might own myself, and indeed my actions, to say that I am then owed the full percentage of the value I have created in an object is to simplify matters greatly, or even worse, to apply arbitrary values to a complex and meaningful situation. Cohen expands on this by suggesting that there is a fundamental normative problem with looking at issues like slavery in such simplified terms. Think about the difference in qualitative terms of a lifetime of slavery, against being kidnapped for five minutes. While it is certainly true that, in the latter case, you are coerced into not having control over five minutes of your life; can this qualitatively be compared to being enslaved? Is the loss of freedom in both cases at all comparable? Cohen thinks that, when libertarians invoke slavery in this way, they are using an emotive term to produce an intuitive reaction, which is then applied to the lesser case, even though the case may be far less deserving of the intuitive anti-slavery reaction. The question is, can slavery, and its associated loss of freedom, rightly be compared to the loss of freedom that results from appropriation of tax from an agent's earnings? To begin to answer this question, we will need to investigate the nature of the word freedom, and thus the work it is doing for Cohen. Luckily Cohen himself recognised this and produced voluminous literature on the nature of freedom itself.

The Slavery Gamble

'Degrees' of liberty are the concept that, rather than the black and white 'free' or 'unfree' society suggested by the polemical nature of this debate, that there is a large sliding scale on which

a number of outcomes in relation to ‘quantities’ of liberty, freedom or slavery are possible. Nevertheless, it still seems that, to a libertarian, the definition of liberty will be increased freedom defined largely as liberty from government or hierarchical rules and regulations. The less of our time or resources we spend on compulsory tasks issued to us by those with a monopoly of force, the greater our liberty. The extent of this liberty involves a number of controversial statements. For example, American libertarians would fundamentally believe in the right to bear arms. Regulation of their right to own a gun is an imposition on their liberty. Yet most other countries agree that at least some regulation of gun ownership is necessary to stop widespread gun crime, which itself is surely an imposition on public liberty. Similarly, libertarians may wish to say that they can do whatever they want with their physical body, as it is in their possession and their possession alone. Yet this statement suggests to theorists, Cohen amongst them, almost a final taboo when it comes to the rights of self-ownership. Self-owners are free to do whatever they wish with their bodies, and they are free to waive whichever personal right they feel appropriate. Cohen, though, suggests that this right, to waive one’s own rights, can only extend so far, and that morally it must stop before an individual can enslave themselves. The transfer of individual rights wholly to another individual is a normative wrong, Cohen says, and thus the extent of self-ownership rights is restricted by a requirement that no one is anyone else’s slave.¹⁸³ To have the very existence of slaves, even slaves who were willing to become slaves, would be a sign of a morally corrupt society.

This statement, and its consequences, that there are things agents can do with their selves (discounting actions they can perform on other self-owners which would themselves violate the self-ownership of those others) which are morally wrong, runs contrary to a great deal of self-

183 G.A. Cohen, *Self-ownership, Freedom & Equality*, p. 21-2.

ownership and yet Nozick himself was unsure when confronted with this intuitively compelling problem. Cohen is correct, however, when he states that Nozick is committed to the statement ‘whatever occurs using only just steps is, in itself, just’.¹⁸⁴ Thus, as both agents freely opted to take part in the gamble, no injustice has been committed and Nozick must believe that the gamble, and thus its consequences, is just.¹⁸⁵ We would like to believe that no individual would rationally contract themselves into slavery, as to do so does not seem to engender a situation that could be advantageous to the agent enslaving themselves. There is surely no reason agents would choose to enslave themselves. Thus, the debate has been largely ignored. Cohen suggests, though, that we imagine there are two agents, both of whom desperately desire a slave, and both of whom are willing to make a gamble.¹⁸⁶ Based on the outcome of the flip of a coin, the two enter into a contract which states that the loser of the coin toss will become the other’s slave. Both parties are willing to enter into the contract, because both believe they have a chance of ‘winning’ a slave. Obviously, after the coin toss, one will become the other’s slave. Both agents rationally contracted into this situation and one agent is now, by definition, enslaved to the other, and has transferred all their rights of self-ownership to the winner of the coin toss. Cohen wishes to say that even though both parties agreed to transfer their rights upon losing the contract, the fact that the coin toss results in one party being enslaved makes the whole affair a normative wrong, and thus the rights of self-ownership only extend so far. “While we might be unwilling to enforce a reversal of the gamble’s outcome, we might also be unwilling to enforce the contract itself.”¹⁸⁷ Can the new slave-owner expect his rights of ownership over the slave to be enforced? On the other hand, if the slave wishes

184 Ibid. p.35-7, R. Nozick, *Anarchy, State & Utopia*, p. 151.

185 G.A. Cohen, *Self-Ownership, Freedom & Equality*, p.47.

186 Ibid. This argument also features in *On the Currency of Egalitarian Justice, and other essays in Political Philosophy*, 2011, Princeton University Press: Princeton, p. 141.

187 Ibid.

to claim his freedom are we committed to saying that he has completely alienated his right to self-ownership and has no further right to himself or to a redress of his current situation?

Cohen is thus contending, on a wider scale, that transactions, the genesis of which contains only just steps, are not necessarily just in themselves. Even if individuals act entirely within their rights, it is possible for their interactions to terminate in a conclusion that is, by some definition, unjust. If this is true, it demolishes a great deal of the self-ownership rights theory that Nozick uses to protect the core of his thesis, moral agency. If, as Cohen desires, the decisions of moral agents can be retrospectively overturned as by definition unjust, then self-ownership's historical entitlement theory is at risk. I think that what Cohen actually wishes to say is that stupidity, or a lack of rationality, can violate Nozick's rights theory and thus an overall concept of fairness to agents who have not fully engaged with the situation they are entering into. Certainly, it does not seem rational to give yourself a fifty percent chance of gaining a slave in return for a fifty percent chance of becoming enslaved. Surely, along these lines, many similar gambles that are stacked against the individual, or do not seem to make much sense, should be by definition unjust. For example, I pay a pound to compete in the lottery, and in return receive a ticket that has a one-in-fourteen-billion chance of winning the jackpot. As a 13,999,999,999 out of 14,000,000,000 chance almost certainly dictates, I lose the gamble and my pound coin. May I similarly seek redress in this instance? Similarly to the slavery gamble, the individual that loses the gamble might feel a grievance, but who would they feel this grievance towards? Surely the only party responsible for entering into the gamble is the party that freely contracted into it. Cohen would claim the slavery gamble is a different concept to the lottery gamble, saying that the result of the slavery gamble is

“not unambiguously just”.¹⁸⁸ To explain why he propounds this difference, Cohen draws an analogy with the compulsory entrance into the market necessary to prosper in a capitalist economy.¹⁸⁹ He gives the example of an agent who owns a small shop, earning just enough to cover everything he needs. He is not in the market for profit, simply to earn enough resources to make his life comfortable. Yet by entering into the market, he has put himself at the mercy of market contingencies. In the case of a market recession, he may lose customers and thus not procure enough resources to pay his rent. He will thus lose everything, and through no fault of his own end up destitute. Yet he was forced into this gamble, unlike the just slave, and still Nozick’s rights schema would dictate that the loss of his shop and livelihood was a just outcome of a just process.

Cohen does not take this complaint relevantly further, so I shall attempt to flesh out his grievances for the purpose of challenging the justice of the right to transfer self-ownership rights. Presumably the shop owner and the just slave are to be seen as relatively analogous on the grounds that both have lost a gamble and thus have ended up in an unenviable situation. If both had perfect knowledge of the consequences of their original decisions to enter into their respective gambles, then neither would have done so, but crucially, we can never have this knowledge. If the parties involved in the slavery gamble were forced into such a gamble, we might wish to say their rights were violated because one of them will lose their liberty, and has not chosen the situation that will cause this to happen. Yet the shop owner was forced into owning his shop in terms of survival and prosperity.¹⁹⁰ I think what Cohen is trying to say is that the just steps argument can quite clearly

188 Ibid, p.48-9.

189 Ibid, p.53, also G.A. Cohen, *Rescuing Justice and Equality*, 2008, Harvard University Press: Harvard, p.300.

190 Presumably Cohen believes the same problems apply when agents are employed by someone else rather than self-employed, as market contingencies can leave those reliant on employers destitute as well.

create injustice, but this is only actually injustice when viewed outside a rights schema. Cohen is trying to appeal to a wider notion of injustice, asking us to take a step back from viewing all transactions in terms of rights and applying a conception of perfectionist moral justice. Is it just that the shop owner loses his livelihood through no fault of his own? Is it just that the agent who hoped he was going to get a slave actually ends up enslaved himself? I feel that we are intuitively tempted to agree with him that it is unfortunate that the shop keeper is now destitute, but not unjust as such. The loser in the slavery gamble would similarly have a hard time pressing his case for redress due to a moral breach of justice.

Nevertheless, the market is hardly concerned with this idea of consequential equality and redressing the forces of brute luck to the extent that Cohen clearly wishes it was. Cohen's counter-examples seem to be attacking the nature of the market itself, specifically the just steps argument, rather than Nozick's self-ownership. "The right conclusion is not that the market must go, but that the considerations which vindicate it (to whatever extent it can be vindicated) are not shown to be ones of justice, even when all probabilities are foreknown."¹⁹¹ This objection thus rests on the relationship between justice and morality, and whether the consequences of bad brute luck should be subject to the powers of redress – are some situations that agents might find themselves in due to the forces of bad luck inherently immoral? Obviously a situation in which everyone's livelihood is guaranteed would be more egalitarian, and would satisfy Cohen's objections, but such a situation is hardly likely to arise within a right-libertarian capitalist system. However, we might say that it maximises the "real freedom" Van Parijs was so concerned with – if we are so concerned about maximising opportunity, why not do away with self-ownership (and consequently the justice of the

191 G.A. Cohen, *Self-Ownership, Freedom and Equality*, p.50.

market and inviolability in private possessions) and redistribute everything until all agents have maximal real freedom?

Let us compare such a statement to classic libertarian self-ownership. When responsibilities for the outcomes of decisions are taken out of the hands of agents, they are treated paternally, and their freedom is decreased. There can be no doubt that this is the case, as the greater the actual numbers of decisions which are left up to agents the more control those agents literally have over their own lives. When we subject individual decisions to redress on the grounds of rationality, we take the original decision out of the hands of the parties involved by stating that they have made the ‘wrong’ choice in the situation. Nullifying the consequences of a decision renders the decision itself pointless. Therefore, if we are committed to upholding self-ownership, we must leave agents to make their own decisions and to enjoy or suffer their consequences. Surely we cannot specify a concept of rationality which is the ‘correct’ version of being a self-owner. By removing choice from agents we, in Nozickian terms, ‘infantilise’ them.¹⁹² It seems, then, that proponents of self-ownership are committed to upholding the consequences of any freely chosen decision where neither side was ‘tricked’ into an agreement they would not have chosen had all the information been available at the time.¹⁹³ This would be consistent with most individualist rights theories. Thus Nozick is committed to keeping the slavery gamble loser enslaved. Indeed, we can extend this to the

192 This counter-argument necessarily ignores the problems of non-agent beings, such as those not in possession of a recognisable rationality. The deeper philosophical question is thus posed; are we specifying a fixed concept of rationality which is needed to allow agents to enter into the social world in the first place? Surely everyone actually possesses rationality to some extent, and we employ the deeper notion of logic to judge whether an agent’s rationality is actually in itself rational.

193 The notion of availability of knowledge of consequences is a tricky one in capitalism, as no-one can claim to have perfect knowledge of consequences but it may invalidate the justice of a transaction if one party withholds vital information from another that would have affected the likelihood of the transaction originally proceeding. Finding a happy medium is a challenge in itself.

notion of the ‘happy slave’. If an agent wishes to become enslaved, should we stop them doing so because they are acting irrationally? Surely the rights to the self must include the right to transfer the rights themselves. In legal terms, the right to the self could not be considered ‘full’ unless this right existed.¹⁹⁴ The reasoning any decision that arises from just steps itself being just can be found elsewhere in this thesis, and it seems the only way we can argue that irrationality can override the consequences of free agreement must be doing away with a rights theory, because to override free agreement is to necessarily ignore the rights of self-ownership. Thus, it seems that a proper conception of self-ownership must include the right to transfer the natural rights we are endowed with, and that a ‘happy slave’ or an enslaved individual who freely chose slavery are not, by definition, stuck in an unjust situation that must be redressed by a higher authority.

Observe, however, that the normal use of ‘slavery’ in libertarian literature refers to the imposition of taxation on the individual. Cohen expands on this by suggesting that there is a fundamental normative problem with looking at issues like slavery in such simplified terms. Think about the difference in qualitative terms of a lifetime of slavery, against being kidnapped for five minutes. While it is certainly true that, in the latter case, you are coerced into not having control over five minutes of your life; can this qualitatively be compared to being enslaved? Cohen thinks that, when libertarians invoke slavery in this way, they are using an emotive term to produce an intuitive reaction, which is then applied to the lesser case, even though the case may be far less deserving of the intuitive anti-slavery reaction. When libertarians do this, they trivialise the seriousness of full indentured slavery and give a false impression of what the proportionate response to coercive taxation, which they depict as slavery, should be. Cohen feels they thus muddy

194 W.N. Hohfeld, *Fundamental Legal Conceptions*, p.6.

the waters of the redistributive justice debate by introducing such an emotive term, especially when it hardly seems justified in comparison to actual slavery. Cohen's objections to the libertarian attitude towards slavery are more convincing when pointed at the normative relationship between a lifetime of indentured slavery and the loss of a few hours' liberty in the wider context of a well-paid job. The question of what defines slavery is one of semantics, but I think we can agree with Cohen that the libertarian appropriation of the word 'slavery' could be considered inappropriate and unhelpful, even if we cannot agree that the nature of the relationship involved in fully-bonded slavery itself is inherently unjust. Cohen's argument that slavery is an inappropriate depiction of what happens when agents' income is taxed perhaps means that libertarians should base their convictions around a desire for greater freedoms rather than muddy the waters of the debate by introducing such a divisive term. If this is the case, we might want to reword our inquiry into 'degrees of slavery' so it reads as an inquiry into the 'extent of necessary self-ownership', which brings the issue into much sharper focus in relation to this thesis, and implies that Nozickian right-libertarians must be more careful with the emotive language that they use if they do not wish to derail the more pertinent arguments confronting them. In terms of this thesis, it begins to show that a lot of the reasoning behind self-ownership is to protect the powers of agency from subsequent redress on particularist moral or ethical grounds. An agent's decisions must stand as just as long as they freely make them – to redress them would be to override that agent's free reasoning, and that, in terms of self-ownership, would be unjust.¹⁹⁵ The relationship between self-ownership and agency forms a major part of the next, and final, chapter, and this section serves to illustrate that agency has

195 Although, it might be feasible to argue, given our conclusions from the Steiner chapter regarding the paradox of labour-based self-ownership, that only natural ownership is permitted and to sell or give one's self entirely over to the ownership of another contradicts Steiner's argument. Given that Nozick needs to adopt this reasoning to escape the paradox, he may well have grounds for denying that being owned by another agent can ever be just.

always been one concern of self-ownership.

Able, Infirm, Joint-Ownership and Equal Division

Cohen's most persuasive counter argument to right-libertarian self-ownership stems from a simple example illuminating in stark terms the troubles that gross material inequality pose to the thesis of self-ownership, and in particular, the left-libertarian solution to these problems we have been discussing. If libertarianism wants to take freedom seriously, as left-libertarians do, it seems from the theories we have looked at so far that the simplest way to preserve self-ownership and move towards a notion of 'real', not formalised, freedom, is to give each individual a modest entitlement to unowned natural resources. As Cohen believes that gross material inequality in resource ownership is inherently unjust, as opposed to the Nozickian position where whatever the market dictates is inherently just as long as it is achieved through just steps, then we need, like the left-libertarians, a principle which distributes resources to those massively disadvantaged by self-ownership. Cohen feels that, to simplify greatly, the two available options for the just division of natural resources are joint ownership and equal division schemes.¹⁹⁶ As left-libertarians have explained, giving each agent a right to an equal share of unowned natural resources will enable those with negligible labour skills to obtain the resources necessary for their continuing subsistence, or make them 'really' free. Cohen feels that an entitlement scheme consistent with self-ownership is not without its obvious issues, and that an entitlement to natural resources can, in some ways run contrary to the nature of the theory that self-ownership is trying to promote.

196 G.A. Cohen, *Self-Ownership, Freedom & Equality*, p.92-3.

To simplify these problems to an easily abstractable level, he imagines a society of just two people, Able and Infirm.¹⁹⁷ The land they both inhabit is jointly owned between them.¹⁹⁸ As their names suggest, Able is healthy and therefore capable of working the land to produce resources, while Infirm is incapable of doing so. Thus Infirm, left alone with no external aid, would surely perish as he cannot provide for himself. His only bargaining chip is that he has joint ownership of the land which Able needs to utilise to create the resources necessary for his own survival. Thus, before Able can use any of their jointly-owned resources whatsoever, he will need to enter into a bargaining dialogue with Infirm, to see under which circumstances Infirm would allow Able to use the land to create resources for their survival. The first point to make is that, without such an entitlement to both use the land, and in the absence of any provisos specifying legitimate acquisition, Infirm would perish while Able would thrive. With no resource acquisition principle defending Infirm's position, then the inequality between the resources of the two will be huge. Intuitively, liberals would say that the inequality between the two is unfair, as it is premised on the random genetic endowments the two agents receive at birth. Is it just to let Infirm perish, even though he did no wrong? A right-libertarian theory allows no room for manoeuvre on this point, Able must freely choose to give Infirm enough for him to subsist on, and cannot be forced to do so – the natural resources bestowed upon Infirm in the first instance do him no good, as he cannot work them. Able must develop some resources before these resources can themselves be redistributed to Infirm.

197 Ibid, p.94-101.

198 Cohen says “each owns himself and both jointly own everything else.”p.94. It is thus distinct from a typical right-libertarian acquisition principle (although one that Nozick falls short of) of 'first-come, first-served' as regards natural resources. Cohen's example is really more left-libertarian, although not entirely so as it cannot enforce any sort of 'rent' transfer between the two. Any transfer is reliant on free agreement.

Even given the joint ownership of the land, Cohen thinks he can outline problems with the left-libertarian position. Cohen identifies a number of possible outcomes from the two agents' bargaining process, only two of which he terms "interesting".¹⁹⁹ These are "If Able produces at all, then the amount he produces is determined independently of his choice, and it exceeds what is needed to sustain both Able and Infirm. They therefore bargain over the distribution of a fixed surplus. The price of failure to agree is no production, and therefore death for both." The second interesting scenario is "Again, Able can produce a surplus, but... can vary its size, so that Able and Infirm will bargain not only over who gets how much, but also over how much will be produced."²⁰⁰ As these examples illustrate, the joint ownership of land means Infirm is able to subsist on Able's labour, due to Infirm holding the 'bargaining chip' of a veto over land use. Even though Able holds more of the 'cards', in the sense that he has a veto and the labour power necessary for both to subsist, Infirm's seemingly less powerful bargaining position is enough to enable him to subsist due to the rational and self-interested nature of the bargain the two will strike. Thus, Cohen says, simple joint-ownership of the world and natural resources can, it seems, begin to move libertarian thought towards a simple kind of equality.

