

SELF-OWNERSHIP, PROPERTY RIGHT AND FREEDOM: RE-CONCEIVING PROPERTY
IN OURSELVES

by

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(Under the Direction of Victoria Davion)

ABSTRACT

The self-ownership thesis claims that all persons own themselves and therefore have overriding control of their bodies and labor. Libertarians have argued that the self-ownership thesis also generates robust property rights to things produced with one's labor, and prohibits redistributive taxation of any sort. Robert Nozick, in particular, argues for robust property rights not only to the products of one's labor but to natural resources, which on his view can be acquired without the consent of others. I argue that the self-ownership thesis generates a host of desirable individual rights and freedoms, and conditions property and other normative rights to the products of our labor and resources in the world so as to protect and enhance individual freedom and autonomy to pursue a good life. However, I argue against the libertarian analysis of self-ownership, concluding that self-ownership does not justify full, liberal property rights to the products of one's labor, nor does self-ownership generate unilateral rights to appropriate natural resources, or prohibit restrictions to the privatization of these resources, so long as these restrictions do not abrogate individual freedom and autonomy to pursue a good life.

INDEX WORDS: Self-ownership, Property rights, Motherhood, Parental rights, Capital resources, Natural resources, Cohen, Okin, Nozick, Libertarianism, Liberalism, Rawls, Flourishing, Welfare, Production

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Chapter 1: Introduction and Common Concerns with Self-Ownership

Overview: Self-Ownership

The goal of this dissertation is to investigate the conceptual strength of the self-ownership thesis in relation to some particularly difficult challenges. The self-ownership thesis claims that all persons have full and exclusive property rights to their own person. For proponents of self-ownership, it provides the basis of political and economic association. For detractors, self-ownership is variously analyzed as paradoxical, unjustified, and without legs to generate the rules of political and economic association that proponents believe it to provide.

The goal of the first chapter is to show that the self-ownership thesis is at least a *reasonable* starting point for political justice. I shall accomplish two general tasks. First, I will explain the thesis, its roots in Locke's writing and in contemporary libertarian literature such as Robert Nozick's *Anarchy, State and Utopia*, and provide some reasons why the thesis is attractive to its advocates. My next task is to discuss self-ownership's vulnerabilities and vagaries – prima facie reasons to reject the thesis, especially in the context of contemporary political liberalism. My aim in this second task is not to *prove* that self-ownership is beyond reproach or that it could never actually lead to the objections laid out against it. Rather, I wish to show that these objections are themselves not inevitable. They do not necessarily arise from the self-ownership thesis, and I believe solutions to such problems are attainable.

Self-Ownership: Locke and Nozick

The self-ownership thesis claims that all persons have robust¹, exclusive property rights in their own person. These property rights generate both negative claims against other persons and positive liberties, which are conditioned by others' negative rights to varying degrees. In political philosophy, the self-ownership thesis is generally attributed to Locke's *Second Treatise*, though it is by no means limited to Locke's writing or to neo-Lockean political philosophy. For example, Gerald Cohen claims that many Marxists and perhaps even Marx himself implicitly rely upon some sort of concept of self-ownership to explain the exploitation of workers' labor power by capitalists, though it is unclear on a Marxian view whether or not this exploitation is in fact *unjust*.²

That Locke believed persons, or 'men' own themselves is made clear in the *Second Treatise*.³ However, Locke does not give us a clear picture of *why* we should think this is so. Elsewhere in the *Second Treatise*, he claims that as man's creator, God owns all persons.⁴ It may be difficult to see how God owns all persons, yet each person owns themselves. However, an explanation of man's self-ownership may be had on Locke's account.

Though Locke claims God gave the entire world to humanity in common, each person must take possession of worldly resources in order to sustain him or herself. All persons *must* sustain themselves because they are God's property.⁵ However, the only way Locke can make

¹ I refer to property rights as 'robust' throughout this thesis. By 'robust' I mean that these rights grant significant, overriding control of the use and disposal of property to owners, constrained *only* by similar property rights of others. Robust property rights are the sorts of property rights that libertarians such as Nozick defend.