This simple example shows that not much is needed to offer subsistence to the infirm members of society. The next step is to introduce a greater number of individuals into the hypothetical situation, and see if the same benefits still accrue or if any great problems develop. Imagine there are a number of farmers (the exact amount is not important), and all available resources are communally owned, so that none may create the resources needed for sustenance

199 Ibid, p.95.

200 Ibid, p.97.

without the permission of the other farmers. The important aspect of this situation to note is that each farmer is, in a sense, helpless when trying to act for themselves. Cohen believes that the joint-ownership of resources, in situations like those laid out above, will not re-enforce self-ownership, it will contradict it. To see why this is the case, imagine you are one of the farmers in question and you wish to plant a particular crop. Now, a system promoting the virtues of freedom, Cohen claims, would surely dictate that whatever this farmer willed to do with his resources, he should immediately be able to. Yet he is unable to do anything with his resources until he obtains the permission of every other farmer to do so. This does not seem consistent with the foundation of the rights of self-ownership, and as we saw in the previous section, is why Van Parijs opted for capitalism over socialism. For it to be consistent with self-ownership rights, it would need to offer each farmer individual control over his natural resources or remove the acquisition principle entirely. While this seems like a severe objection, all Cohen has actually done with this example is to prove that self-ownership is best promoted by the institution of private property, and Steiner has indeed already suggested that private property best represents the aims of self-ownership when he claimed that the only worthwhile rights are compossible rights. Thus, Cohen has proven that shared property and self-ownership aim to secure two very different advantages for agents and so he believes these are fundamentally incompatible doctrines.

This surely means, Cohen posits, that the only way property and self-ownership can be reconciled without ceding the ground to the gross inequality he finds so reprehensible is to institute a system of equal division between agents, much like Steiner suggested in his conception of a 'land fund' for creating a simple kind of egalitarianism. Imagine the same farmers as above, only this time each has a privately owned share of natural resources, which was divided amongst them. As each

farmer does not have to ask for permission to utilise natural resources, the schema seems to better embody the separateness of persons and freedom to decide that are so fundamental to self-ownership. However, Cohen believes that any agent in the same position as Infirm, from the example above, would be forced to accept a much lesser quality of life. This is because an Able, being rationally self-interested, may agree to work an Infirm's land and supply Infirm with resources in exchange, but Infirm's bargaining position is now much weaker than in the case of joint ownership of natural resources. As Able can easily support himself on the land he privately owns, he will not be motivated enough to work Infirm's land and give him a high percentage of the output. Thus, as Cohen says, Able has Infirm 'over a barrel' in terms of the relative strength of their bargaining positions.²⁰¹ Cohen thus claims we are stuck between two cardinal virtues; that of self-ownership and equality. This does not essentially undermine self-ownership – it simply shows us that self-ownership can be robbed of substantive appeal when the consequences of it are starkly spelled out. Joint ownership better respects the infirm and those unable to work, because they are in a bargaining position of equal strength, which means the infirm can trade as equals by holding a veto over the work of the able. Under a situation of equal division, there is no longer a guarantee of free agreement yielding subsistence, and the infirm will have to rely on the desire for expansion by the able. Thus, we must choose between a basic notion of equality and the rights of self-ownership, which, when resource acquisition and use is taken into account, will leave the infirm in a situation of gross inequality. As Cohen points out, for the committed self-ownership theorist this is no contest, as “to go for (joint-ownership) would probably reflect a belief, prejudicial to self-ownership, that people should be endowed with rights which enable them to benefit from (the fruits

201 Ibid, p.103.

of) the personal powers of others.”²⁰² This emphasises in stark terms the choice that seems to face self-owners, of self-ownership or egalitarianism. It also brings up the question of whether it can ever be correct to include some form of egalitarianism in a basic theory of self-ownership, as left-libertarians claim is dictated by justice.

Steiner's solution, of a 'land rent' scheme, would charge those with private ownership of natural resources a rent, which is redistributed back equally to all agents. Even in a case of equal division, the infirm could thus sell their land, pocket the resources they obtain from this and still get a sizeable payment as compensation for owning less land than average, which surely leaves them better off than Cohen is claiming. Cohen has a further objection to this idea, though. He believes that, if resources are equally distributed at the 'beginning' of a society's occupation of the resource, whenever that might be (he calls it the 'starting gate' theory²⁰³) and there is a free market in resources after this initial distribution, then there will be a two-fold problem. Firstly, after a few generations we may well be stuck in the same situation regarding inequality that we were placed in by the complete lack of any support for the infirm. Over time, the able, with their greater bargaining position, will probably buy up the land for little outlay, as the infirm have nothing to bring to the table except their land, as Cohen explained above. Secondly, future generations will be short-changed by this theory, unless we (as it seems we must be) are content to constantly re-divide the land in light of the arrival of new claimants. The first problem seems to be covered by the temporal consistency of the land rent scheme; as each must treat their resources as something 'rented' from everyone else, they must keep paying in the rent. The resources themselves can in this case never be

202 Ibid, p.106.

203 Ibid, p.107.

truly 'owned', and a consistent stream of revenue can be accrued. The second problem presents far greater issues for Steiner; how can he account for the problem of the entitlements due to future generations? Steiner's solution would involve denying the right to bequeath resources from one generation to the next, a major theme of his work.²⁰⁴ Thus, the property owned by an agent would pass back into the status of unowned things, ready to be acquired by future generations. This presents a rough and ready solution to Cohen's problems. A far longer and more detailed sketch of this area would be needed to fully reconcile Cohen and proponents of self-ownership such as Steiner, but it seems left-libertarianism's additional right to an equal share of natural resources can be used by libertarians to rebut most of Cohen's gravest issues with self-ownership.

In summary, Cohen has objected to the libertarian idea that taxation can appropriately be called slavery. In attempting to dismiss the classic perception of right-libertarian self-ownership, he decried the supposed justice inherent in the blatant material inequality that private property generates, and to extend his argument to attack any political theory that proposed a theory of self-ownership, he claimed that justice was still not served even self-ownership was allied to an egalitarian conception of resource distribution. So do his objections, as he claims, 'rob' the thesis of self-ownership of any rational appeal? While they might diminish the immediate appeal of libertarianism by making some of its core principles subject to adding conditional propositions, such as the idea of taxation as slavery being qualified by reference to a 'sliding scale' of liberty (or lack of), it does not seem that the core thesis, that I am the rightful owner of myself, can be damaged or robbed of its intuitive appeal by Cohen's particular attacks. He only suggests an

204 Hillel Steiner, *An Essay on Rights*, p.266-296. Steiner's denial of bequest can itself be seen as an egalitarian measure, as it will eliminate equalities across generations rather than perpetuate them, like inheritance does.

alternative to this thesis twice, once where he states that no-one should own any rights over anyone else or themselves, as the existence of these rights is unjust in itself,²⁰⁵ and secondly when he offers an alternative view of the 'eye lottery' example that was briefly covered in the introductory chapter. If you recall, the eye lottery was the concept that it would be unjust to force those with two working eyes to redistribute one of their eyes to those with none. This suggested intuitive rights over the self which would imply the existence of self-ownership.

Cohen now suggests that we should re-run the thought experiment, but this time assuming that the only people who have eyes obtained them by accident, perhaps by walking under an 'eye tree' where they happened to fall into the sockets of agents. Given the fact that agents now came upon their eyes entirely by chance; do we still feel the same intuitive commitment to proclaiming the rights of agents to retain their eyes?²⁰⁶ The skill of this example is to introduce an element of uncertainty into the ownership debate, in the same way that considering the random nature of genetic endowments can make the idea of self-ownership feel less certain. Certainly the intuitive reaction against redistribution of eyes seems to be somewhat muted by the suggestion the eyes themselves were the result of luck or chance. Nevertheless, the fact that they were randomly acquired by their owners surely does not make it just that they are to be redistributed. While it might seem, given the new condition, that it is more acceptable than it was for eyes to be transplanted, luck of the draw, or more accurately, the 'birth lottery' still cannot push the self-ownership stance into a justice-based redistribution of resources that agents lay claim over. It is one thing to say that I do not deserve these resources I own, but another thing entirely to use that as a

205 G.A. Cohen, *Self-ownership, Freedom & Equality*, p.230.

206 Ibid, p.244.

basis for the claim that the resources in my possession should be redistributed to other, equally undeserving agents.

The argument of Cohen's that we need to take forward, and that left-libertarians are essentially in agreement with, is that a theory that features such gross material inequality as classically understood right-libertarian self-ownership is robbed of its substantive appeal when we see the consequences of its strict individualism. Upholding self-ownership as a good in itself, or inherently just, does little to convince anyone that self-ownership is the 'best' theory of any kind, however we interpret justice. A theory which leaves the infirm and unable to suffer, as we have consistently discussed, is one that is unlikely to gain a foothold in common political debate, so thoroughly does it contradict strongly held intuitive values. So, while Cohen has not defeated self-ownership itself as a theory of individual justice (as, indeed, he never claimed he could), he has shown how classically considered self-ownership lacks appeal – gross material inequality is a consequence that few would be able to coherently support as a derivative of justice. Allying it to a conception of equal division of natural resources, as the left-libertarians do, goes a long way to solving Cohen's criticisms, but his attack on Nozick stands alongside the left-libertarian thesis that commitment to self-ownership should be, at best, a derivative value of some more basic or fundamental tenet if it is not to be either unappealing or contradictory.

We have now identified the common criticism that Nozick seemingly has no answer to, but before I can show that there is indeed an answer to these problems inherent in *Anarchy, State and Utopia*, we must deal with a few final meaningful criticisms of the theory of self-ownership itself.

Against Self-Ownership: Ingram et al.

Cohen, then, believes the theory of self-ownership can be robbed of substantive appeal, but never denied or disproved. Its core message is simply too intuitively strong. Some academics share the latter opinion to an extent, but would suggest that deeper investigation into the principles self-ownership relies on reveal it to be of little consequence, or simply based on false assumptions. In this chapter, I hope to show that the major avenues of criticism of self-ownership are often based on misunderstandings or misapprehensions of the rights theory at play in understanding crucial aspects of self-ownership. One theorist, Attracta Ingram, does however further develop the criticisms we took as valid from the left-libertarians' internal criticisms – that self-ownership will eventually be robbed of its substantive content by the problems caused by the gross material inequalities that will develop over time. The aspect of self-ownership that Steiner said rendered it “impossible” is the same criticism as Van Parijs' declaration that self-ownership considered in abstract could only ever provide “formal freedom”. Essentially, a society based on purely negative rights will not result in equality of rights for all agents – while all agents might formally possess the same rights, the structure of society will remain such that a sizeable proportion of the population will be practically unable to utilise the rights for the purpose which they were intended. I turn now to her work, so that we might finalise this most important criticism of self-ownership, and also so that we can analyse a few other valid objections she poses to the theory. Other theorists, who I shall deal with after Ingram, claim that self-ownership is actually based on some very basic philosophical assumptions which do not stand up to greater scrutiny.

Ingram's book *A Political Theory of Rights* dedicates its first half to a dismissal of self-ownership and a re-appreciation of the key terms invoked in normal defences of the theory. Ingram wishes to discover whether a discussion of justice in terms of property rights which relate to agents must necessarily be the libertarian account that has been at issue throughout this thesis, in other words “the case for favouring libertarian over other possible conceptions of self-ownership has to be shown... It is not the ultimate point of all this to affirm self-ownership but rather to make conceptual space for an alternative to proprietary rights.”²⁰⁷ If Ingram were successful, proponents of self-ownership would have to concede, contrary to what Steiner affirmed in chapter 3, that other theories that rested on a less restrictive relationship between labour and control over earnings could do the same job in terms of individual liberties that self-ownership was currently performing.

At a base level, Ingram wishes to attack the connection between “full” liberal ownership and self-ownership, in the sense that it seems to her conceptually dogged to retain the link between full retention of earnings and ownership of the self. Is full ownership of external objects entirely necessary for the thesis of self-ownership to retain practically its major tenets? Can we envisage self-ownership providing the same protections for basic liberties but allowing a portion of earnings to be justifiably reallocated? Must ownership necessarily be “full”?

Ingram begins by analysing the relationship between self-ownership and property, which, given the structure of self-ownership, necessarily entails questioning the nature of rights. Ownership relates, obviously, to the owner of an object. Ingram defines what it is to be an owner thus: “the

207 A. Ingram, *A Political Theory of Rights*, p.26.

owner of an object is the person who does not require the consent of others to use it and whose consent others must seek if they want to have access to or control of it.”²⁰⁸ The negative obligations regarding use of property, which are placed with any agent who is not the owner of the property, can only be lifted with the owner's agreement. Clearly, the nature of the relationship between owner and owned relies on consent. In relation to ownership of the self, nothing can be done to an agent without the consent of that agent. It is a “system of private property rules assigning to each person the final say over the disposition of the personal resources in her possession as a natural individual.”²⁰⁹

This definition ties self-ownership to the interpretation of private property laws, and Ingram crucially then points out “the concept of private property allows of several conceptions of which the system of unfettered capitalist private property rights is [only] one.”²¹⁰ Ingram is claiming that, rather than being based on a definitive and unarguable notion, self-ownership is visualised in terms of a particular conception of private property rights, in this case the “full liberal ownership” as denoted by Honoré.²¹¹ Different appreciations of the same term may in fact result in self-ownership taking a radically different form.

208 Ibid, p.28.

209 Ibid, p.29.

210 Ibid. Ingram also points out that the “concept-conception” distinction (that is, splitting a concept such as self-ownership from the conceptions on which it is based, namely private property), on which this assessment is based is highlighted by Rawls in *A Theory of Justice*, p. 5-11.

211 To be an owner in this example is to have “(1) a right to possess a thing; (2) a right to use it; (3) a right to manage it; (4) a right to the income that can be derived from letting others use it; (5) a right to the capital value of it; (6) a right to immunity against expropriation of it; (7) a power to transfer it to another by sale, or gift, or bequest; (8) absence of term (temporal limitations) on the possession of any of these rights, liberties, etc.; (9) a duty to refrain from using it in a way that harms others; (10) a liability that it may be taken in execution of a judgment for debt; (11) a right to the residue, that is, to the return of all rights in a thing held by others when their term is up or they are forfeit for any reason.” A.M. Honoré, *Ownership*, p.112-3.

Ingram gives an example raised in the chapter on the history of self-ownership, Locke's division of ownership powers into those wielded over agents by God, and those God allows agents to wield. The former precludes agents, each of whom is God's property, from damaging themselves, as the agents are not the owners of their selves in the fullest sense; they are instead recipients of "trustee or tenancy rights" in themselves.²¹² Agents are entrusted with their selves, in a sense; they have a duty to their 'landlord' not to damage the property they are given, and as such could not be said to strictly own the property, as "full liberal ownership" would include, under the second point on Honoré's list, a right to use the object as the owner sees fit. The tenant is denied the full appreciation of this right by the landlord, in that while remaining able to use the property they may not damage it in any way. Analogously, agents are denied the fullness of this right regarding their property in their selves by God's residual claim over them. Thus, to Locke, self-ownership was understandable without the private property rights which necessitate the injustice of involuntary redistribution.

Another competing and relevant interpretation of the nature of ownership in private property is "a self-ownership that includes the incidents of full liberal ownership except for the right to exploit one's talents by selling their use to the highest bidder. That is replaced by the legitimate expectation of the reward for the exercise of talents assigned by a just social structure."²¹³ This would result in a structure similar to that of a Rawlsian liberal society, which, as the phrase "just

212 Ibid, p.32.

213 Ibid. This incorporates item 4 on Honoré's list, the "a right to the income that can be derived from letting others use (the object)."

social structure” implies, would involve redistribution from those with resources greater than the median amount to those with less. It is, in fact, the “social role” that self-ownership is playing, Ingram claims, which leads to it requiring a “full” appreciation of ownership – individual inviolability and a rejection of slavery. Even a minor re-interpretation of self-ownership's relationship with private property endangers its commitment to the fundamental moral premise that it is right to let each agent act as they will, not relying on the consent of another agent to act.

Thus, self-ownership relies on a specific moral decree to inform its particular choice of the structure of private property laws, as many other forms of the concept of private property could still conceivably do the job of fulfilling some system that could be interpreted as self-ownership. Ingram argues that this moral imperative is, in turn, a strange method of combating slavery – why give in to the structure of slavery by promoting the existence of private property rights in agents? The presence of these rights in fact invalidates a major claim of self-ownership, the claim that slavery is unjust. “Because (self-ownership) affirms the view that people can be subjects of private property rules, and allows them to do as they wish with their own property, the thesis permits voluntary slavery and subjection to absolute power. Its moral authority is thereby considerably diminished.”²¹⁴ The moral objection doesn't have a basis in the ownership of an agent by another agent; the objection can only hold when these rights have been coercively obtained. Thus, the slavemaster-slave relationship is not in itself unjust within self-ownership, Ingram claims. Again, self-ownership finds the force of its objections to slavery actually lie in the nature of consent and agreement, in terms of slavery only being unjust when it is a coercively-reached agreement. The suggestion is that it is therefore morally indifferent to an unjust situation. This is a challenge to libertarian self-

214 Ibid, p.42.

ownership that I will return to in my final chapter.

Ingram goes on, much like Cohen, to attack the perception that left-libertarianism's equality in natural resource holdings can ameliorate much of the unpopular conclusions of self-ownership. Ingram states up front, in relation to the left-libertarian project, "Welfarists have no reason to suppose that libertarianism offers either: (1) a compelling case for dismissing welfare rights; or (2) the possibility of an economic constitution which is consonant with the underlying impulse of welfarism"²¹⁵ the first being libertarianism's normative dismissal of the justice of the existence of welfare rights, and the second point being the possibility of a combination of self-ownership and basic support for the needy. I shall briefly explore and analyse her response to these two central pillars of, respectively, right-libertarian and left-libertarian thought.

In attacking (1), Ingram starts her analysis by setting out the problems with the Nozickian theory of just appropriation highlighted in the earlier chapter on Steiner.²¹⁶ Essentially, a potentially infinite number of agents, in the form of future generations, will require resources to appropriate for their survival. After a few generations without a welfare principle, this will become very difficult if not impossible.

215 Ibid, p. 44.

216 In chapter 3, I wrote "can those alive today rightfully dismiss their claims knowing that future agents will be born into a situation in which a fundamental right, that of resource acquisition, is irretrievably compromised? Steiner believes that if we portion out all land to all currently living individuals, we will create a future generation of self-owners who will not be able to survive and prosper without the express consent of others, who are, on no account, obliged to help them. Even if we do reserve land for future generations, how much do we set aside? Setting aside as much as 95% of our unowned land will seem useless after a few hundred generations arrive and divide it up between themselves."

If the crucial point is whether appropriations worsen the position of others, then the theory does not hold together when latecomers are considered. If it is said that consideration of latecomers must be ruled out because it imposes a condition on appropriation which is impossible to meet (how can the impact of an appropriation on millions yet to be born be calculated?), the right response is to say: so much the worse for this way of validating titles in external resources.²¹⁷

The theory is (more) acceptable if there is only one generation, but given that this is unlikely,²¹⁸ and that distinct agents will be produced in an on-going manner, the theory cannot be universalised in a way that commits it to equal rights for future agents. If self-ownership is trying to claim that an equal distribution of rights ensures justice, it contradicts itself by failing to acknowledge the problems scarce resources and infinite agents pose its model.

If equal liberty is this important, the differential distribution of liberty which inevitably results from Nozickian appropriation is inconsistent with the motivation underlying the whole project of the historical entitlement theory. The theory cannot validate existing titles because it cannot get original titles off the ground. It cannot, therefore, validate capitalist private property. It cannot, therefore, provide any basis for the robust denial of welfare rights characteristic of right-wing libertarianism.²¹⁹

Thus libertarianism requires a welfare consideration if it is not to fall prey to problems caused by one of its own assertions, as there can be no “enough and as good” left behind for others

217 Ibid, p.57.

218 I suppose, in theory, that the group doing the distribution could be Quakers, for instance, who do not reproduce. Instead, they could choose when to let new agents enter into their resource distribution model. This would invalidate Ingram’s complaint, but such a scenario is not relatable to a universal model of acquisition.