² Gerald Cohen, *Self-Ownership, Freedom and Equality* (New York: Basic Books, 1979), 144-148.

³ John Locke, *Two Treatises on Government* (Cambridge: Cambridge University Press, 1967), II, § 27.

⁴ Locke, *Two Treatises on Government*, II, § 6.

⁵ Locke, *Two Treatises on Government*, II, § 6.

sense of a person's coming to possess things in the world is if they own themselves and by extension, their labor. As a result, it seems that on Locke's view, God owns all persons (as creator) and all persons own themselves, though not exclusively. The property rights of God, our creator, condition our ownership of our own person. We cannot destroy ourselves because God ultimately owns us. However, in order to avoid self-destruction, we must sustain ourselves from the common 'bounty' of the world. In order to do this, we must take possession of fruits, grains, water and flesh, and in order to do this, we must first own our labor. In some sense, we have power of attorney over ourselves while on earth, doing God's bidding for us. In this sense, Locke is not committed to exclusive self-ownership in the contemporary Libertarian sense. For example, just as we may not commit suicide, Locke believes one cannot sell oneself into full and permanent slavery. However, Locke's employment of self-ownership as it relates to political philosophy and property rights does not seem necessarily conditioned by his claim that God owns all persons. As such, we can still retain most everything else Locke has to say about political association and property rights without appeal to 'God's role.' Locke's claims against suicide and selling oneself into permanent slavery remain debated in the literature even without the worry over violating God's property rights in humanity. However, in order to better explain self-ownership in a pluralistic world, we must turn to an analysis that does not explicitly rely on Locke's transcendental claims.

In contemporary literature, the self-ownership thesis is most strongly connected up with Libertarian theory, notably, that of Robert Nozick, John Hospers and others. In *Anarchy, State and Utopia*, Robert Nozick presents a distinctly Lockean account of self-ownership, property rights and political association without relying on Locke's own claims about God's role in the relationships between persons and between persons and the external world. Borrowing from

John Locke's arguments in his *Two Treatises on Government*, Nozick uses the self-ownership thesis as a justifying principle for understanding the minimal conditions of political association and for generating individual rights in person and property.

Nozick offers a picture of property rights in his chapter on distributive justice which suggests that he views self-ownership as a *negative right*, held by all persons, and perhaps one that stands *without* need of independent justification. He appeals, albeit with some reservations to Lockean notions of self-ownership.

Although Nozick almost seems at points to eschew the notion of self-ownership as being in some sense antiquated, both critics and proponents of Nozick take him to be a proponent of self-ownership. We have good reason to believe them correct. Nozick's near duplication of Locke's theory of acquisition of property reinforces his commitment to self-ownership. Locke's theory involves the mixing of something a person owns, her labor, with something un-owned – namely, worldly resources (land, water, minerals, game, etc). It is through the mixing of one's 'labor-property' with things in the world that we come to possess them. However, in order for a person to own his or her labor, a person must own his or her own person. Nozick provides a case for robust, libertarian property rights through an implicit employment of the idea that we do in fact own our person, and so our own labor.

In his now famous 'Wilt Chamberlain' argument Nozick claims that if everyone who goes to see Wilt Chamberlain play a game of basketball agrees to pay an additional 25 cents to Chamberlain, then Wilt is entitled to all of that extra money. Why should we think he is not? So long as both his employers and fans voluntarily enter into this situation, it is just, according to Nozick. Wilt Chamberlain is entitled to the bounty of his efforts simply because he owns his efforts. Chamberlain owns his efforts because they are resources in his own person that he alone

controls. His ability to sink a jump shot, or maneuver around a defender is something that he can profit from in voluntary exchange with others, because he owns his own body, and by extension, his own labor.