219 Ibid, p.59.

without an on-going redistribution of necessarily scarce resources, as “privatization when resources are limited changes the situation of all others with respect to the distribution of *equal* liberties.”²²⁰

This is a basic restatement of the left-libertarian critique.

As was suggested throughout the chapters criticising aspects of self-ownership, this attack on the argument that libertarianism offers a compelling case for dismissing welfare rights is itself devastating to a conception of self-ownership that intends to claim that the rights to the self and property owned by the self renders redistribution of resources impossible. Given that, as Steiner claimed, self-ownership rights must be of equal use, or they end up favouring one group of agents over another, the theory is itself incoherent without something that guarantees for future generations the same rights as the very first appropriators. This criticism cannot be overcome, as far as I can see, using the apparatus right-libertarians currently possess to discuss self-ownership. In strict Nozickian terms, this objection is fatal unless we deny there will be future generations all sharing a resource which, in this case, does not and cannot regenerate. The problems created by such a line of argument are likely to cause Nozickian self-ownership to be dismissed as irrelevant to the concerns of political theory. Again, I will deal with these important concerns on Nozick's terms in the final chapter.

For the time being, though, let us look at Ingram's problems with Steiner's re-purposing of self-ownership theory. Steiner's “global fund” claimed it could ameliorate some of the problems faced by the worst off in a theory strongly based around private property, by emphasising the

220 Ibid.

problems faced when dealing with scarce resources and offering a more egalitarian method of private resource acquisition and ownership which did not penalise future generations of self-owners. Ingram states “Steiner's equalization of initial raw resources is the most natural interpretation of the equal right to liberty which... is the foundational right of the system of capitalist property rights.”²²¹ Ingram thus believes Steiner’s approach to equal liberty best embodies the values that should underpin such a notion – as the liberty ensured by self-ownership is “uninteresting”²²², according to Ingram, without a guarantee that an individual’s needs will be met, then, in her terms, equal liberty should mean roughly equal resources. This is itself an important criticism of self-ownership, and one we have developed the thread of in the last few chapters, particularly when, firstly, a specific version of it was featured by Steiner in his internal criticisms of self-ownership, and then secondly Van Parijs (and essentially, Cohen) used to highlight the difference between 'formal freedom' and 'real freedom'.

To expand on this, I shall briefly outline why liberals such as Ingram believe self-ownership to be a self-defeating concept. Contained within the judgement that gross material inequality is an undesirable feature of a society that claims to be just is, for liberal thinkers, the connection between a lack of material resources in a capitalist economy and a lack of worthwhile political freedoms. Without the resources to aid myself, the decisions available to me are not ones that constitute choices relevant to my life plan – I am largely at the whim of those who own the resources taking pity upon me to enable me to possess the resources necessary to make decisions such as how I wish to live, what I wish to do, and so forth. This connection implies that the correlation between the two

221 Ibid, p.59-60.

222 “Self-ownership is not very interesting unless a person's survival needs are met and she is in a position to exercise and develop her powers” – Ibid, p.45.

is enough for right-libertarianism, which fails to guarantee any resources to individuals, to be self-contradictory. Thus, as I mentioned in the Steiner chapter, left-libertarianism isn't just one interpretation of self-ownership's political consequences, it is the *only* viable interpretation that does not result in gross material inequality. Self-ownership not allied to external resource allocations is, liberal thinkers claim, a contradiction in that the liberty it claims to supply is unattainable, leaving us to rely on the uncertain charity of others. This complaint is easy to understand and difficult to deny. It strikes a fundamental blow to the foundations of self-ownership, the repercussions of which I shall discuss at length in the concluding chapter.

It is therefore not especially controversial for Ingram to say left-libertarianism is the best embodiment of the concept of real freedom, or useful liberty – if we are to interpret liberty as opportunity to any extent, in the same sense that Van Parijs wished to express, then it is clear that access to at least basic material provisions is a necessary tool if the individual is to be capable of actually achieving whatever it is they aspire to. She does, however, raise some important issues with what she calls the “Steiner Constitution”; her first complaint is one of practicality. She asks “how to effect equal division in a world where natural resources are heterogeneously composed and many of them are not readily divisible into the requisite number of equal parts.”²²³ This is a good question, and illustrates one of the obvious problems with either Steiner or Van Parijs' left-libertarianism; the abstract nature of their proposals, which are necessarily, given their purpose in the literature, deeply theoretical as opposed to strictly practical, might suggest that an actual “Steiner constitution” is too idealistic. How would one go about determining the “median” amount of resource ownership, and relating a monetary amount to deviations from this? While it would no doubt be a difficult task, it is

223 Ibid, p. 60.

still visualisable as a concrete principle that penalises the better off – imagine the “land rent” bill of a corporation that owns vast swathes of land and resources, versus the pay-out to an individual who simply rents a dwelling to live in. Surely there is no reason to suppose some sort of payments matrix could not be arrived at with enough attention from economists and accountants; it is not enough of a complaint about the system to say it might be impractical without suggesting any specific concerns. For a trivial example that illustrates the possibility of such a system, look at UK council tax – tax is decided based on the size of each dwelling, and the greater the size of the property, the higher the tax. In abstract, this is a complex position, but it has been enacted with little practical problem – in fact the main issues with council tax seem to reside on a theoretical level, over whether it is a legitimate tax, or even “fair”. While it is understandable that a deeply abstract theory is difficult to relate to “real-world” outcomes, one reason in the case of the “global fund” for this might be its relative obscurity in the literature – with greater analysis comes greater understanding of the non-ideal theory outcomes of the abstract proposal.²²⁴

Ingram's lengthier complaint carries greater weight; she claims that, given a commitment to welfarist principles rather than to the notion of self-ownership, that a “Steiner constitution” would still generate an unacceptable amount of inequality after even a few market interactions, as it would not do as much as a welfarist principle to ensure equality. Steiner's commitment, first and foremost, is to equal liberty, not to welfare equality itself. He does not claim that a more egalitarian principle is required because egalitarianism is in itself good, but that the left-libertarian schema will avoid the problems faced by Nozick's self-ownership in regards to the equal usefulness of self-ownership

224 Steiner discusses this problem with the global fund in “*The Natural Right to the Means of Production*”, *Philosophical Quarterly*, Jan. 1977, especially on p.46-9. He concedes an independent sense of value for all natural resources will be difficult to establish, but that this does not preclude its occurrence.

rights of future generations. Thus, subsistence is not technically assured as such, it simply relies on Steiner's idea being the best interpretation of self-ownership. If an alternate constitution arose which was said to best embody the idea of liberty, then Steiner would be committed to switching to this. "Welfare figures only incidentally in the left-wing libertarian argument. The primary motivation for the right to equal resources is not concern with the material condition of people but with equal liberty."²²⁵ In sum, then, Ingram's complaint is that welfare is itself an instrumental or incidental function or feature of the political interpretation of self-ownership, whereas a welfarist would claim something as important should actually be a fundamental and unalterable feature of any constitution. Without any such guarantees, self-ownership fails, in Ingram's eyes, to ensure a proper conception of equality. Again, rather than being a criticism that attacks self-ownership on its own terms, this is an appeal to a competing basic value, one that Ingram feels is more worthy than liberty or freedom, and so is not one that most proponents of self-ownership would be inclined to take too seriously.

Can the simple presence of something similar to welfare not appease the welfarist to an extent, however? Can we not praise the presence of welfare in left-libertarian self-ownership as a good in itself, and say that, aside from it being a better approximation of justice as self-ownership, that the presence of welfarist considerations makes it a better theory than interpretations of self-ownership without any similar caveats? Ingram believes these to be the two points that undermine a welfarists' possible approval of the left-libertarian interpretation of self-ownership - "Steiner's constitution is vulnerable if either or both of the following holds: (1) scarcity threatens the survival of some or all under equal division when an alternative dispensation would assure it; (2) on a scale

225 Ibid, p. 61.

of points of well-being rising from basic survival the next point up (let us imagine it is a point marking enjoyment of good nutrition, health care, and education) can be reached by more people under an alternative to equal division, and so on up the scale.”²²⁶ In (1), if Steiner's 'global fund' proved to be insufficient to support everyone to a subsistence level, Steiner would be unable to change it so it better supported everyone unless the changed constitution was itself a better interpretation of justice. Welfarists would argue, in much the same style as Rawls does, that support for the worst off should be maximised as far as is commensurate with the continued operation of society; scarcity under self-ownership would mean the worst off not getting the best possible deal. This is essentially the concern at work in (2), and both steps embody a vital concern of the welfarist, as well as Ingram's most important questioning of the value of self-ownership – could the worst off get a better deal under any other system of organising society?

The answer to this, it has to be conceded is plainly yes, they could. A theory which equalised overall resource ownership, like Cohen's, and not just land ownership, would demonstrably provide the worst off with a “better deal” than a theory of egalitarian land ownership alone.²²⁷ Under this situation, those above the average level of resources would give up their surplus, which would then be redistributed to those below. This would include earnings gained through labour, which obviously violates the principle of self-ownership as laid out previously. This argument is commonly dismissed as providing no incentive for the talented to work in that market,²²⁸ but Ingram's argument is not of this overly simplistic form. It eventually takes the form, from the third

226 Ibid, p.61-2.

227 This is to say nothing of Rawls, whose explicit focus on the situation of the worst-off may do even better.

228 See Rawls' reasoning for simple inequality arising from the Original Position in a Theory of Justice.

of her rules governing democratic law, that “(agent's) interdependence means that citizens must stand to each other in relations of mutual concern and respect expressed in their co-operation in a just state.”²²⁹ Ingram illustrates the conceptual basis of this by stating “The very minimum requirement here is Rousseau's principle: ‘In respect of riches, no citizen shall ever be wealthy enough to buy another, and none poor enough to be forced to sell himself.’”²³⁰ Ingram's state would hold welfare as its primary concern, and she believes that her statement of this particular rule cannot be supported by any theory of self-ownership, coming as self-ownership does from a different direction; that of property rights as the most important feature of a just society. She summarises her justification for this position thus:

The satisfaction of basic needs is a precondition of being able to form and pursue a view of a worthwhile life, and to change one's view for another. But more than the fulfilment of basic needs is required if there is to be more than the possibility of formal autonomy. A substantive autonomy requires a social environment which sustains individual access not only to the material means of life but to a sufficiency of means to participate in the cultural pursuits and practices to which she may reasonably aspire. The necessity to provide the conditions of autonomy is a basic ground for our discourse partners to choose the principle of strong social provision.²³¹

So, this means Ingram believes that even the left-libertarian position cannot provide enough guaranteed welfare to satisfy the desire to free agents from the whims of other agents. Only the welfarist position can supply the guaranteed welfare that supports the aspects of the self necessary for self-ownership's enactment, but cannot be attained without violating the economic principles of

229 Ibid, p.171.

230 Rousseau, *the Social Contract*, bk. II, ch. 11, p.96, quoted in Ingram, *A Political Theory of Rights*, p.187.

231 Ibid, p.188.

self-ownership, namely extensive state redistribution of privately owned resources. Thus, paradoxically, self-ownership is an empty concept without the inclusion of a fiscal policy which renders it a contradiction in terms.

Again, though, Ingram's "level" of welfare which renders self-ownership actionable is similarly abstract to Steiner's; the crucial sentence in her description of the acceptable level of welfare, which differs it from the Steiner constitution, is "A substantive autonomy requires a social environment which sustains individual access not only to the material means of life but to a sufficiency of means to participate in the cultural pursuits and practices to which she may reasonably aspire." This would suggest that redistribution shouldn't only be to agents, it should be used to create social institutions, which, as Rawls so famously pointed out, set the reasonable expectations of the individual through their policies and actions. Furthermore, fully realised self-ownership requires a greater than subsistence payment to agents; without it, Ingram feels they are robbed of the chance to live their lives to an extensive conception of the good. To give a trivial example, imagine under a Steiner constitution I have no means of income (whether this is my fault or not is not a concern) and that I have squandered my lump sum from the land fund. Subsequently, I wish to take part in cultural activities. Say, for instance, I really wish to paint; indeed, painting pictures is part of my overall conception of the good. However, given that I have squandered my income, I am unable to afford the art supplies necessary to paint, and subsequently cannot afford my very simple requirements for fulfilling my conception of the good.

Furthermore, Ingram includes the caveat that expectations of the cultural pursuits one may

state as providing part of one's conception of the good must be “reasonable”, ruling out the criticism that some people's conceptions of the good will consist of tastes so materially expensive as to make the state's support of their concept of the good difficult without extreme levels of redistribution, potentially above the median level.

It must be conceded that, if our concern is primarily with welfare, then Ingram's system is clearly superior to any conception of self-ownership which denies the possibility of redistribution from the product of labour. However, by attempting to appeal to an idea of individual justice, that is, claiming an increased level of welfare is the only method of ensuring the possibility of the greatest possible opportunity for the specific capability to enact one's rights in a meaningful fashion, Ingram moves into direct competition with self-ownership on its terms. Indeed, she explicitly claims

What constitutes harm is broadened to include harming others by neglecting to provide them with a fair share of the resources necessary to develop their autonomy. It follows that a state whose responsibility is to provide the conditions of autonomy for its citizens undertakes to secure to them a sufficiency of worldly resources, services, and cultural conditions for the exercise and development of their autonomy even though that involves re-distribution of resources and provision of public goods and services.²³²

Proponents of self-ownership are therefore, on Ingram's terms, harming the social fabric; autonomy must be supported to its fullest extent, and welfarism is the most apt method of doing this, requiring, as it does, manifold resources. Thus, welfarism and self-ownership act to preserve moral agency. It is on these grounds that we can properly compare the two, something that will be

²³² Ibid, p.179.

done after the discussion of the basis of Nozickian self-ownership in the final chapter.

Aside from Ingram's important criticisms, there are many less-developed journal articles attacking the basis and consequences of unfettered self-ownership. They are too numerous for this chapter to cover all of the attacks contained within, but I shall try and draw some generalisations between articles to develop and subsequently analyse the most important criticisms.

One common liberal objection is that agent's differing original endowments undermine a self-ownership conception of natural rights, and that people's natural capabilities should inform their natural rights. This view is well summed up by John Christman, in an article from *Philosophy and Public Affairs*, who claims that

The view of... natural rights to one's body remain(s) plausible only in the state of nature scenarios typically imagined. A natural right to non-interference with free actions is well grounded when there are not appreciable disparities among the abilities of people to freely move and use their bodies. If the world were different – if, say, in the state of nature most people were helplessly crippled or dependent on the healthy minority to make wheelchairs and such in order that they could survive – the intuition that all people have natural rights to act or refrain from acting however they choose would be strained.²³³

Christman is suggesting that, rather than being universal rights which can apply in all

233 J. Christman, *Can Ownership Be Justified By Natural Rights?* *Philosophy and Public Affairs*, Vol. 15, no. 2, spring 1986, p. 173. Christman also examines this problem in *Self-Ownership, Equality and the Structure of Property Rights*, *Political Theory*, Vol. 19, no. 1, Feb 1991, p.38-41.

circumstances, such rights are in fact dependent on our reality-biased perception of social equality in terms of natural endowments.

This is a variation of the indirect criticism of natural self-ownership rights theories most famously proposed by Rawls; the idea that we must compensate for natural deficiencies in original endowments,²³⁴ and that this is often more important than the dogged retention of property rights. Indeed, we encountered a relatively undeveloped idea of it at the end of the previous chapter, when Cohen suggested that the ‘eye lottery’ example is undermined by the notion that genetic endowments were themselves the products of luck or chance. While the liberal response to this is, at root, a separateness of persons argument, as dealt with by Nozick elsewhere in this thesis, the addition of people’s varied capabilities to act on their rights combined with the ‘undeserved’ nature of both favourable and unfavourable genetic endowments makes for a more compelling case. Why is this so? Well, a basic egalitarianism seems to be a deep intuitive commitment for a lot of agents; at base, the idea that it is unfair that some agents are born into advantageous situations, while some are born into situations which actively disadvantage them is a pervasive one. But should such considerations alter, or even do away with, strong natural rights? While it might be unfair, it is not *unjust*. As we have previously mentioned, such a consideration might rob self-ownership of a lot of its substantive appeal, but does not harm the essential notion that we are all the rightful owners of our selves; indeed, such an idea stops the exploitation of the weak by the strong if we analyse their relationship in terms of power – if self-ownership is violated and the weak can be forced by the strong to do acts against their will, even if such an act serves the interests of society, then we are in a situation analogous to slavery once more.

234 J. Rawls, *A Theory of Justice*, p.64.

The addition of emotive considerations towards those with lesser genetic endowments should not disguise the fact that universal ownership of the self can protect the most vulnerable from anything the less ethically inclined members of society may want to do to them. Christman's objection is only persuasive when allied to a conception of constrained assistance, a point we have already conceded needs greater attention in the libertarian literature. This does not mean natural rights themselves need abandoning or even necessarily constraining; that is rather a case of throwing out the baby with the bathwater.

An associated and similarly common approach is to attack the link between ownership of the self and the right to the fruits of labour one has performed. The link is not especially well developed in Locke or Nozick's accounts, as I briefly highlighted, and largely takes the form of a labour mixing argument. In other words, the fact that I own my body, and that my body is the object which is performing the labour, means that I own anything I perform my labour on in the same way I do my body.²³⁵ The brute fact (for self-owners) that I am the rightful owner of anything produced by my labour, means that any state redistribution is theft – no resource of mine, no matter how small or insignificant, may be taken without my consent. Criticisms of this range from questioning the true purpose of the dogmatic retention of *all* of one's resources, when one may need considerably less than this to prosper fully (especially in situations where the 'just' act would be the transfer of some resources to needy parties)²³⁶, to denying the simplistic philosophical link between ownership of the

235 As long as I had the right in the first place to labour on the item.

236 See for example M. Davis, *Necessity and Nozick's Theory of Entitlement*, Political Theory, vol. 5, no. 2, May 1977, p. 221-7, or D. Wood, *Nozick's Justification of the Minimal State*, Ethics, vol. 88, no. 3, April 1978, p. 261-2.

self and the ownership of resources one has earned through labouring.

Firstly, then, why must one retain *all* of one's resources? This query strikes at the very heart of the inequality problem – few will suggest that there should be no inequality in resources whatsoever, but similarly, few will accept that the highest earners should retain all of their income by right, as this is unfair, or not egalitarian. Self-ownership, based as it is entirely on property rights, does not distinguish between resources owned by an agent; the same rights apply to each item or part of property, and so to forcibly remove from ownership any resource whatsoever is theft. This does not leave any leeway for any amount of resources to be redistributed for the sake of lessening equality. The only way such a pursuit could be acceptable to self-ownership is through voluntary resource transfer, hence Nozick's appeal to philanthropy.²³⁷

One appropriate criticism is that the problem of necessity should override retention of property rights. Davis uses the example of an island where there are two inhabitants, Wet and Dry. Nozickian property rights are assumed. Both possess a seemingly infinite supply of water in the form of a well on their privately owned land, and make a living selling the water to tourists. They have no other form of income or contact with the outside world. One day, a storm destroys Dry's well, meaning he is left with no water, no method of obtaining income and no possibility of obtaining water without appealing to Wet's better nature. Despite the brute fact that Dry will perish in a week or two without access to Wet's supply, Wet may charge Dry whatever he desires for this

237 R. Nozick, *Anarchy State and Utopia*, p. 265-8.

water, as it is his private property, and the rules of ownership apply.²³⁸

Argued from a moralistic (perhaps even paternalistic) point of view, the argument against retention of all property by individuals with a surfeit of resources is that these agents may choose to ignore the moral course of action and profiteer off the need of others, essentially exploiting an agent who has no other choice but to appeal to charity. Thus, they conclude this is unjust to the party in need. Surely, the argument then continues, if a course of action is clearly the morally 'correct' one, we should force agents to take this course of action? To fail to do so in this particular situation would be to allow naked profiteering off the misfortune of others. Critics of the consequences of self-ownership believe we should enforce charitable giving in the form of just compulsory redistributions, lest the actions of agents not in need of charity perpetuate or even increase the gap in material resources between the haves and the have-nots. In times of great need, especially where lives may be lost, social concerns and a "fellow humanity" should outweigh individual freedoms. In Nozickian terms, the rights Wet has over his water supply are of greater concern to the application of justice than Dry's obvious need for sustenance. As Nozick says, "someone else not providing you with things you need greatly does not itself violate your rights."²³⁹ While we might want to comment that Wet is morally in the wrong charging Dry for access to an infinite resource,²⁴⁰ libertarians would want to say that the morally 'right' path does not imply a rule coercing agents in a situation into this one path of action – it is a moral duty, not an enforceable duty, which as we have

238 The Lockean response is to say that there is something akin to an obligation which requires Wet to sell, but allows him to charge whatever he can get from Dry.

239 R. Nozick, *Anarchy, State and Utopia*, p.30.

240 Part of what Davis feels is the persuasiveness of this example is that Wet's supply of water is not at all scarce – indeed, Dry's appropriation of enough to survive would not damage Wet's position in terms of how much water he possesses. This begs the question that, given the far more likely condition of overall scarcity in such a scenario, would he be moved towards supporting a different outcome?

already discussed is a key dichotomy for libertarians. Morality should not necessarily be enforced. To use a classic term, it is the difference between perfect and imperfect duties, the former being duties that we must perform and are imposed on us by legitimate force (normally the state) and the latter being duties that we perhaps *should* perform, but are under no obligation to do so.

So runs the argument by libertarians against the enforcement of particular moral acts, especially those which contradict our natural rights.²⁴¹ What of the more fully developed argument, though, set in libertarian terms, which suggests that the presence of necessity and the absence of choice due to the actions of another party is coercion, and that coercion is itself expressly forbidden by libertarian thought? Essentially, the argument proceeds, an agent who has a choice between death, starvation, a similarly desperate condition or an option that is unattractive to him, such as selling their labour far below what they consider to be an acceptable level, is exploited by the agent offering them the unattractive option, and due to the conditions of their choice the unattractive option is practically enforced, leading to the agent being coerced into an option they do not want to choose. In our example above, isn't Dry coerced into paying whatever price Wet demands, as Dry has no other option? In demanding Dry pay a clearly excessive price, is Wet violating Dry's rights?

Nozick continues with the same thread of argument he used to dismiss moralised concerns, as in the quote above. He denies that the actions of others making free choices can violate rights, or

241 Another analogous situation (an action which seems morally the right choice but should not be enforced by coercion) might be helping someone who is drowning, for example, or essentially sacrificing one to save the other, as in the common "runaway train" example, where we may switch the points to make a runaway train kill one person rather than three. Note that the acts required (swimming to save the drowning man, or changing the course of the train) do not themselves violate our rights in the same way as the redistribution of privately owned resources, but would nevertheless be rejected by libertarians as morally enforceable on the grounds that the simple enforcement of such acts would itself be proscriptive or paternalistic.

be the equivalent of coercion through absence of choice. Nozick uses the example of twenty-six pairs of marriage-minded individuals, A through Z and A' through Z'.²⁴² We talked about something like this in the section on Steiner's compossibility, where there was a discussion of the free exercise of naked rights resulting in the numbing of the rights of others, but with such a relationship conducted so that no specific party could be held at fault. Briefly, given freedom of choice and the ordering of A and A' being the most appealing choices within the sets, A and A' will opt to wed each other. B, denied the chance of marrying A', will opt for B', and the individuals are paired off in order down the line leaving Z with the choice of Z' or nothing. This choice is the least appealing one possible from the set, but everyone else's actions have left Z and Z' with no other option. Have Z and Z' been coerced into choosing each other, when they would rather have chosen any of A through Y or A' through Y'? To an extent the conduct of free choice by everyone else has constrained their possible outcomes – if A through Y had not been in this abstract situation, Z could have chosen A'. Nozick's answer, though, would be that everyone has acted within their rights in making their choices. No one was coerced into their choice directly by the actions of another; the only force is the indirect force of the nature of the situation Z and Z' find themselves in. Their hand has been forced, so to speak, but it has not been forced directly by another agent, and the other agents cannot be held responsible for Z and Z's predicament, acting as they were freely and within their rights.

So, self-ownership theory denies in the above example that Wet's actions exploit or coerce Dry, or that the imperfect duty Wet bears in regards to Dry should be enforced by the holder of the monopoly of force. It is on the grounds of rights and enforceable duties that self-ownership denies that justice will entail forced redistribution, and the same argument is used to claim that it is

242 R. Nozick, *Anarchy, State and Utopia*, p.262-4.

impossible for the just actions of others to add up to exploitation of anyone – indeed, as Nozick so famously claimed, any situation which arises from a series of just steps must in itself be just,²⁴³ like Nozick's theory of historical entitlement.

Finally in this chapter, we examine the complaint that the link between ownership of the self transferring to ownership of one's labour and the fruits of said labour is tenuous at best, or has a false basis. In Locke and Nozick it simply takes the form of a labour mixing argument; I own myself, I labour on an object, during this act energy is transferred from me to the object, and this energy (of which I was already the owner) creates my claim within the object itself.²⁴⁴ By labouring over this object, I have created a claim equivalent to the extra value I have created in the object. If X were the only person responsible for change in state Y, then libertarians envisage us holding X responsible for the actions which resulted in change of state Y by attributing the consequences of Y to X. As Locke says in reference to this link “The labour of his body and the work of his hands, we may say, are properly his... Whatsoever he removes out of the (natural) state... hath by this labour something annexed to it that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to.”²⁴⁵ Locke founds private property on the property we have in ourselves with his labour mixing principle, in the sense that by labouring, we have literally committed a part of ourselves to the

243 Ibid, p.163.

244 All this assumes that the object the self-owner labours on was rightfully free to labour on – the paradigmatic example is unowned objects, which very little labour is required to develop a claim to (as Locke says in the *Second Treatise*), but the principle applies to contracted labour for compensation too. The principle cannot overcome natural rights, though; if I labour on something that belongs to you without your agreement, my labour on it does not develop a similar claim, as the object was not mine to act on originally. Indeed, my acting on your object is a violation of your ownership rights in the object.

245 J. Locke, *Second Treatise*, V, 27-8.

labour, and so something of us is now contained within the act of labour.²⁴⁶

While the relationship here between labour and title creation is clear enough, critics have argued it is not strong or distinct enough to bear the weight of one of the major principles of self-ownership, the full unfettered ownership of the resources one has earned through labouring. Can the simple process of conducting an act of labour (of a potentially minute amount²⁴⁷) entitle one to the full amount of a resource so appropriated, or a reward earned?

The foremost complainant here is Jeremy Waldron, whose article *Two Worries about Mixing One's Labour* is a short and punchy dismissal of the coherency of labour mixing creating entitlements.²⁴⁸ His first concern is more abstract in nature; it is the suggestion that labour is not a “thing”, so to speak, that the notion of labour is not a physical embodiment of anything and so cannot be said to be mixed with another object by a labourer. “Surely the only things that can be mixed with objects are other objects. But labour consists of *actions* not objects. How can a series of actions be mixed with a physical object?”²⁴⁹ This is surely a misapprehension of the nature of labour mixing. Waldron is claiming that, in Locke, labour mixing involves labouring upon something and this labour creates an entitlement in the object with which labour is mixed. This is controversial because I am mixing one object (a tool I use to conduct my labour) with another (the

246 G. Parry, *Political Thinkers: John Locke*, p.49-50.

247 Locke's labour mixing principle, as previously discussed, allows a tiny amount of labour to count as appropriation – the picking of an apple, or the act of drinking from a stream, are enough to make these resources (the apple and the drink of water) justly private.

248 J. Waldron, *Two Worries About Mixing One's Labour*, *Philosophical Quarterly*, vol. 33, no. 130, Jan. 1983. p.37-44. Waldron admits that this article also owes something of a debt to Karl Olivecrona's *Locke's Theory of Appropriation*, *Philosophical Quarterly* 24, 1974, p.226.

249 *Ibid*, p.40.

object upon which I am labouring), but there is nothing of myself going into such an action.

I would counter Waldron with the question “how can mixing be understood without the employment of action, and thus something that can be described as labour?” An object remains in one particular state until it is acted upon. This action, in the case of 'mixing', involves a person who is the rightful owner of their selves utilising things they own (their selves and the tool for labouring with, if applicable) to alter the state of an object, X. Perhaps Waldron's issue is that, while we can understand labouring *upon* X, we cannot similarly understand *mixing* one's labour with X. Waldron treats labour as if it must be a physical component of any labour equation, whereas I contend that essentially labour mixing is the name of the relationship between the labourer and X. Treated this way, as a method of summarising a relationship, labour 'mixing' is the interaction of one element (the labourer) with X; the two are mixed together, arguably resulting in a different outcome in both cases. The labourer has expended something of themselves (the energy required to operate the tool), and X is presumably a different object to what it was before the labour mixing occurred. If the labourer has expended something, and X is now of a different composition, then what is so controversial in identifying an exchange, or mix, of energy between the two? If I am the rightful owner of myself, I am the rightful owner of my actions, and I am the rightful owner of energy I expend in performing these actions. If I mix this energy with an object for the purposes of labouring and with the intention of alteration, we can assume that (at least) the change observed in X is imputable to me, and that I therefore bear responsibility for the change. The actual existence of the principle of labour mixing, it seems to me, is understandable in terms of the energy expended by the labourer to alter an object which would otherwise have remained unaltered. However, this does not cover the problem of the amount of labour required to privatise a nominally unowned thing being so

inconsequential as to make no difference at all, even though labour has been expended, for instance swimming in the sea – my act of swimming is expended energy, and it alters the water around me. Do I now come to own the sea?

Thus, Waldron's second complaint is with the triviality of the labour required to be nominated as “labouring”-

Suppose there is a vat of wet cement lying about which belongs to nobody in particular, and I drop my ham sandwich into it. Before I can retrieve the sandwich, the cement hardens into a concrete block. (Or, better still: as in Locke's case the cement is lying about and I *intend* to drop my sandwich into it, not wanting to retrieve it.) Can I now claim the concrete block in order to protect my entitlement to (my) sandwich? Can I object, when someone takes the block out of my control, that he is violating my entitlement to the sandwich?²⁵⁰

Waldron sets these questions at the end to illustrate how ridiculous the situation is – how can one claim a vat of cement simply by dropping a sandwich into it? Surely the problem with this example lies in its first sentence – the cement belongs to “nobody in particular”. It does seem quite odd to have a vat of cement, just now drying, which is not in possession of anyone; to claim otherwise would be to suppose the natural occurrence of such objects, whereas surely someone must have laboured to get the materials that constitute drying cement into such a state. Much more persuasive would be the analogous argument that Waldron is really getting at – if I bury my sandwich in a natural unowned resource, do I come to justly own that resource? Thanks to the

250 Ibid, p.43. This example surely parallels Nozick's infamous “radioactive tomato juice” example on p. 189 of *Anarchy, State and Utopia*.

clause in the acquisition proviso that the appropriation of unowned objects must not worsen the situation of anyone else²⁵¹, as long as the situation of others is not worsened by the claim over the land the sandwich is buried in, then libertarians are committed to saying that this strange and trivial amount of labour does indeed give an agent title over the unowned land. As not worsening the situation of anyone else is a given under such a system, this objection is not really troublesome for self-ownership – who is to say which particular methods of labour *should* give rise to a title?

We shall be more charitable to Waldron and imagine the block of cement is the property of someone. May I similarly claim the cement and sandwich mixture, or attack someone else's claim to the newly formed mixture, as in the second question posed by Waldron? This is unlikely, as I presumably did not have the permission of the owner of the cement block to drop my sandwich in, or essentially to mix my labour with his property. All I have done is foolishly and irretrievably misplace my sandwich in a manner which has not altered the ownership of the concrete block. From this, we can see that the amount of labour required to entitle one to an object is not as important as the original ownership of the object. If person X owns object Y, and person Z comes along, labours on Y without X's knowledge and greatly improves the value of Y, that still does not make Y the possession of Z; indeed, X's rights are violated by Z labouring on Y without permission. Thus, consent is the vital component of acquisition claims within labour-mixing theory, and the amount of labour needed to claim an entitlement seems largely beyond the point. All labour, if not performed on something unowned or something in the labourer's possession, will be conducted on the property of someone else. This someone must have given consent, and therefore set out the terms that will apply to the labour, meaning direct conditions will apply to not only the labour itself, but to the

251 See Ibid, p.174-8, and earlier chapter on Steiner.

amount of compensation or levels of subsequent ownership of the object the labourer has mixed their labour with. Again, these statements are uncontroversial, and in fact the latter case can be used to describe all contractual labour-mixing for compensation, as occurs in both manual labour and service industries.

This chapter has analysed the major complaints about the existence, nature and consequences of self-ownership, from Cohen to Ingram to Waldron. After surveying the relevant and pressing attacks on what is, when laid out by Nozick, a very stark, simple theory that undoubtedly promotes gross material inequality, our conclusion must still be that the only complaint the Nozickian model of self-ownership has no response to is the problem of a lack of subsistence level support rendering self-ownership a less-than-universal concept. Self-ownership is *coherent*, but does this make it *useful*? It is universally applicable, but is it universally operable? It is *formal*, but is it *real*? Taking our previous analysis of Nozickian self-ownership, it has become apparent that Nozick seems to possess no answer to this crippling problem (as he fails to see it as a problem in itself), but my final chapter will claim that perhaps he has not noticed the response to it which is implicit in the reasoning and justifications which comprise his account of self-ownership and its justification. By way of illustration, I will now unpick and re-formulate Nozickian self-ownership, to show what the implications of strong and non-egalitarian right-wing libertarianism *really* are.

The Justification of Nozickian Self-Ownership

As has been obvious since the section on Nozickian self-ownership, self-ownership is a concept that has been beset by criticism from all sides, criticism which has attacked and questioned all of the aspects which comprise the theory. Nevertheless, self-ownership remains concrete, simple and demonstrably coherent enough to be a defensible theory. The job of this chapter is to argue that, while the core of the theory has come through these tests, its values have not emerged unscathed. If self-ownership is to retain appeal as a theory of justice, there are certain issues with its structure and consequences that will need addressing. As we have been examining the counterpoints to a Nozickian conception of self-ownership, we must now examine what damage the problems, queries and declamations of the chapters following on from our analysis of Nozickian self-ownership have done. Only then will it be possible to lay out the responses and fixes self-ownership must make to solve the fatal problems uncovered, if this is at all possible. If there is not a solution to the problem available within the boundaries of Nozickian self-ownership, we must admit the criticism is fatal and that self-ownership cannot be corrected without destabilising the foundations Nozick laid for it. Essentially, this chapter will examine what is wrong with self-ownership, and then suggest a response to the problem derived implicitly from Nozick's work, for better or worse.

So what *is* wrong with self-ownership? Firstly, Steiner and Van Parijs outlined how self-ownership must really work – they felt that, prior to the demands of self-ownership, we have a greater responsibility to the freedom and liberty of agents, and the best way to ensure the fulfilment of these requirements was to redistribute wealth in some way so as to ensure each individual was

not noticeably disadvantaged in their freedom or liberty. Indeed, Van Parijs refers to the freedom of those who have only rights and no resources (Nozickian self-owners, to take an extremely pertinent example) as *formal* freedom, and I think the distinction between the formal freedom of individuals in a Nozickian right-libertarian state and the “real” freedom bestowed upon left-libertarian agents that results from the combination of self-ownership and sufficient resource ownership will be the byword for our investigations in this final chapter. It is a challenge to Nozick that he does not, in his present form, have the tools to rise to. This is the point of including the left-libertarian critics – to show that Nozickian agents are disadvantaged, even when a competing account of self-ownership is considered. What, then, of the criticisms of Nozick that hit home from the non-libertarian critics, covered in the subsequent chapters? Can any of these be said to have hit home in a similarly damaging fashion?

Cohen, Ingram, Christman and Waldron have questioned the basic notions of self-ownership. Aside from their questioning whether or not ownership is the appropriate concept when visualising our relationship to our particular selves, none of them are prepared to go as far as explicitly refuting the core idea that, in justice as visualised in terms of rights, the rights to the self must reside within the ownership powers of that relative self. Each of them questions self-ownership's interpretation of this idea, to the point where they say that the Nozickian interpretation of self-ownership has so many counter-intuitive and unappealing consequences when “cashed out” in an on-going social arrangement that it is unlikely ever to hold appeal or to gain popular credence.

The majority of their criticisms can be summed up as either, as Cohen or Ingram suggest,

proposals of entirely separate and incompatible concepts of justice that will serve to solve some of the supposedly problematic consequences of full self-ownership (while presenting their own unique problems), or, as with Christman and Waldron, misapprehensions and misunderstandings of the nature and interplay of justice, the rights to the self, and the rights to property. The former are too broad and too far removed from rights theories of individual liberty to be genuine threats to the stability of self-ownership as a conception of purely negative freedoms, while the latter can be, as has been demonstrated, amply defended by the theoretical mechanisms already deployed by Nozick in *Anarchy, State and Utopia*.

Cohen argued that money was itself a dispersal of freedoms, and as such those who have less money are measurably less free. This was refuted as an unhelpful conception of freedom, as to make everyone as free as possible would involve distributing all resources entirely equally, with no chance of developing any inequality through work and earning. This would drastically change the subject under discussion from capitalist freedoms to communist freedoms, and so this complaint's analysis of the nature of freedom is irrelevant to our pursuit here. Cohen had a valid point, though, when he noted that 'slavery', as employed by libertarians to describe the work done by individuals solely for the benefit of the state, is such an emotive term that it masks the obvious and important differences between actual slavery and the far comfier relationship between the state and the taxed individual. It would be more profitable for us to focus on the still obvious restrictions on liberty that tax and the state impose using less hysterical descriptions. Cohen also argues that some things agents can give their free consent to should not be allowed due to their inherent immorality, such as opting into slavery. A Nozickian account would say that this only serves to undermine the free decisions made by self-owners and render them infantile in relation to the state, whose job Cohen

sees it as to rescue them from such abusive relationships. However, were Nozick to adopt Steiner's refutation of the self-ownership labour paradox (as it seems he must to avoid the paradox), then he would have grounds to deny the justice of slavery on the proviso that only natural ownership is justified, and that the ownership of one agent by another runs contrary to this.

Only one of Cohen's complaints, however, successfully attacked self-ownership on its own terms and is significant enough to jeopardise the entire enterprise. This is the suggestion that gross material inequality will eventually lead to a situation in which agent's rights are essentially differently actionable. This criticism carries greater weight than any other because essentially it suggests that the very core of self-ownership, that is equal and natural rights applicable to each and every agent and prescribing the individual liberty demanded by justice, is simply a formalised protection that, for certain individuals, is of little to no use or value whatsoever. Essentially, self-ownership in its current form cannot be universalised – the rights that comprise it affect only agents with specific characteristics, effectively acting as if to treat them differently from others. The self-ownership of some is compromised so as to make their possession of it, in a practical sense, pointless.