Perhaps the strongest evidence of Nozick's commitment to the thesis of self-ownership comes in his criticism of so-called redistributive taxation. Nozick claims that "taxation of earnings from labor is on a par with forced labor."⁶ This is a central objection of libertarians against any sort of unnecessary redistributive taxation. The objection rests on the notion that forcing someone to work for the well-being of another violates his or her rights. But, what rights are we talking about here? What would justify my right to *not* work for your benefit, especially if you are disabled and cannot work for yourself? According to Nozick, while it may be morally praiseworthy for me to help you, you have no claim on my labor. For, if you did, you would have, as Nozick says ". . . (partial) property rights in *other* people."⁷ So, while Nozick at points refers to the thesis of self-ownership as part of a 'classical liberal tradition' or as being a feature of 'earlier theorists' work, his own arguments rest solidly on the idea that persons' rights are grounded in full, autonomous, exclusive rights of ownership of their own person. The fact that Nozick's theory allows a person to sell himself or herself into slavery further reinforces the case for his acceptance of self-ownership. Even a Kantian picture of rational moral agency disallows the treatment of one's own person as a means in this way. Only through *full* and *robust ownership* in one's own person may one thereby *sell* oneself into slavery.

The picture that emerges from Nozick's libertarian theory is one where all political rights are based in each and every person's full and exclusive property rights in his or her own person.

⁶ Nozick, *Anarchy, State and Utopia*, 169.

⁷ Nozick, *Anarchy, State and Utopia*, 172.

Nozick explains property relations in terms of two primary principles, Justice in Acquisition and Justice in Transfer.

According to Nozick's theory of justice in acquisition, a person need only produce or procure property through his or her labor, as long as they leave 'enough and as good' for others. This proviso comes from Locke and is interpreted in a variety of ways. It is meant to allow for others to meet their needs from the 'stock' of worldly resources. Locke argues that the commons are of no use to humanity if individuals are prohibited from privatizing (acquiring) enough resources to meet their needs and to live comfortably. In fact, privatization on Locke's account is preferable, since privatization has the potential to make land (for example) far more productive than it was in its common, natural state (Locke uses the example of agriculture). As a result of privatization, there is now *more* value coming from earthly resources than existed previously. While this claim ignores the contention that common land might be as productive in meeting human needs as private land, not much turns on such a claim. Whether privatized by an individual, a collective, corporation, village, etc, in working the land, a person and/or group takes possession of it and removes it from its common, natural state. So long as the proviso is satisfied (enough and as good resources remain for others to sustain themselves), the privatization is just. Ultimately, on Locke's account of private property, all natural resources used for human sustenance and enjoyment must eventually become private property before they can be used *as* life-sustaining resources. Even if social groups work communally to gather resources, when I take an apple from the 'communal' pile my family and I pick, I take *that* apple into my possession, even if it needn't have been *the same* apple that I originally picked. Locke's claim then is that persons can possess external resources by laboring on them. They can continue this

process beyond what simply meets their needs, so long as they leave ‘enough and as good’ for other persons needs to be met.

Self-ownership applies not only to cases of acquiring external worldly resources. In cases where a person produces property directly through their labor, such as giving a philosophy lecture, reciting poetry or giving a back massage, the ‘enough and as good’ proviso is automatically met, as no one besides the person whose labor it is that produces such a ‘good’ has any claim on that property. Nozick’s ‘Wilt Chamberlain’ argument is one such example. On the self-ownership thesis, Chamberlain already owns his labor and talents. He trades this labor and talent for currency, with which he may purchase whatever he needs to pursue his own conception of a good life. The distinction between property (and exchange value derivative of this property) generated through the mere exercise of one’s own labor, and property acquired through a ‘mixing with’ or ‘laboring on’ external worldly resources is important. As will become apparent in the coming chapters, the latter type of acquisition (of worldly resources) finds more objectors in the crowd than the former. It is for this reason that most objections to libertarianism focus on this sort of acquisition.

Nozick’s own proviso on acquiring property requires very little of the acquirer. He maintains that acquisition of a previously un-owned thing or resource is just, so long as no other person is made *worse off* than he or she would have been, had that resource remained in common use. I shall focus on the details and controversy surrounding Locke’s proviso in chapter three.