Ingram suggested that the very nature of ownership was an inappropriate tool for analysing our property in our selves, as the creation of ownership rights regarding agents plays right into the hands of slavery. Without a system like the one under discussion, we could not coherently express the relationship involved in slavery, but self-ownership, allowing as it does for individuals to be owned, 'lays the ground' for a slave-owner/slave relationship, which is inherently immoral. Again,

like Cohen, her fully expanding on this critique would simply involve the creation of an alternative system, and beyond the brief criticisms of her idea I offer in the previous chapter, there is little worth in us pursuing further the interplay between political theories based on such vastly different interpretations of the basic nature of rights. She then went on, in much the same way as Cohen, to explain how self-ownership was a self-defeating concept for a particular kind of agent. Indeed, this complaint coheres, as again Cohen's does, with Van Parijs' suggested formal freedom/real freedom dichotomy. Thus, what all these complaints have in common is that they all agree that *gross material inequality formalises the freedom of some agents, rendering self-ownership a pointless or inactionable concept to them.*

I shall therefore tackle this final chapter by outlining who these agents are, how they are disadvantaged compared to the ideal operation and employment of rights of self-ownership and, ultimately, the methods Nozick might use to go about providing a solution to the major problem that besets his theory.

Same Rights, Different Application

So who are the agents left disadvantaged by self-ownership rights? The answer to this was outlined in the other chapters on self-ownership by those who believe the principle is sound but requires some modifications – the left-libertarians Steiner and Van Parijs. If you recall, they believed that, while self-ownership was an essential feature of a structure that hopes to ensure

freedom or liberty for all, a necessary supplement to this self-ownership was an equal share of natural or scarce resources, essentially a positive right to a certain amount of income derived from sources theoretically consistent with theories of self-ownership. Both suggested that agents without a guaranteed right to resources would experience self-ownership differently to those who had access to the resources necessary to contract into the mutually beneficial agreements which comprise interaction in a libertarian society. They believed this for two reasons, respectively that successive generations will be born with rights which are incompatible with the exercise of the rights of those who came before them, and that something must be done to make agents as free as possible with regard to the choices they must make, otherwise freedom is formal, not 'real'.

Therefore, the notion of differential experience of rights is the basic criticism that ties together the Steiner, Van Parijs, Cohen and Ingram critiques of Nozickian self-ownership. The two identified groups who will be problematic to right-libertarianism – future generations who will arrive to find that there is nothing left for them to claim, and those who wish to have options beyond being forced into selling their labour against their will by the structure of capitalism, are noticeably different, and suggest that there is a more pressing need for wider assistance than either of these theorists have outlined. Nevertheless, both share a common characteristic; neither group possesses the resources necessary to make sure their rights are not compromised. We return here to the point ably raised by Cohen and Ingram, that rights are formalised for those without private possession of a certain amount of resources that enable them to subsist and survive without relying on others. Indeed, for a theory so focused on individual liberty to be pushed into a situation where the liberty of some is dependent on the free agreement of those who hold resources (in terms of employment, support, assistance, etc.), as in the social ownership rejected by all the libertarian theorists we have

surveyed on the grounds that it does not enable agents to make free, independent decisions, seems to run contrary to its core principles, especially separateness of persons, universal liberty and in general, the freedom to act for one's self, at one's own behest.

Nozickian rights, as was made apparent in the earlier chapter on his work, are all based on the necessity of protections for the self. His circle of rights, which comprise self-ownership, create a duty, held *in rem* against others, that denies the possibility of justifying the violation of the rights without specific consent from the agent bearing the rights. This is their full extent, however. The rights do not have a 'reach' outside the individual; rights cannot impinge on others except to deny the possibility of certain actions. The structure of Nozickian rights, which mean that no individual has a right held against others that he must be assisted, makes for a society based around insurance claims. This is because the only way to create a positive right to assistance in these circumstances is to freely contract into it. If no one has a duty to assist me, and I require assistance, then it is up to me to create that obligation. For instance, someone in poor health may form a contract with a doctor, which creates a duty on the part of the doctor to assist the other party.²⁵² However, creation of this contract by an individual with no resources is unlikely, as the doctor will presumably require the further resources necessary to continue living, and so is highly unlikely to bargain away his major skill for no reward whatsoever. Thus, the individual wishing to create duties of positive assistance on the part of others necessary for his continuing prosperity must have something of value to exchange in return for this created duty.

252 J. Wolff, *Robert Nozick: Property, Justice & the Minimal State*, p.19-20.

Established within this example is the idea, now crucial to us, of a self-owner with no ability to labour. Analysed in terms of his ability to exercise the rights to his self, he both has the opportunity to exercise his rights and no opportunity to exercise them. Clearly, he can still reason, think, make decisions for himself, and so forth. However, to live any respectable quality of life, and so to thus aspire to make decisions which would have an effect on his life, he would require round-the-clock care, as he is unable to perform the smallest task to aid himself. Crucially, he must contract into the previously outlined medical support arrangement or perish. Liberal society, and to an extent our left-libertarians, would give our disabled agent this aid even though he had no resources to exchange for it and nothing to realistically offer a wider society that, in terms of self-ownership, views him as a protected resource useful only for labour. Nozick's society is likely to let this individual fall on the mercy of private philanthropists, privately organised health insurance schemes, and family members. As he is unable to work, he is unable to come to own any resources which would be used to create positive duties relating to his care and assistance, unless they are freely and benevolently given to him. As his only resource is *himself*, and that self is unable to perform labour (the only task an agent can perform while possessing no other resources which creates value), he is stuck in a situation in which his self-ownership is of no worth. Without a guarantee of even a continuing existence, what choices is the individual really at liberty to make? Any value he may have derived from the exercise of his rights is wiped out by the absence of the possibility of any of his decisions having a discernible bearing on his life. As a liberal might say, he does not get 'fair value' from the rights of self-ownership.

When I say meaningful, or of no worth to the individual, we must turn to trying to identify exactly what it is that gives self-ownership *meaning*, or essentially which value it aims to defend. If

it is possible to identify the aspect of the individual that self-ownership aims to promote then perhaps we can put a finger on why exactly it is, in terms that Nozick could understand, that agents are disadvantaged when, under a system of self-ownership rights, they are unable to provide for themselves. Essentially, we are asking whether or not self-ownership is the *basic* value for a Nozickian account of right-libertarianism, or whether there is another aspect of his theory that informs the necessity of the imposition of self-ownership rights – a prior value that *Anarchy, State and Utopia* is in fact an expression of.

Self-Ownership and Agency

Doubtlessly, all critics of self-ownership, from socialist to left-libertarian, agree that something more must be done about the needy than Nozick is prepared to do – that without a positive right of some sort, self-ownership is, for various reasons, indefensible. All these theories are arguing that, without a positive right to resources, self-ownership loses something; it becomes formalised. We need to identify what exactly this is. Now, the theories we have surveyed have had various reasons for saying self-ownership rights are, by their nature, compromised.

Firstly, Steiner said an equal share of natural resources was required to prevent impossibilities occurring. When these do occur, future generations will lose out – their natural rights will be impossible to act on, as “nothing can be made by labour alone” but “...any current set of domains, to be valid, must derive from a set of original rights and duties concerning things which

were ipso facto antecedently unowned. Initially unowned things must be justly ownable.”²⁵³ Thus, for agents to have the chance to labour on anything so that they might support themselves, they require a right to a share of natural resources to be included as one of their original natural rights. This is because otherwise the sets of rights agents bear will be incompatible with each other – they will not be simultaneously actionable.

This is essentially a structural complaint, but it reveals what is pretty much an inconsistency over rights application – those who are the “first founders” will divide up natural resources between themselves, as is their right, and then future generations will find there is nothing left for them to labour on. Their natural rights are formally equal, as they would still be able to labour on unowned resources were they to be available, but as there is no practical chance of them doing so the right cannot be considered more than formal – it is not actionable. Self-ownership rights differ in content, as we conceded previously. So why is this a serious clash? What value is compromised when these rights clash? Perhaps if rights ascribe areas of freedom, then we may accurately say that the later generations are “less free” or “less able” than the earlier generations, and this is unjust. The rights of *An Essay on Rights* are there to protect *liberties*. Essentially, to Steiner, future generations are less at liberty to act without some sort of resource redistribution.

In fact, this freedom to act is the value-judgement that seems to drive all these complaints, and furthermore what justifies the solutions laid out. In Van Parijs' case, we saw that the simple presence of rights is just “formal” freedom, rather than “real” freedom that results from the UBI’s

253 H. Steiner, *An Essay on Rights*, p.235.

guaranteed access to resources. This is important to agents because it gives them the chance to live out their conception of the good life, to exercise greater choice over what they do with themselves. The parallels are obvious – when rights are merely formal, they are of lesser value, despite 'existing', or taking the same form, in exactly the same way in every other agent. In Van Parijsian left-libertarianism, if I have an infinite amount of resources in my possession I am free to live out any reasonable conception of my ideal plan of life I wish; conversely with no private resources I am certain to have to sell my labour to survive, and will find that this compromises the freedom I might otherwise have had to make decisions. The actor with no resources and the actor with infinite resources possess *exactly the same rights*, but one's rights are of demonstrably greater value to him than the other's rights are.

Ingram, as we saw, makes a similar point to Steiner's regarding latecomers, but goes more directly for criticising the differential liberty such a problem imposes. "If the crucial point is whether appropriations worsen the position of others, then the theory does not hold together when latecomers are considered... the differential distribution of liberty which inevitably results from Nozickian appropriation is inconsistent with the motivation underlying the whole project of the historical entitlement theory."²⁵⁴ Again, equal rights create unequal liberty due to the situation in which they operate.

The conclusion we must draw from these complaints, all of which have Nozickian right-libertarianism firmly in their sights, is that self-ownership is variously inconsistent with its own

254 A. Ingram, *A Political Theory of Rights*, p.57-9.

premise of equality of rights. The presence of merely formal rights does not, in some cases, have the effect the rights were intended to create when we consider how the rights themselves can and will be acted upon in social settings. What the rights actually do is, in practical terms, restrict some agents' freedoms, and the severity of these restrictions depends on the amount of private resources the agent can bring to bear.

Still, for this complaint to worry Nozick, we must put it more in his terms. There are two major avenues of enquiry available to us here. Firstly, I am going to attempt to show that there is an aspect of the formal/real freedom distinction present within Nozickian right-libertarianism itself, at a very basic level of his theory. Nozick displays concern for rights being formalised, and I will use this analysis to lay the ground for my remodelled version of Nozickian libertarianism. Secondly, I will use the very small parts of Nozick's work that talk about his theory's relationship to Kant's categorical imperative to demonstrate that Nozickian libertarianism relies on a basis of moral agency. Subsequently, I will combine these two original re-interpretations of Nozick into a re-appreciation of what Nozick's right-libertarianism *actually* entails, that is, a theory that goes against most of Nozick's commonly understood beliefs, but displays concern for real freedom as well as formal freedom.

Formal Freedom and Real Freedom in Nozickian Libertarianism

So, our first step is to establish the existence of a formal freedom and real freedom

distinction within Nozickian libertarianism, and to show that Nozick is, to some extent, concerned about this distinction. As Nozick infamously says, any situation that arises by just steps (in this case, the application of rights), is in itself just. Thus, while these problems might be perceived as having negative consequences, due to the way in which the problems are arrived at they are, to Nozick, just in themselves. What problems, then, can it present for Nozick if the rights themselves are formally equal but not equal in real terms, that is, equal in their distribution but not in their practical application? Our complaint presupposes that for natural rights themselves to be just, they must not only be equally applied to everyone, but that this application must have an equal subsequent effect on everyone. There is some evidence that Nozick displayed concern for the possibility of rights not affecting everyone equally. This can be found in his treatment of the Lockean proviso, as well as in the consideration from the answer Nozick gives to the problems posed in the last chapter by Wet and Dry, in which Wet was forced to show concern for Dry's formalised rights and share his water.

When concerning himself with the nature of just original acquisition, Nozick clearly exhibits concern for those who might get left behind, requiring those whose situation is worsened by the acquisitions of others to be fairly compensated, because “an object's coming under one person's ownership changes the situation of all others. Whereas previously they were at liberty to use the object, they now no longer are.”²⁵⁵ Note the concern for *on-going* liberty for agents at work in this quote. “The crucial point”, he goes on to say, “Is whether appropriation of an unowned object worsens the situation of others.”²⁵⁶ The pertinent question this raises is *why* Nozick shows concern

255 R. Nozick, *Anarchy, State and Utopia*, p.175.

256 Ibid.

for the 'losers' in the race to acquire. As Nozick believes that all justly taken actions must necessarily be just in themselves, the idea of a consequential redress dependent on the prospects of others seems odd to say the least. Nozick's other two principles of justice in holdings do not require knowledge of the situation of other rights-holders, and it is difficult to picture him supporting, for instance, a principle of justice in transfer in which those who are placed at some sort of disadvantage by the transfer, but not directly involved in it, are entitled to a form of compensation. Essentially, each agent possesses the right to acquire as large an amount of natural resources as they wish, but this acquisition is not legitimate, or is unjust, if it impacts negatively on the rights of others and no redress is offered.

Thus, Nozick exhibits a clear concern for those whose rights are formalised by the resources of others, which not only displays a clear link *present within Nozick* between resource ownership and the usefulness or otherwise of a rights distribution, but shows that it is *necessary* for those who lose out to be compensated before the action of acquisition, one of our very few original rights, can be considered just. "Any adequate theory of justice in acquisition will contain a proviso similar to... the ones we have attributed to Locke."²⁵⁷ That is, any proviso which does not contain at least some form of compensation for those whose situation is worsened by the actions of others in acquiring objects is entirely inadequate for 'purpose', whatever that purpose might be.

This suggests to me that Nozick is actually, on some level, concerned for the nature of opportunity available to self-owners in the subsequent actions they are permitted to perform within

257 Ibid, p.178.

the freedoms dictated by their rights, as well as the previously identified Nozickian dictate of ensuring that their original rights are in place. Thus it would appear that not every action taken within the structure of Nozickian rights can be considered just without reference to the effect the rightful action of one may have on the potential for another to perform the same action. Indeed, “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.”²⁵⁸

“It is the combination of the original acquisition plus all the later transfers and actions that violates the... proviso.”²⁵⁹ Rights themselves are not just original distributions specifying a set of allowed actions; in this case they are an on-going and situational dependent move set that has to respond and change given the environment and surroundings a self-owner finds himself in. As well as the deployment in a social setting of this particular right, we must consider the effect this right has on others, and whether it makes the identical right wielded by all other parties simply formal, that is whether the action I am performing makes it difficult or impossible for you to perform the same action. Our environment must be a factor in our rights. For example, “a person may not appropriate the only water hole in a desert and charge what he will. Nor may he charge what he will if he possesses one, and unfortunately it happens that all the water holes in the desert dry up, apart from his.”²⁶⁰ Were I to be acting in abstract, that is, with no other right-holders around, then my acquisition of this well would be permissible. The simple presence of other rights holders affects

258 Ibid.

259 Ibid, p.180.

260 Ibid.

my rights, because I will lessen their ability to use their rights to acquire similar objects for the purposes of their flourishing. The interesting debate is whether this question is internal or external, that is, whether the concern itself lies with the resulting inability to successfully operate the rights themselves or the effect a lack of ability to operate has on some sort of primary, more basic value, such as an account of freedom or liberty. Nozick himself says that “a right to life is not a right to the physical things one needs to live.”²⁶¹ That is, Nozick believes this proviso's ultimate appeal is to the rights themselves, not to any greater value as in the left-libertarian accounts. I hope to show in the next section that these two interpretations of the structure underpinning an appeal to compensate others for their disadvantages are intertwined in a way Nozick could not admit.

It would be unfair to Nozick to say the notion of rights distributions relating to a dynamic environmental understanding of whether or not rights are actionable is widespread or common in his work, as it is clear from everything we have said that his just steps argument used in combination with the justice in transfer principle is a major argument *against* a dynamic redistribution responsive to the situation of everyone else.²⁶² Nevertheless, the need to respond to the actions of others that render rights formal, or impossible, is actually present within Nozickian right-libertarianism, showing he had a minor concern for not only formal freedom (the original distribution and upholding of a fixed structure of rights), but *real* freedom (an understanding of the dynamic and socially dependent application of our original distributions of rights, and the individual or personal consequences of these rights when applied to such a situation).

261 Ibid, footnote, p.179.

262 Nozick also goes on in the section regarding this proviso to outline some further examples in which a seeming monopoly over a good cannot result in subsequent compensation, such as if an inventor invents a new product, thereby necessarily taking all the supply of said product for himself.

At the very least, it would appear that he is well aware of the distinction between formal freedom and real freedom, and the problems that this interpretation of the usefulness of rights poses to his theory.

Kant, Nozick, and the moral basis of self-ownership rights

How can we relate the concept of 'real freedom' to Nozick's right-libertarianism? For my thesis to suggest that Nozick has an underlying conception of not just formal, but real, freedom, it must show not only that Nozick has some kind of concern for real freedom, as in the preceding section, but that 'real freedom' is not philosophically opposed to Nozickian libertarianism on a more fundamental level; that is, that the concern for the actual consequences of self-ownership for the individual are not just purely mechanically present, as in the acquisition example, but that this concern is noticeable in the very basis of Nozick's reasoning behind his entire project. This section should prove that the acquisition example is not just a token offering from Nozick to those whom he admits will be disadvantaged, but that noticing the implications of that example is simply to notice a deeper, important, and easily missed thread of Nozickian libertarianism.

So, to proceed to a deeper level of analysis, we must ask ourselves what aim or goal the rights themselves are trying to achieve, beyond the vague and relatively undeveloped idea of 'individual freedom'. What, to Nozick, specifically justifies the very existence of self-ownership, if anything? A normal reading of Nozickian self-ownership would take self-ownership as the basic

principle of Nozickian libertarianism, the rights of which exist because they are, in themselves, just.

I would like to suggest that, in a similar fashion to Steiner and Van Parijs (who have liberty and freedom as their basic values, from which they derive self-ownership), Nozick's self-ownership is a secondary principle to a more abstract and nuanced philosophical idea. This is the basic idea that this thesis will propose. The notion that rights are a second-order principle is suggested, firstly, by the fact that Nozickian natural rights act as side-constraints on action and are not in themselves the purpose of action. For example, in Van Parijs, self-ownership, and the associated rights it bestows on agents, is derived from a need to uphold a basic formal freedom for every person. Superficially, Nozickian self-ownership is itself the primary virtue of Nozickian libertarianism. However, there is something of a vacuum at the centre of Nozickian libertarianism – rights themselves act simply to prevent others interfering with agent's actions. There is no stated goal to self-ownership in this sense – we should simply leave agents unfettered, because self-ownership comprises an individual's just natural rights. Because of this, any action would stand as just, as long as natural rights are not violated. This move means that, while freedom to decide and protection for one's actions remain, the only justifiable decisions follow the rules laid down by side-constraints on action. Side-constraints are simply blocks on certain kinds of actions, and Nozick believes their presence in every decision-making process is essential, as there must necessarily be side-constraints on everything we do if justice is to be served and agents to be treated properly.²⁶³ If they are ever ignored then rights are made less valuable – there can be no trade-offs between constraints and some other value (as in utilitarianism). They are there to 'limit' what one can do with a 'tool' – I am free to utilise my 'tool', but I am not free to strike you with it, because you own the rights to

263 R. Nozick, *Anarchy, State and Utopia*, p.29

yourself.

This is an almost Lockean statement of an agent's natural rights as property rights. Every agent naturally must possess rights simply as a fact of their existence, thus when making decisions that involve any agent we must be sure that our actions (whatever they might be) do not violate these rights. Given that we all have the same natural rights, no-one has the right to violate anyone else's rights, and therefore *equality of natural rights* is what gives Nozick's theory its character, as the fact that each agent's rights are equal and inviolable are what leads us to the more unpalatable consequences of Nozickian libertarianism.

The fact is, for Nozick every agent is surrounded by side-constraints. They are all we must consider when deciding whether a decision is just or unjust to a particular agent. Nozick feels that those at the top of the pile, the highest earners, constantly have their rights violated by the argument for taxation derived from diminishing marginal utility – £1,000 is very little money to a rich man, but a huge sum to a poor man. Thus, utilitarians, welfarists, liberals, and socialists would argue the money should be redistributed to the poor man, as its positive impact on his life will be measurably larger and more meaningful than the negative impact on the rich man. Absolute equality of self-ownership rights requires that each individual is treated precisely the same by the state and by each other, no matter what their circumstances are. Interpersonal comparisons of utility will never be enough to violate natural rights, because there can be no such thing, Nozick claims – interpersonal comparisons suggest there is some social entity, that we can 'make better' via equalising individual's

circumstances.²⁶⁴ The equality of self-ownership rights, then, means discounting individual circumstances and leaving individuals to make their own uncoerced decisions regarding redistribution, but does not imply a body capable of 'forceful' redistribution.

Nozick's belief that side-constraints on decision-making must be present in every action to preserve natural rights and prevent trade-offs really sets the scene for our analysis of the moral or justificatory basis of his account of the just extent of rights. This is not a simple minimisation of rights violations; it is an outright banning of all violations.²⁶⁵ Given the overriding concern we must therefore exhibit for these natural rights (as only side-constraints may be considered when deciding what is and is not just), it might be said that it only makes sense to make them the *goal* of our reasoning, not a constraint upon it. However, it is plain that self-ownership itself is not the focus of the rights Nozick proposes; it is merely the structure of the rights themselves. If self-ownership rights were our prime focus, we would act to minimise their violation in any situation, even if it meant some violations being allowed. Nozick phrases this formulation, "How can a concern for the non-violation of (a side-constraint) C lead to the refusal to violate C even when this would prevent even more extensive violations of C?"²⁶⁶ In other words, if self-ownership is the be all and end all of the 'rules' of natural sociability, then it follows we must make self-ownership the subject of our actions rather than the supporting role side-constraints suggest. Recall, though, that we may not

264 Ibid, p.33

265 However, Nozick does not follow this argument to its logical conclusion, instead choosing to say, "The question of whether these side constraints are absolute, or whether they may be violated in order to avoid catastrophic moral horror...is one I hope largely to avoid." This does not really rebut the classic anti-inviolable rights argument – that it is the correct course of action to sacrifice one life to save a hundred thousand lives. It does seem, however, that unless Nozick's side-constraints are some extreme form of utilitarianism of rights, that he is committed to saving the one and sacrificing the hundred thousand.

266 Ibid, p.30.

allow *any* violations of side-constraints. Nozick's solution to his question is the most explicit statement of the moral basis of self-ownership - "Side-constraints upon action 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."²⁶⁷ In other words, an individual must be treated as if they are the only individual, organisation, body or authority who knows what is best for them. So far, I have often mentioned the notion of the 'good life'. This is a notion key to the understanding of libertarian and liberal philosophy as a whole. Simply, it is the idea that the method of political organisation which best respects the individual is that which leaves them as free as possible to pursue their own conception of the 'good', as long as their particular conception of the 'good' does not undermine and is compatible other individual's similar conceptions of the 'good'. Thus, it rules out coercion, property theft, repression, violence, and so forth, but aside from this leaves the individual's course of life entirely up to them. It is an atomistic perception of the individual as an inviolable generator of their own 'good'.

Nozick explicitly links these thoughts to Kant's categorical imperative. By acting in a coercive or a paternalistic manner towards others, we use agents as a means to our end; a tool for achieving what it is that *we* want. In this sense, we treat the end as if it is more important than the individual, when what Kant says is that we should treat individuals as "ends in themselves". When we treat individuals as if they know the best course of events for themselves, and admit that it is inappropriate to foist any particular course of action upon them without their willing it, we offer them the moral respect and negative liberty we would wish to be afforded when considering *our* favoured course of action for ourselves. A moral philosophy like this could be seen (and Nozick

267 Ibid, p.30-1.

would certainly see it as such²⁶⁸) as entirely complementary to the development of a theory of individual liberty, and is a more fully realised deontological conception that crucially does not hinge on the presence or otherwise of a higher power, as recognition of one's duty towards others still requires use of one's own reason. This being the case, ceding to a moral authority in fact requires acceptance by our own moral authority, and so an individual's own powers of agency are ultimately authoritative over any supposedly authoritative external source.²⁶⁹ Freedom, for Kant, is living under a law you give yourself, or at least give free consent to live under. As such, this is a deontological theory that can find its strength in an appeal to a higher non-theistic duty to each other as rational individuals, self-contained rationality and autonomy being the highest form of good. "What we find in Kant... is open recognition that human beings, viewed as free and equal, require a certain kind of consideration... It is not policy or institutional detail that is vital for Kant, but respect for the autonomy and dignity of human beings."²⁷⁰

It is worth noting that this is an alternative method of conceptualising autonomy, freed from ownership rights and their often clunky arguments. The general powers of moral agency, for Kant, imply equal respect for individuals as moral agents. It would require a lot of work to explain the Kantian position, but it is definitely worth understanding that a concept of autonomy can be, and commonly is, divorced from a concept of self-ownership. Whether or not such a divorce is as convincing as the simple and intuitive argument that we each own ourselves is another thesis entirely, but taking such an argument further into abstraction from pseudo-legal concerns such as

268 R. Nozick, *Anarchy, State and Utopia*, p.32-4.

269 A. MacIntyre, *A Short History of Ethics*, p.194-5.

270 B. Haddock, *A History of Political Thought*, p.133.

ownership rights is certainly not without its appeal. A simple concern for each individual's moral agency does not necessarily entail ownership rights, indeed, we might say it can stand by itself, but given Nozick's concern with rights, separation of persons, and freedom from coercion, it is entirely understandable that he chose to take Kant as a basis for his theory rather than as the entirety of a libertarian conception of political philosophy.

Thus, Nozick would argue that focusing on the moral reasoning for a universal theory of ethics relating to the actions of the agent only takes us so far into a full account of self-ownership, and where it takes us is to an account of the reasoning behind separateness of persons, and "the fact that there are distinct individuals each with his *own* life to lead."²⁷¹ As Kant said, agents are ends in themselves, and not simple vessels for trade-offs and being used. The parallels here in the moral basis of Nozick's theory with Kant's work are overwhelming. Still, this argument for the separateness of persons does not carry us the full way to a proper understanding of self-ownership, Nozick claims, as it would not entirely prohibit the use or threat of force against an individual to benefit the threatening party. It merely ensures each is not used by another for their benefit. This is illustrated by Nozick's next statement, which is the necessity that a rule forbidding aggression, such as the rules of conduct which comprise the theory of self-ownership, must focus the similarly important "fact that there are distinct individuals each with his own life *to lead*."²⁷² Not only must an agent have their *own* life, they must have the freedom *to lead it*.

271 R. Nozick, *Anarchy, State and Utopia*, p.34

272 Ibid, p.34

What exactly informs the structure of self-ownership, and why?

There is a further bit of proof that Nozick values freedom to lead one's life as one desires, or to live one's conception of the 'good life' as the most important intrinsic good to agents, which gives us an invaluable insight into the overriding importance of moral agency to his theory of self-ownership. This comes in the form of his infamous description of the 'experience machine', which, while nominally a dismissal of utilitarian principles as of worth to agents, reveals a deeper justification behind Nozickian self-ownership, one that, if cashed out in the form of a justification for self-ownership rights, he perhaps did not fully explore the consequences of himself. I shall explain why by using a close analysis of his reasoning behind the dismissal of utilitarianism, the subtext of which is the importance of the act of *living as a moral agent*, making one's own decisions and being free to do so.

Imagine a machine that could give you any experience (or sequence of experiences) you might desire. When connected to this experience machine, you can have the experience of writing a great poem or bringing about world peace or loving someone and being loved in return. You can experience the felt pleasures of these things, how they feel "from the inside". You can program your experiences for tomorrow, or this week, or this year, or even for the rest of your life. If your imagination is impoverished, you can use the library of suggestions extracted from biographies and enhanced by novelists and psychologists. You can live your fondest dreams "from the inside." *Would you choose to do this for the rest of your life?*²⁷³

The genius in this example is the separation of the act of living from the rewards living may

273 R. Nozick, *The Examined Life*, p.104. Italics are mine.

possibly bring – utilitarian theories would be committed to saying that it would be the correct choice of action to spend one's life inside the machine as, if pleasure and pain are chemically identical in the machine's simulation as in real life and pleasure is guaranteed and maximised within the confines of the machine, then it makes sense to commit to a lifetime in the machine as pleasure and pain are all that human experience comprises. A life lived in an unplanned reality is likely to contain substantially less pleasure. However, this obviously involves a total disassociation from reality; agents cannot be in the machine and operative in the real world at the same time. So why, then, is the idea of spending the rest of our natural lives plugged into a machine, not interacting with the real world, so intuitively unappealing as to make a lifetime in the machine a concept that does not command our instant approval?

The question for Nozick, given that he is trying to disprove that pleasure and pain are what largely comprise human experience, is whether the experience machine is the *best* kind of life possible, and if not, why. Would a life in which we achieved all our goals, indeed, in which we were guaranteed to achieve all our goals, be the best possible life? Nozick thinks not, for a number of reasons.²⁷⁴ Firstly, he believes we value the nature itself of *doing* certain things; that simply feeling the emotions associated with doing a certain act does not encompass what it is to have performed the entire act. For example, earning a PhD in a virtual world and earning a PhD in the real world, while theoretically emotionally identical, would be two very different things. Only the real world PhD would be truly 'earned' through acquisition and dissemination of knowledge; the experience machine PhD would be guaranteed and earned by travelling a linear path through a set of pre-determined experiences. Even though I am a self-owner making my own decisions in both

274 R. Nozick, *Anarchy, State & Utopia*, p.42-4. Also *The Examined Life*, p. 106-9.

circumstances, only in the circumstance in which my choices have an appreciable impact on my situation is my freedom of choice *real* – in the other situation it is very much a *formal* conception of making choices.

Even though I would, by definition, feel the same intrinsic joy in earning the PhD in both scenarios, I am tempted to say that only one of these experiences is valuable; that only in one of these scenarios was there a chance of failure and thus only in one of them did I actually achieve something of value and worth. The machine-based PhD fails to capture the full experience in some way, resorting as it does to a synthetic (if chemically realistic), pre-planned experience. Thus, if the experience in which success is not guaranteed is conversely the more valuable to an agent, we cannot say that simple pleasure maximisation is the most important value to agents – instead, there is something inherently valuable in actually exercising one's rationality under the guise of the application of free choice itself; whether a goal is reached or not, an aspect of what agents find desirable is that their free choices resulted in a successful experience, and that the success is entirely imputable to them and the decisions they made. The fact an agent's choices are *real* is the most important thing to them. Making a choice without the possibility of the choice changing anything renders choosing itself a pointless exercise. In terms of dismissing utilitarianism, this implies that pre-determined happiness is not as valuable as happiness which depends on a series of choices with unpredictable consequences (essentially, a realistic interpretation of what it is to be a moral agent), and further that there is more to the exploration of what is of value to agents than simple pleasure. It is an obviously parallel argument to the one which we have seen is the argument common amongst all of those who wish to criticise self-ownership – a right which itself formalises a decision to the point which it becomes worthless is not a useful right; rights must be useful, real, and tangibly

applicable to be of any use or purpose.

Nozick's second reason for dismissal of the appeal of a life spent in the experience machine, outside the realm of a life lived using the powers of moral agency, is that "...we want to *be* a certain way, to be a certain sort of person. Someone floating in a tank is an indeterminate blob. There is no answer to the question of what a person is like who has long been in the tank."²⁷⁵ In fact, viewed this way, plugging into the machine could be seen as a "kind of suicide"²⁷⁶. How would we view someone who had cut himself off from everyone else in the simple pursuit of total individual pleasure? Would this person be living a fulfilling life? Nozick's argument seems to be that they are not living the "good life" at all, that an agent inside the machine is essentially no longer an agent in the sense we would recognise it. Agency is of such value to Nozick's account, that those not exhibiting its powers are committing a "kind of suicide"²⁷⁷ - essentially they are non-agents.

This argument suggests part of what makes us human is self-image, that there are certain virtues that *make us* moral agents which we wish to embody, certain characteristics we wish to possess, and while plugged into the machine we cannot do this. We cannot live any concrete conception of the "good life", if we define that as some sort of linear progression throughout our lives.²⁷⁸ That does not cover this entire objection; self-image could be shaped within the confines of

275 Robert Nozick, *Anarchy, State & Utopia*, p.43.

276 Ibid.

277 Ibid.

278 An agent may be able to opt for his conception of the "good life" to take place within the machine, obviously, I just do not think many, let alone the majority, would do so for the reasons outlined – furthermore, it would take place without other agents.

the machine to the same extent it could outside of it. The fact that all the 'agents' encountered within the machine would be computer-generated (and thus only capable of a certain amount of pre-programmed actions, as opposed to the near infinite capabilities of human action²⁷⁹) seems to make the time spent in the machine of tangibly less value than time spent in the 'real world'. Additionally, no goals, beyond basic chemical emotions, can be achieved in reality while in the machine; as our only goal would be happiness maximisation within a virtual world, then the achievements which bring us the pleasure in the virtual world bring us only that, pleasure itself. The achievements do not correspond to real-world success, or move our conception of the "good life" forward in any way.

The necessary disconnection between the real world and the virtual world invalidates anything that happens in the virtual world in terms of progress in the real world. Again, there is more to living, to being an agent, than just simple emotions; the employment of moral agency is itself of value. Furthermore, it seems to suggest that at least part of what it is to be an agent is based on recognition from others, that moral agency is only made truly valuable by interaction with other moral agents. This actually points at an interesting direction for discovering what is important to us, that part of what constitutes us is not only an idea of our selves but recognition of this idea by empirically real others, and interaction with them. While rights are natural, they only affect social situations. If I were the only human on earth, I would still have my natural rights, but they would not necessarily be useful to me.

279 On p. 107 of *The Examined Life*, Nozick suggests that an experience machine that everyone plugged into and in which everyone shared a virtual reality would be less objectionable, but this raises the question of how everyone could be guaranteed maximisation of pleasure and still believe in the machine's presumably necessarily realistic experiences.

This reasoning suggests not only the fairly trite point that that empirical reality is Nozick's only path to achieving any meaningful life, but that more importantly when living as a moral agent our choices truly matter, as they have a definite bearing on our situation and on the future, unlike in a life simulation where a piece of programming code would decide to what extent any decision influenced the game world. In reality, each person is the outcome of a collection of decisions that have been made throughout their life – the result of the consequences arrived at by expression of their moral agency. In the experience machine, the situation in which an actor expressed their 'agency' would just 'be'; it is how it is because that is how it has been programmed

The powers of agency, and the urgency of their protection, are thus of inestimable value to, and the underlying basic value of, Nozickian self-ownership. As Nozick said above, each must have “their own life to lead.” A life lived without recognisable powers of agency is not a life anyone would choose to consent to, Nozick believes, and is not a life that anyone should ever be coerced into. When choices are formal, they are not of worth to an agent. The actual basic principle underlying the reasoning behind the application of Nozickian self-ownership rights lies not in the rights themselves, but in the acts of agency and autonomy the rights protect. Imagine a human with no powers of agency; what would self-ownership rights be protecting them from? Thus, with the addition of the importance of moral agency, in the sense of the ability to make *real* choices, underpinning the Nozickian account, his moral thesis has a fully explained moral basis, and one that is discernible from a close analysis of Nozickian self-ownership itself.

Value and Structure

It is implied by this account of moral agency that the idea of an individual right is not a 'good in itself'; it is not there because it is, in itself, of overwhelming moral importance. Indeed, Nozick claims, while rights should not be violated, retention of our rights is not the sole greatest good – it is rational, he claims, to choose to move to a society where rights might be violated rather than live on a desert island where there is no-one around to violate your rights.²⁸⁰ Moral agency is the aspect of the self that is of overwhelming importance, as it is vitally important to agents that they be allowed to 'lead their own lives'. It follows from this that an absence of free moral agency worsens an agent's condition, and that by rendering agents unable to do what they wish we treat them unjustly. Agents therefore need a secondary system of rights to protect their most important function, the discharge of the powers of moral agency. This is where self-ownership comes into play, as a protection for these powers. Strong individual rights are thus a vehicle for the promotion and protection of moral agency. When attempting to discern the moral basis of Nozickian self-ownership, the question "why am I the rightful owner of myself?" should be answered, "Because being the rightful owner of yourself protects your moral agency, which allows you to lead the conception of your life that you personally find most worthwhile and valuable." All the rights of self-ownership are a secondary function aimed at protecting the individual's primary function, the ability to make decisions regarding themselves. Furthermore, it imposes the obligation that the consequences of these decisions are to be respected and upheld by other moral agents.

Therefore, close analysis of Nozick uncovers an argument for the importance of the

280 R. Nozick, *Anarchy, State and Utopia*, p.28

application of rights; that the legal and political freedom to exercise one's moral agency is what is important to agents and that without it a life is less valuable. This is a more exact idea than the vague concepts of promotion of individual freedom or individual liberty – if rights ensure the chance to make the individual choices that influence the direction of an agent's life, in terms of allowing them to make the meaningful choices that will influence the path of their existence, then these rights act to supplement a fundamental and universal human value. This moral agency is Nozick's reason for the existence of self-ownership. Without their natural rights, agents are less free to express their agency, and freedom to express agency is fundamental to an agent living the best possible, or most satisfying, life. The best way to respect agents is to treat them as ends in themselves.

Say I am unable, through no fault of my own, to participate in any form of transfer as I possess no resources whatsoever, or an extremely meagre amount of resources. I would be unable not only to make any important decisions regarding my idea of leading my own life, but also would be unable to even acquire medical assistance, education, and other fundamental and vital needs, as a libertarian state would require me to already possess some resources in order to make such a transfer. The law of justice in transfer exists simply to ensure that all agents are able to acquire things they desire without outside interference. If the point of a law is circumvented by acting within the law itself, then the law needs altering to preserve its original aim. If Nozick cedes this point in the same way he does in reference to the acquisition problems, he at a stroke eliminates most of the problems posed by left-libertarians to his theory. Some basic concept of agency, underpinning the laws of self-ownership, must be upheld. This interestingly highlights the importance not only of the formal freedom to live one's own life, but also the on-going possession

of the faculties allowing one participation in the actual activity of living it, the real freedom to *act* on one's rights.

This idea of the necessity of the act of making our own choices, of, in one sense, the importance of possessing the freedom to live life to the appreciable standard supposedly preserved for us by the laws of justice in holdings, starts to show us exactly what it is that self-ownership is working to protect, or an idea of why it is that agents require the imposition of such strong individual rights – it is itself some kind of freedom or liberty from any sort of outside coercion. It doesn't matter what our decisions are, how or why we make them, and what actions we take, as long as it is us, the agents, who are making these choices for ourselves. These choices require protection from outside interference, and so the rights of self-ownership create a dispersion of negative freedom around us, the exclusive employment of which is enabling us to make these choices.