For Nozick, justice is maintained through repeated applications of the principles of justice in acquisition, as detailed above, and justice in transfer. Justice in transfer claims that all legitimately held property may be voluntarily transferred to other owners through sale, barter, contract, bequest, inheritance, etc. In this way, the self-ownership of all persons generates robust

libertarian property rights in the things produced through a person's labor, or otherwise legitimately acquired through transfer.

I have focused primarily on the relationship between self-ownership and property relations between persons and things in the world, as this is the focus of the bulk of my thesis. However, I think it is important to present an analysis of self-ownership itself. The following sections propose to show what makes self-ownership an attractive theory. Additionally, I will provide a defense of the theory against the *prima facie* liberal objection to the theory, that self-ownership not only fails to provide for political obligations of mutual aid, but in fact prohibits such obligations from legal sanction. I will argue that self-ownership *can* and *does* require political obligations of mutual aid.

Why Self-Ownership is Important

Addressing the self-ownership thesis and its criticisms is a project worthy of our time. Self-ownership goes a long way to generate a coherent theory of political justice – one that explains and aligns with strong intuitions about justice and rights. Consequently, whether one is a proponent of self-ownership or eschews the thesis, I believe continued inquiry regarding self-ownership is worth our time. The self-ownership thesis, I argue, provides a *strong* account of negative rights of non-interference, positive liberties and freedoms, property rights as well as accounting for our political obligations to ourselves and to others. These rights, liberties and duties, I claim, are common in the liberal tradition. The fact that self-ownership generates them counts as a strong reason to retain the theory as a basis for building a system of social justice.

Rights of Non-Interference

Self-ownership explains and justifies intuitions about rights of non-interference that underlie much of liberal political theory. Most liberal theories of political justice, and theories of morality claim some sort of right of mutual non-interference. This is to say that each and every person has an equally strong negative right *not* to be interfered with by other persons. Whether one follows Locke and believes these sorts of rights to be ‘natural,’ or that they are generated within liberalism as a result of the demands of impartiality, rights of mutual non-interference appear as cornerstones of liberal theories.

These rights include prohibitions against physical and psychological harm and against thwarting one’s attempts to provide for oneself, so long as those attempts do not violate the negative rights of others. And whether viewed as natural or dependent upon a state’s constitution, securing these rights stands as one of the primary motivations for the formation of a liberal state. Classically conceived, it is the lack of security against aggression by others that drives individuals to surrender most of their rights to the use of force so that they might survive moments of vulnerability to others. But why should we think that we have these rights? Some might claim that such negative reciprocity is itself a valid first move in developing a theory of normative political justice. However, self-ownership provides a substantial framework for generating and understanding the nature of these rights; without such a framework, it is unclear as to precisely *what* sorts of negative rights persons have. By viewing all persons as having property rights in their own person, we can explain both the source of their rights of non-interference and our judgment that someone has wronged them when these rights are violated. When I strike you, I violate your property rights in your own person. If I prevent you from providing for yourself, I again violate your property rights by preventing you from using your

property how you see fit to maintain it. However, why should we think persons own themselves in the first place?

As I will argue in chapter two, I believe that self-ownership is a relationship persons develop in relation to themselves when they can and do exert the sort of control over their body and actions that is definitive of ownership – one might view it as the political analogue of moral autonomy, though I do not intend on equivocating between the two concepts. Precisely how this process might occur is one of the tasks of the following chapter.

Liberty

Seemingly incompatible theories of justice, Rawls' 'Justice as Fairness' and Nozick's Libertarianism both call for robust, reciprocal personal liberties. In conjunction with the negative rights of non-interference that self-ownership explains and justifies, self-ownership also accounts for many of the positive rights and liberties commonly claimed by liberal political theories. Classical rights of free speech, association, expression, thought, religion, consumption, etc, are all accounted for by the theory that claims we own ourselves. As the theory is traditionally conceived by libertarians, my full and exclusive property rights in my own person give me the right to do whatever I want with this property so long as I do not violate anyone else's property. This includes saying what I like, believing in whatever god or gods I choose, eating, drinking or smoking whatever food, drink or substance I desire, exercising or living a sedentary life, doing philosophy, befriending or taking as lovers any persons willing to reciprocate, etc. My liberty to do what I like with my own person is limited, again, only by others' like rights to do whatever they wish with their own person, which is in turn limited by the same principle.