This, in turn, is partially what justifies self-ownership for Nozick, the idea that individual flourishing in terms of the freedom to make one's own path in life via one's decisions is the most important thing for the individual. “A person's shaping his life in accordance with some overall plan is his way of giving meaning to his life; only a being with the capacity to so shape his life can have or strive for a meaningful life.”²⁸¹ For Nozick's conception of self-ownership, it is vital not only for an individual to have natural rights marking them out as independent, there must necessarily be importance in possessing the freedom to live the life one desires to leads while protected by these rights, whatever that life may look like or consist of. If side-constraints were protecting something

281 Ibid, p.50.

of no importance to the individual, then they themselves would presumably not be worth upholding as a form of justice. “Think how different we would be (and how differently it would be legitimate to treat us) if we were all amnesiacs, forgetting each evening as we slept the happenings of the preceding day.”²⁸² In other words, the way it is appropriate to treat an individual is largely, if not entirely, based on their ability to make rational and free choices. The opportunity for the employment of free choice in the sense of the freedom to make one's own decisions without coercion and the importance of the imposition of the laws of self-ownership itself are, for Nozick, indivisible, because neither works without the other – abstract freedom without self-ownership implies the chance of individuals being coerced into decisions, and self-ownership without freedom to act is an empty concept, because not possessing one's own freedom to act (being not free to make a decision about your individual 'good') is a violation of the boundaries of self-ownership. Thus the actual act of being free to employ powers of agency is itself of essential value to theories of self-ownership. Freedom or liberty, as Steiner and Van Parijs claimed, whatever form such concepts may take in this interpretation, *must* underlie self-ownership. “The state may not use its coercive apparatus... in order to prohibit activities to people for their *own* good or protection.”²⁸³ Why? Because their freedom to choose, their liberty to express themselves, and the absence of coercion from their chance to live the 'good life', expressed in terms of their rights against outside interference, are of paramount importance. To say, as Nozick does, that self-ownership is a stand-alone theory of self-evident importance, is to consider an empty vessel to be full, to paint a picture of morality but forget to include the morals.

282 Ibid.

283 Ibid, p.ix. Italics are Nozick's.

The desire for freedom from coercion defines what it essentially is, for self-owners, to be an agent, and the restrictions of self-ownership are there to protect this as thoroughly as a state structure can allow. Self-ownership and the freedom to act without unjust contradiction presuppose each other. Self-ownership provides a rights-based protection for individual reasoning, supporting the common libertarian conception that the more an individual is in control of their own destiny and pursuit of the 'good', the greater their sense of self-worth and self-esteem. Moral agency is of such importance, that self-ownership is needed to ensure it is *always* an enactable premise. In summary, if the idea of freedom or liberty or some such basic value which must precede the creation of the laws of self-ownership is itself of value, then the laws Nozick originally puts in place to ensure such values are preserved must be *dynamic*, they must be reflective of the current environment and aim to *constantly* uphold the particular concept that is a more basic value than self-ownership itself, which is of no value without reference to some such ultimate expression.

What then, of cases, the kind of which we have continually highlighted, when agent's rights are undermined, formalised or rendered inactionable by a series of just actions, all of which fit within the parameters of our original rights of self-ownership? All these rights must have an equal effect on agents' freedoms to achieve the aims to which Nozick is aspiring, namely, enabling individual's freedom of choice and action. If they actively disadvantage some agents, then the rights themselves do not appear to be fit for purpose. As I explained in the previous section in reference to the problems of acquisition, an agent's original rights should be dynamically understood if they are not to be eventually formalised, and in this specific case at least, this was a point Nozick entirely conceded. I wish to argue that the point he concedes can endanger his first principle too, the principle of justice in transfer. The rights that underlie this principle must be equal between all

parties for such a principle to be consistently applied. If there is not a level playing field when it comes to the actual action of transfer, then arguably some agents are coerced or even bullied into accepting outcomes which are inconsistent with viewing them as ends in themselves, as objects of respect or indeed as independent and separate self-owners. In Nozick's own words, "an object's coming under one person's ownership changes the situation of all others."²⁸⁴ Without an equal balance of rights, disadvantaged agents' powers of moral agency, and the chances they have to enact their will, are diminished. This diminishing, ironically, comes about entirely through the interplay between individuals entirely within the confines of the original structure Nozick imposed to protect their powers to make their own decisions. Such a problem clashes with the idea that an important part of being an agent, and indeed the aim of giving individuals inviolability in conducting the transfer of objects between each other, is simply being free to live your life, having the liberty to make the decisions that concern or affect your person. Again, we return to the notion of a sort of idea of freedom or liberty underlying self-ownership, in the same way it does in the left-libertarian theses under discussion.

In the same way as the acquisition law, there is a particular point to Nozick's imposition of a specific rule relating to property transfer. Only in the previous example of acquisition, however, does Nozick concede that the actions of others may circumvent the point the original rule was trying to make; in that case, that agents must be able to acquire objects for their own private use. If they are unable to perform the action supposedly preserved for every agent by equal application of such a rule, then they are due compensation. So, as I have said, a dynamic understanding of environmental concerns undermines the idea that whatever occurs through just steps is in itself just,

284 Ibid, p.175.

and Nozick admits this to be the case. If this is the case in the acquisition example, I see no reason that such a dynamic understanding of the other law, of justice in transfer, should not also be employed by libertarians. Both laws have in common that supposedly whatever objects are acquired in accordance with their laws are justly possessed, but in the case of acquisition we saw that not only can the situation when the acquisition occurs change this, but it can even affect an individual's holdings further down the line, if for instance there is a sudden shortage of the resource apart from the same resource under sole private possession. So, transfers from unowned to owned are subject not only to environmental redress, but *future redress dependent upon unpredictable circumstances*.

It is my contention that, although Nozick was aware that a basic conception of agency provided the real value in his account of self-ownership, his final account of self-ownership is in fact insufficient protection for a properly considered notion of moral agency. Let me establish why this is the case. We need to focus on the necessary requirements granting opportunity for the employment of agency to be plausible. To do this, we must analyse the problems posed to self-ownership by agents who cannot be considered moral agents under the criteria laid out above – those who are incapable of making decisions that affect the course of their lives in any way. There are two cases to cover here – firstly, those who do not possess the mental faculties to be considered capable moral agents, and secondly, those whose moral agency is irreparably compromised by the structure of Nozickian self-ownership.

Cases where the powers of moral agency necessary to function in a capitalist economy are

not present, presumably of mental handicap, are usually dealt with by denying, on some level, that the handicapped individual can operate as an agent and making them subject to greater supervision that would be appropriate for a fully mentally developed agent. We already recognise that moral agency is not a “given” - it cannot be assumed to occur in every agent, as its powers depend on genetic structure, not abstract application of an intangible structure of concepts. Biological make-up quite clearly varies from agent to agent, to the point where we cannot assume that every agent will be capable up to any specific standard of functioning.

Furthermore, when these powers are subject to a Nozickian interpretation of moral agency derived from the experience machine example and the explicit Kantian basis, there are other important facets an agent must possess to have a chance of expressing the powers of moral agency effectively in the specific form of society implied by the Nozickian right-libertarianism which is derived from self-ownership. Crucially, they need the ability to labour and earn money and resources. Not having the chance of coming to own resources without relying on altruism means that the individual cannot guarantee even their own survival, let alone their ability to properly enact their powers of moral agency – all relationships in which one can come to earn resources, which are the only reliable way of obtaining support, assistance, subsistence and desirable goods, are unavailable to those without the powers of moral agency necessary to function in Nozickian society. It is straightforward to imagine someone with no ability to labour, perhaps a birth defect that prevents them from being able to manually labour, or indeed an agent hampered by the aforementioned issues with their mental faculties preventing them from performing less labour-intensive job duties. It cannot be denied that such individuals exist; that some people are born less able than those who society considers to be a “normal” level of mental, physical and social

functioning. There is no doubt, as they are human and therefore possess rights, that these individuals are self-owners, and that they are free, given their natural rights, to employ their powers of agency.

Can it be said in this situation that the rights of self-ownership, given that what they are derivative to the basic functions of moral agency, protect the aspect of the self that they were specifically derived from? Without entirely cohering to this more basic value, the structure of self-ownership is not appropriate or logical in its application. Certainly, handicapped individuals can still make choices in a practical sense, such as where they might like to go, or what clothes they might like to wear today, but without the guarantee of continuing subsistence they are unable to make any choices that matter to them, choices about what they wish to do with their lives, or who they wish to be. If for example, these agents were in a liberal state, the state would offer the guarantees of the resources necessary to live a dignified, independent life, free from relying on the uncoerced, and therefore uncertain, agreement of others. Nozickian right-libertarianism is not even the best structure for respecting the basic value it seeks to promote, that of moral agency.

The nature of Nozickian moral agency dictates that choices must be available to agents if they are to lead a valuable life; a life in which an agent relies entirely upon external influences for the procession of their lives is analogous to the style of existence that Nozick decried in the experience machine example as failing to capture what it is that gives value to an individual's life. Both the handicapped and those within the machine are removed from society as a whole – choices they make will be relatively frivolous, and meaningful choices regarding the course of their lives

may be unavailable to them. Essentially, without the ability to live our lives on our own terms, something fundamental is absent from the human condition. Under Nozick's right-libertarian rule, the handicapped are fundamentally unable to aspire to this kind of existence – they are essentially living an existence without value, and one that fails to cohere to the basic value of human dignity and flourishing that Nozick himself used as the basis for his theory of self-ownership.

Purely negative rights, when applied to those unable to express their moral agency in a way that enables them to live anything approaching their conception of the “good life”, are not a structure that promotes the basic Nozickian value of moral agency. In fact, they are a hindrance to the promotion of moral agency – the act which, in itself, is so important as to be a basis for social structure, is denied the chance to be actionable *because* of the rights Nozick has imposed to *protect* the chance of such an act occurring. To put it another way, rather than make the enacting of the powers of moral agency a universal constant, as is the newly-appreciated aim of Nozickian self-ownership, what Nozick's theory achieves is to make moral agency protected in a majority of cases, but inaccessible to a significant minority. Self-ownership rights as right-libertarians understand them are contradictory to a sizeable percentage of the population, in that and cannot be considered universal.

It is clear from this that some form of *positive* right is necessary to make self-ownership a structure that can universally support the powers of moral agency. Assistance will be required by some to attain the level where their choices can be of inherent value, as in the description of the innate worth laid out by Nozick in the experience machine example. Only with such rights in place

can handicapped agents begin to make plans or choices, as without them not even their continuing subsistence is guaranteed within a Nozickian society.

So what of our second group, those whose powers of moral agency will be undermined by the supposedly just series of transfers and transactions that makes up the basis of social interaction in a Nozickian society? If you remember, we decided that it was arbitrary for Nozick to introduce a dynamic appreciation of the potential for rights to be enacted in one of his laws of justice in holding, and not the other. As above, if moral agency is the basic value, and self-ownership derivative of this, then if at any point self-ownership fails to protect an individual's powers of moral agency, it is not doing its job. It does not matter if the original structure featured the protection and promotion of moral agency to a greater degree over any other system – if this system does not promote moral agency to a greater degree than any other system *throughout its existence*, then it has failed in the task it was designed to do.

As Van Parijs, Steiner, Cohen and Ingram have all pointed out in various ways, to various extents and using various approaches, for some individuals throughout their lives moral agency is simply a formal freedom, not a real freedom. The free exchange of goods, resources and services has the eventual outcome of leaving some with nothing, be it through a lack of talent, poor judgement or sheer bad luck. These agent's moral agency is then compromised to the point where, similarly to those described above, they are unable to make meaningful decisions for themselves, and will suffer as a result. An agent with no resources may be unable to contract into an agreement to receive healthcare, for example, due to a lack of funds, they may be unable to send their children

through an education system, and then may even be unable to house, feed or clothe themselves without, in a Nozickian state, aid that is dependent on private altruism and completely non-guaranteed.

Again, moral agency in these cases is far better promoted under a different system, one in which guaranteed state support is offered to those individuals whose powers of agency are threatened or compromised. Everyone should have the ability to live their lives to some realistic conception of the 'good life', and everyone should have the opportunity to make the decisions that affect them and that they place meaning in, not to rely on the charitable whims of those that have profited massively from this system. A simple system of state redistribution of resources, which could even be done in the ways Steiner and Van Parijs suggest which respect self-ownership's separateness of persons to a greater extent than a simple liberal redistributive welfare state, would completely assuage all these problems and leave agents on an equal footing of moral agency once more.

Therefore, I contend that Nozick's structure of self-ownership rights is not entirely helpful to the notion he was trying to promote the protection of in the first place. Given that it actually prevents some individuals from being able to enjoy the powers of moral agency, and that the powers of moral agency are really the basic function an agent wishing to live a life that they can find worthwhile, their version of the 'good life', it is fair to say that Nozick's conception of self-ownership is not entirely effective in promoting the aims that underlie his entire project of self-ownership. A fully developed conception of Nozickian self-ownership should be one which

promotes the ability to enact the powers of moral agency on a *universal* scale. Although self-ownership is necessary to protect agency in the majority of cases, on occasion its limitations become counter-productive. This means self-ownership will require some significant structural alterations if each are to 'have their own life to lead'. Below I offer some suggestions as to what this fully realised conception of Nozickian self-ownership might look like.

The Structure of Self-Ownership

So, self-ownership is actually a more complex system of appealing to specific moral values than Nozick was prepared to lay out, although he is clearly aware of the relationship of self-ownership to a deeper set of values. Without the powers of moral agency, which are by definition unavailable to some individuals, being a universal concept, self-ownership as Nozick proposed it is not enough to be able to say we are protecting the possibility of the meaningful employment of the powers of moral agency in every agent to the greatest possible extent. Moral agency, derived from a brief exploration into the inviolability suggested by Kantian autonomy, must inform self-ownership, and so must be its primary concern.

As should be clear from the previous section, purely negative rights impose separateness of persons to such an extent that those who are resource-poor are stuck in a vicious cycle in which they require resources to obtain other, desirable resources, but as they do not possess these are unable to act in ways they would wish to be able to act. Essentially, this group of society cannot raise

themselves into a situation where they would be able to employ the powers of moral agency without altruistic intervention. This altruistic intervention can hardly be relied upon; indeed, given the freedom of choice implied within Nozickian self-ownership, the supporting altruistic party could choose to withdraw its support at any time, with no negative consequences to them, other than the moral crisis they have presumably caused.

The unreliability of altruistic intervention means that the disadvantaged cannot make plans and be certain they are capable of acting on them, as the support they necessarily require in order to act could be withdrawn at any time. In other words, if agency for all is the prime concern, some entity needs to be legally bound to provide assistance to those incapable of earning resources so that the agency of all may be respected. Much like in left-libertarianism, where, for the specific reasons explained in previous chapters, there is a basic redistributive function, the state seems the only appropriate vessel for such guaranteed support. Given the libertarian distaste for government organisation, this statement requires some qualification.

Private institutions could definitely fulfil the criteria for offering some kind of assistance, but given the necessary institution of a free market in a society based on self-ownership and freedom from government coercion, these institutions cannot always be relied upon to act with the interests of the handicapped individuals at heart. They may, given their freedom of choice and the lack of power of the state, take such support away at any second, leaving the disadvantaged in a situation they cannot get out of, and causing them to forego their powers of moral agency in any meaningful way. Therefore, if we accept that some sort of positive intervention is necessary to

guarantee that agents have the possibility of living a freely chosen life, and that it is necessary to universalise the possibility of agents always being able to utilise their powers of moral agency, then we must further accept that it will be done by some basic form of centralised redistribution, which, although clearly anathema to Nozickian right-libertarianism, is now necessary to the derivative structure of self-ownership if it is to achieve its stated aim of making employment of the powers of moral agency a universally applicable concept.

Libertarians may argue, coherently given their commitment to the minimal state, that government support is no more reliable or welcome than private support. Furthermore, perhaps some kind of system could be envisaged in which private support for the powers of moral agency in terms of some provision of a package of good or services was the appropriate method of fulfilling step 1 in the schema which follows this argument. Take, for instance, the method I outlined in chapter 2, where Nozick uses state-esque provisions to ensure universal coverage by the dominant protective agency. When individuals end up not covered by the dominant protective agencies powers, to ensure a monopoly and to compensate individuals who do not wish, for whatever reason, to subsume their rights to the dominant protective agency, members of the agency are compelled to buy protection for those without it, a minimally redistributive function within an organisation which fulfils the role of the minimal state. It is not beyond the bounds of possibility that, if a libertarian structure did not wish to give a state general redistributive powers over taxation and upholding moral agency, that it could specify a package of necessary goods, such as healthcare, unemployment and disability benefit and education, and compel individuals who could afford such provisions to provide extra for those that do not, all within the bounds of such private organisations. Thus, moral agency could be upheld with little more coercion than Nozick found acceptable to introduce to give

the minimal state a monopoly of force within a geographical boundary. Now, we might say, the organisation which has a monopoly of force within a geographical boundary has a second function, upholding the powers of moral agency for its members. Whether this is done by imposition of tax or by privatised redistribution does not matter, as long as the goal of upholding moral agency is achieved. I put this argument here to show that it is not necessary to visualise what comes below in terms of a pseudo-liberal income tax taken at source, but that private provision, if reliable, is just as appropriate, if not more so. If the methods Nozick used to give the dominant protective agency a monopoly of force are those preferred by libertarians, then they should be the methods utilised.

Acceptance of the primacy of moral agency in right-libertarian thought leads us to a hierarchy of principles within Nozickian right-libertarianism. Rather than the rights of self-ownership simply being of value in themselves, we have argued our way to the following structure, which represents what justifies right-libertarianism and therefore how the concept of self-ownership should be understood.

- 1. Moral Agency/Autonomy²⁸⁵**
- 2. The rights of Self-ownership²⁸⁶**
- 3. Basic redistribution to uphold 1 & 2.**

285 The bulk of which can be found on pages 28-51 of *Anarchy, State and Utopia*.

286 The bulk of which can be found on pages 10-12, 27-8, 137-40 and 268-71 of *Anarchy, State and Utopia*.

The existence of 1 is of inherent value to agents, but its social existence is threatened without the imposition of 2 on all other agents. As I have now explained, 3 is necessary to make 2 a universal principle for the protection of 1. Without 3, 2 cannot always protect 1, and without 1 an agent's life is of less worth than if they possessed its powers. This is a significant alteration to our previous understanding of Nozickian self-ownership, adding as it does two further concerns to our correct ethical treatment of agents. It is also, crucially, of different structure to left-libertarian principles of redistribution, as it does not require an appeal to the scarcity of certain types of resources to enable redistribution – redistribution is itself now a necessary feature of the derivative powers of self-ownership, without which the entire principle is incapable of being a universal one.

What then would the addition of point 3 look like in practical terms? The reasoning in the previous section would suggest that we must equalise the condition of those who are at a disadvantage significant enough to stop them being fully in control of their own lives, and this equalisation must be applied to the point where a) their continued existence and subsistence is guaranteed, not dependent on private altruism which may be withdrawn, and b) they are able to make significant choices regarding their own lives. While such a statement of support is open to interpretation as regards the best method of fulfilling those two principles, I would suggest that redistribution in the form of the imposition of some form of taxation solely to provide for a system of resource-based redistribution is applicable for the following reasons.

There are already the tools within Nozick to suggest that he is not opposed to a dynamic appreciation of the current usefulness of the powers of moral agency to an agent. Putting this with

our unpacking of the moral basis of Nozick's laws of self-ownership, we come to the conclusion that, as the basic principle must be upheld *at all costs*, then our first concern as a society is to act to make sure that each agent possesses an appreciable liberty to make their own decisions, to be treated as an end in themselves, or to demonstrate real freedom to choose, not just the formal freedom to be a rights-holder. The evidence it must be upheld at all costs comes from the perception that, when self-ownership was itself the basic principle, it was to be upheld at all costs, even in the face of seemingly intractable moral problems like the starving poor or the helpless disabled. If, then, our basic principle is similarly inviolable, it *overrides the subsequent principle*. As this principle (self-ownership) is itself simply a mechanism for upholding the universality of the powers of moral agency, it must adapt to the requirements of the basic principle, or it is not the best principle for upholding the basic tenet of Nozickian right-libertarianism.

Essentially, we must support agents by helping them to a level of moral agency which enables them to labour, earn resources, make informed decisions regarding their conception of the 'good life' and to not be beholden to other agents when making these decisions. If we do not equalise all agent's abilities to exercise a mental capacity of inherent and overriding importance, we leave agents with rights that are of varying degrees of worth and use, not a universally useful standardised system of rights. As was previously established, universal equality of rights is a necessary feature of a system based entirely on the distribution and interaction of rights. Now, we have seen that the rights themselves may be affected by the simple interaction of free agents expressing their powers of moral agency within an acceptable structure of rights and security. Therefore, it is no longer enough to simply *give* all agents equal rights; we must ensure that the rights naturally bestowed upon them are of equal operable value. Unless libertarian *rights* to the self

are entirely equal in their distribution *and* their value as operable concepts, then the rights schema inherently favours some agents over others. Not only must we ensure all these rights are useful when we bestow them, we must ensure as an overriding concern of justice that all rights are *constantly* useful to agents. This dynamic appreciation of moral agency unarguably requires ongoing support as the system of justice in transfer threatens to make rights unequal once more after a certain amount of transactions and exchanges. If Nozickian self-ownership contradicts the principle of universal moral agency at any point, it is by definition *not the best system for upholding the universality of moral agency available to us*. I purposefully leave the question of the best system for upholding the powers of moral agency using the rights of self-ownership relatively open-ended; there are arguments to be made for both private provisions within an ultraminimal state and a general approximation of a welfare state, left up to the devices of the government.

I believe I have laid out a thesis here, the premises and basis of which are consistent with a full appreciation of Nozickian thought, that justifiably alters self-ownership to make it an equally useful concept for every agent, and not just, as is commonly complained, the preserve of the able-bodied. I think all of its premises are derivable from a full appreciation of the concepts that Nozick set out and his work, and thus are a true reflection of the *actual* basis of Nozickian self-ownership, structured so as to fully reflect what Nozick held to be of value. However, the outcome of this train of thought is entirely opposed to the ultraminimal state, and indeed to all the principles commonly derived from the work of Nozick, and so such complaints, if logical, must be held to be fatal to a typical Nozickian account of right-libertarianism. While a new structure incorporating a larger state cannot hope to convince all of those who object to self-ownership for various reasons, it should at least go some way to ameliorating their distaste towards the demonstrably stark nature and

consequences that Nozickian self-ownership was commonly held to possess, and to show that a theory that was so harsh towards those who were unable to support themselves was not, when fully cashed out and with a coherent moral basis, internally consistent.

Conclusion

I set out at the beginning of this thesis to explain and analyse self-ownership, discern why it was a relatively discredited and ignored theory, survey the main approaches and critics of it, and finally to show how the theory of self-ownership most often held up as unjust or unfair, the stark right-libertarianism of Robert Nozick, was in fact inconsistent with the reasoning utilised to back up the claims of *Anarchy, State and Utopia*. Using evidence available to us from close analysis of Nozick's theory, it seems that he cannot coherently support a theory of a right-libertarian ultraminimal state. Nozick's theory as it stood was commonly associated with an ultraminimal state, which offered no support for the worst off and simply meant that all agents were left to sink or swim on their own terms, regardless of opportunity, prospects, skills or natural endowments. This was due to the extremely limited power of the organisation holding a monopoly of force within the specific geographical entity we were concerned with, which was unable to coerce its members into doing anything with their resources. Their self-ownership rights, held up as they were to be the primary concern of the entire state structure, simply prevented such coercive actions. Given this, Nozick asked us, what more or less can a state do? He concluded no more and no less than freedom from state coercion and the upholding of personal property rights as a matter of law and justice – I must conclude that, for self-ownership to be coherent, the state *has* to do more than simply respect private property. It must also respect and uphold the viability of the individual functioning that makes the institution of the laws of private property a worthwhile and viable concern.

Making Nozick face up to the modifications proposed by those who wished to use self-

ownership as a derivative principle of a richer conception of libertarianism, and to the criticisms levelled by those who wished to do away with self-ownership entirely on the grounds of injustice or unfairness, we discovered that there was a criticism common to all their accounts, which Nozick's theory of self-ownership could not reasonably deal with. Van Parijs, Steiner, Cohen and Ingram, critics both supportive of and vehemently against the adoption of a principle of self-ownership, agreed that the stark, immovable and deontological nature of the structure of rights presented within *Anarchy, State and Utopia* would mean that we commit something akin to an act of moral turpitude by ignoring the inevitable consequences of such a system. The consequences of a Nozickian system of right-libertarian ultraminimal government are not something any of these academics were prepared to countenance as an acceptable and defensible theory of justice.

It is striking, and perhaps damning, that theorists of such disparate hues should reject Nozick on essentially the same principle. A sizeable percentage of self-owners would find their self-ownership essentially formalised, in that it would be left inconsequential to them, and even prevent them from acting as they wished, due to the lack of resources that all of Nozick's critics agreed agents would need to be able to bring to bear to make their self-ownership a worthwhile construct. The functioning of an individual is vital to the libertarian account – while my rights are natural, if I cannot usefully make decisions, then my rights are of no personal value to me. What *is* of value to me is these decisions. The importance that I have the ability to make them is *primary*, the protection of the law regarding my decisions is of *secondary* importance. Missing this distinction was a fatal flaw within Nozick's work. The basis of a fully realised, persuasive and logical account of self-ownership as a derivative principle arising from a deeper principle is *within* the work, but never makes it to the surface.

Close analysis of Nozick's reasoning for the inherent value and meaning behind the natural imposition of a moral code in the form of a notion of self-ownership in *Anarchy, State and Utopia* revealed that he himself had a richer, deeper conception of morality which self-ownership was itself derived from. Individual functioning and the freedom or ability to make moral decisions for one's self was in fact presupposed by the strong rights that make up self-ownership, but the lack of a clear thinking through of why self-ownership was necessary, or even, to borrow Nozick's famous phrase why "individuals have rights", meant that he arrived at a theory which has been demonised and dismissed since its release, a theory which respected rights over people, structure over a moral concern which is seemingly inherent to humans. How often do we simply leave the poor and disabled to starve? Nozick would, and did, argue that individuals would pick up the slack, because this is what we do anyway, but many theories of government want to see the attitude of the individual reflected in the attitude of the state. The state is not an entity that should be completely indifferent to the fates of its citizens, in the same way that a citizen should not be completely indifferent to the suffering of his fellow man. If, as Nozick put it, an institution is nothing more than the people that make up that institution, then at what point did those people lose their common humanity?

The implications that a fundamental part of a commitment to a libertarian structure is at least some basic commitment to ensure the continued ability of individuals subject to that structure to competently act and subsist within it is one similar to the interpretations of self-ownership we analysed in Hillel Steiner and Phillippe Van Parijs' books, respectively *An Essay on Rights* and *Real*

Freedom for All, where they used self-ownership as a derivative of the more basic values of liberty and freedom, and used these higher values to justify a form of redistributive justice. The more basic value of Nozickian self-ownership, moral agency, similarly implies that a redistributive element is the only way self-ownership can hope to be a universal value, applicable and useful to all agents. These three terms, “liberty”, “freedom” and “moral agency”, all appear to use different phrases to do much the same work – without such a consideration as the primary concern of government, agents are in danger of having their rights formalised. To use Van Parijs’ terms, self-ownership without moral agency is simply a structure of formal rights, while self-ownership derived from moral agency and with a supporting redistributive structure is the only way self-ownership can be a structure of real use to all. We might imagine the three concepts, if trying to draw parallels, to be the “liberty” or “freedom” to utilise one’s “moral agency” – the freedom or liberty to *act*, not just to exist.

Furthermore, this interpretation of self-ownership, while now ostensibly a left-libertarian theory, does not rely on controversial premises like Steiner’s global land fund or Van Parijs’ job scarcity to justify its redistributive element – this element is a necessary and fundamental part of a richer reading of the self-ownership that right-libertarian thought relied on. Introducing claims like these means a different set of arguments that critics can find fault with, respectively, the debate over whether land, and the fruits of it, can be treated so differently from other forms of ownership, and if treating jobs as a scarce resource and using an obscure economic function to tax their ownership is a legitimate tactic. In the first case, we open ourselves up to criticisms asking us whether we are simply picking and choosing terms of property ownership, and especially whether taxation and not simply prevention from acquiring further tracts is the appropriate course of action. There is also a

great deal of complexity in calculating the relative value of each area of land – desert against oilfield, mountain against field. The potential problems inherent in resource distribution in this case are many, and while such a system is presumably workable, it is complex enough that it would have many critics, even amongst those who agreed on the need for redistribution. In the second case, critics might ask if we are using an overly complex method to arrive at an approximation of the direct income tax method so common in liberal democracies today. Furthermore, the function used to arrive at the permitted level of taxation for each job is, at best, opaque to a great deal of people. Income tax and redistribution is easy to visualise, in terms of we need this much to do these actions, but a Walrasian market-clearing amount which provides a variable UBI to all citizens would be a much harder sell without greater education on the ins and outs of Van Parijs' economics.

Our conclusion is simply that taxation is a necessary evil to give individuals the chance to express their moral agency in a meaningful sense. The amount redistributed is not a function of the value of land or the value of a job compared to another potential scenario in which the job is situated, it is enough, no more and no less, to make moral agency a universally enactable concept. So, to what extent is this still a libertarian conception? Van Parijs and Steiner went to great lengths with their theories to deliver theories of redistribution that were consistent with self-ownership – tax on resources in this case is only legitimate due to the special nature of a particular kind of resources, respectively jobs and land. Both are considered scarce, and so it is appropriate to compensate those who do not hold such a resource, as it is assumed that all would want to do so. The theory which I have derived from Nozickian right-libertarianism simply says that redistribution is necessary – provisos about respecting resources are not, as we now have a concern which overrides self-ownership. Is it not the case, though, that liberty of action, as Steiner proposed it, depends on the

privatisation and sole control of personally held resources? This point is indeed a blow to this theory's hopes of being considered a libertarian one – a general redistribution for the upholding of moral agency may in fact be considered to be a thin liberal theory, with a strong structure of rights upholding personal freedoms underneath it. While we have no doubt expanded the ultraminimal state in some way, it is still limited in the actions it can take against its citizens, and redistribution ensures a structure in which each can flourish. In a sense, we have divorced self-ownership's extension into property rights from the rights strictly relating to the self, on the basis that at least some property of those with much of it is needed as a general resource for those without. We are left, then, with a structure of human rights but without a libertarian structure of property rights. To conclude this section of the discussion, it may be the case that unpacking the basis of Nozickian libertarianism shifts his position all the way from right-libertarian to that of a liberal government with a deep concern for personal freedoms. The price of individual flourishing is Nozick's strong commitment to property rights *outside* the self.

Individual flourishing is itself a relatively vague concept, and would be open to interpretation. As previously discussed, the powers of moral agency are what enables an individual to mould their own existence, to push their lives in a direction which appeals to them. I would suggest, then, that the ability to make an informed, pleasing and logical decision for one's self originally stems from education to a decent level. People need to be in good health throughout their lives to be able to make decisions, and so healthcare is also a necessary evil. This is particularly true for those who are handicapped, and such healthcare would make constant provisions for them, to help them live a respectable quality of life, a life which appeals to them. Subsistence level benefits would be important for those out of work or unable to find work, as without resources they will find

themselves in a position where they are unable to express themselves to any real extent. Thus, the three main features of a centrally-organised liberal democratic welfare state, education, healthcare and benefits, are, I would argue, a necessary feature of a society which hopes to uphold moral agency as a primary value. Without these three, it is likely that some individuals will simply be left behind, that they will, on some level, be unable to lead a quality of life which is pleasing to them. This is another strike against this theory's hopes of being considered libertarian, as general taxation to support these three institutions would be relatively major, and gives the theory the appearance of a liberal welfare state.

Giving self-ownership its proper place in a hierarchical structure derived entirely from the work of Nozick, that is, second place to the critical importance of moral agency, overcomes all of the most pertinent criticisms it faced and results in self-ownership eschewing its association with right-libertarianism. Hopefully, this will result in moving the discussion regarding its appropriateness, usefulness, and aptitude as a contemporary political theory onto a new level where it can be taken more seriously without suffering the fate of being inextricably intertwined with the problems of gross material inequality.

Why, though, adhere to a structure of self-ownership at all when it is now rendered controversial to both libertarians and liberals? I simply feel that ownership of one's self is an easily understandable, easily defensible and intuitively persuasive philosophical concept, and that the work I have laid out here gives it the sort of attention it deserves. Whether the consequences of that work make libertarians dismiss it and leaves liberals unmoved from their conceptualisation of the

state is neither here nor there. Ironically, this is a thesis that is deontological in its analysis of self-ownership, not consequentially concerned with its subsequent appeal. If, however, the concept “I am the rightful owner of my self” can still hold sway (and I believe it can), then I am of the opinion that what is presented here is a fully realised and logical appreciation of an easily understandable and persuasive idea. In one sense, this is the goal of any work of political philosophy.

Bibliography

Aristotle, *Politics*, book I, part VII.

Berlin, I., *Two Concepts of Liberty*, contained within *Four Essays on Liberty*, Oxford University Press: Oxford, 1990.

Child, J. W., *Can Libertarianism Sustain A Fraud Standard*, *Ethics*, Vol. 104, no. 4, 1994.

Christman, J., *Can Ownership Be Justified By Natural Rights?*, *Philosophy and Public Affairs*, Vol. 15, no. 2, spring 1986, p. 173.

Christman, J., *Self-Ownership, Equality and the Structure of Property Rights*, *Political Theory*, Vol. 19, no. 1, Feb 1991, p.38-41.

Cohen, G.A., *Freedom, Justice, & Capitalism*, *New Left Review* Issue 126, March/April 1981.

Cohen, G.A., *Self-Ownership, Freedom & Equality*, 1995, Cambridge: Cambridge University Press

Cohen, G.A., *Self-Ownership, World Ownership and Equality*, *Social Philosophy and Policy*, Vol. 3, Issue 2, 1986.

Davis, M., *Necessity and Nozick's Theory of Entitlement*, *Political Theory*, vol. 5, no. 2, May 1977.

Edmundson, W.A., *An Introduction to Rights*, Cambridge University Press; Cambridge, 2004.

Filmer, R., *Patriarcha and Other Writings*, Cambridge University Press: Cambridge, 1991.

Grant, R.W., *John Locke's Liberalism*, University of Chicago Press; Chicago, 1987.

Haddock, B., *A History of Political Thought*, Polity Press: Cambridge, 2008.

Harcourt, W., introducing the first bill for graduated death duties in Parliament in 1894.

Hohfeld, W.N., *Fundamental Legal Conceptions*, Yale University Press, New Haven, 1919.

Honore, A.M., *Ownership*, from *Oxford Essays in Jurisprudence*, Oxford University Press: Oxford, 1961.

Ingram, A., *A Political Theory of Rights*, Oxford University Press: Oxford, 1995.

Kymlicka, W., *Contemporary Political Philosophy*, Oxford University Press: Oxford, 1990.

Locke, J., *Two Treatises*, 1690.

MacIntyre, A., *A Short History of Ethics*, University of Notre Dame Press, Indiana, 1998.

Martin, R., *Human Rights and Civil Rights*, *Philosophical Studies*, vol. 37, no. 4, 1980.

Mediterranean Migration Observatory report on International Migration, available at
http://www.mmo.gr/pdf/news/Migration_in_the_Middle_East_and_Mediterranean.pdf ,
p.33.

Nozick, R., *Anarchy, State and Utopia*, Basic Books: New York, 1974

Nozick, R., *The Examined Life*, Simon and Schuster, New York, 1990.

Okin, S.M., *Justice, Gender and the Family*, Basic Books; New York, 1991.

Olivecrona, K., *Locke's Theory of Appropriation*, *Philosophical Quarterly* 24, 1974, p.226.

Overton, R., *An Arrow Against All Tyrants*, 1646, accessible through
http://www.constitution.org/lev/eng_lev_05.htm

Parry, G., *Political Thinkers: John Locke*, HarperCollins: New York, 1978.

Rawls, J., *A Theory of Justice*, Harvard University Press: Harvard, 1971.

Rawls, J., *On the Currency of Egalitarian Justice, and other essays in Political Philosophy*, Princeton University Press: Princeton, 2011.

Rawls, J., *Political Liberalism*, Columbia Press; New York, 1993.

Reiman, J.H., *The Fallacy of Libertarian Capitalism*, Ethics, Vol. 92, No.1, 1981.

Rothbard, M., *For a New Liberty: The Libertarian Manifesto*, Collier Books; New York, 1978.

Rousseau, J., *The Social Contract*, Penguin Classics: London, 1968.

Sandel, M., *Liberalism and the Limits of Justice*, Cambridge University Press: Cambridge, 1998.

Spencer, H., *Social Statics*, Robert Schalkenbach Foundation, 1995.

Steiner, H., *An Essay on Rights*, Wiley-Blackwell; New Jersey, 1994.

Steiner, H., *Nozick on Appropriation*, Mind, Jan 1978.

Steiner, H., *Structure of a Set of Compossible Rights*, Journal of Philosophy, Dec 1977.

Steiner, H., *The Natural Right to the Means of Production*, Philosophical Quarterly, Jan. 1977

Steiner, H., Vallentyne, P., & Otsuka, M., *Why Left-Libertarianism is Not Incoherent, Indeterminate or Irrelevant: A Reply To Fried*, Philosophy & Public Affairs, vol. 33, no. 2, 2005.

Thomas, D.L., *Locke on Government*, Routledge; London, 1954.

Vallentyne, P., review of *Real Freedom for All*, Ethics, vol. 107, no.2, Jan 1997.

Van Parijs, P., *Real Freedom For All*, Oxford University Press, Oxford, 1995

Van Parijs, P., *Why Surfers Should Be Fed: The Liberal Case For an Unconditional Basic Income*, *Philosophy and Public Affairs*, Vol. 20, No. 2, 1991

Vlastos, G., *Does Slavery Exist in Plato's Republic?*, *Classical Philology*, 1968, vol. 63, no. 4.

Waldron, J., *Two Worries About Mixing One's Labour*, *Philosophical Quarterly*, vol. 33, no. 130, Jan. 1983.

Wolff J., *Robert Nozick: Property, Justice & the Minimal State*, Polity Press; Cambridge, 1991.

Wolff, J., *Fairness, Respect & the Egalitarian Ethos*, *Philosophy & Public Affairs*, Vol. 27, no. 2, 1998

Wolff, J., *Freedom, Liberty and Property*, *Critical Review* 11, no. 3, Summer 1997.

Wood, D., *Nozick's Justification of the Minimal State*, *Ethics*, vol. 88, no. 3, April 1978.