Like our rights of non-interference, some theorists have claimed that our positive liberties are basic – predicated merely upon the equal rights of all and requirements of reciprocity. However, if we take self-ownership as a starting point, it is easy to see how our liberties are generated. Not only can we see how they are generated, but by taking self-ownership as the proper starting point, the principle actually *guides* us in determining just what liberties we do in fact have. The self-ownership thesis generates a list of liberties consistent with those commonly thought to be had by persons from a liberal political perspective. Disregard for rights of self-ownership explains why we see ostensibly liberal constitutions that limit the liberties of some citizens and to make those of others more expansive. In America, it took nearly century from the founding of the country to give African Americans even the most basic liberties, and longer still to extend equal basic liberties to women. Furthermore, both historically and currently, individuals’ liberties are limited by social traditions and religious dogma. Gays, immigrants, and other minorities are still denied equal basic liberties by many ‘liberal’ societies. If we take self-ownership to be the source of our basic liberties, then the shroud of mystery that has surrounded and in some cases still surrounds issues such as women’s suffrage, gay marriage, and recreational drug use would be immediately removed.

If all persons are taken to be self-owners, an examination of the above issues reveals past and current partiality regarding individual rights to be essentially baseless. Women have been and are still denied the right to vote in many places. This has been due in part to social, cultural and religious beliefs that a woman is either implicitly or explicitly the property of her father or husband. Under these sorts of principles, a woman’s needs and interests are subsumed under the needs and interests of the man who possesses her. Just as I may vote in a way that affects the welfare of my dog (who I happen to *own*) while my dog himself cannot vote, women’s interests

are treated in much the same way when they are denied suffrage. However, if all persons own themselves and women are people,⁸ then prohibiting a woman from choosing to express her own interests is a violation of her property rights in her own person.

Denying certain kinds of couples (or triples, or quads for that matter) the right to equal recognition of their relationship by the state is also prohibited by the self-ownership thesis. No referendum by even a very large majority of voters is valid if the referendum calls for selective denial of person's right to choose what they wish with their property, so long as that choice does not violate others' like rights. The free choice of same-sex or polygamous partners to enter into marriage cannot be justly restricted by others. On the self-ownership thesis, allowing such votes to take place and be enforced grants a heterosexual majority property rights in the persons whose rights are thereby restricted.

I have not provided anything approaching a robust treatment of the above issues. Doing so would dictate an entirely new project. However, I hope to have provided reason to believe that even if the self-ownership thesis should fail to provide sufficient grounds for more expansive rights (such as property rights to external worldly resources), I think its work in clarifying and determining personal rights and liberties in an egalitarian manner is reason enough to continue our analysis.

Property Rights in External Resources

⁸ I take the claim that women are people to be obvious and any argument to the contrary a non-starter. It is important to note, however, that many past attempts at justifying discrimination on the basis of sex, race, ethnicity or otherwise, claimed that members of discriminated groups were in fact not fully persons, or not persons at all. The falseness of this latter claim on just about any coherent rendering of personhood has in part, helped to swing social attitudes against such unjust discrimination.

Nearly all theories of justice include an account of property rights.⁹ By external resources, I intend the sorts of earthly, material goods necessary for sustenance and for the pursuit of a good life, broadly construed. These include things like plants and animals gathered and killed for food, organic and inorganic materials used for clothing and shelter, and of course, clean water and air. Other resources include parcels of land and bodies of water themselves, as they are used for the production of food and other products useful to or desired by humans, and any minerals, chemicals and other substances necessary for the production of products useful to or desired by humans. The majority of human artifacts and material goods are produced using at least some external worldly resources. As such, a theory of political association must provide an account of how persons as individuals or groups come to either possess or control the resources necessary to produce such material goods. Libertarians in the tradition of Locke argue that it is self-ownership which makes such possession and control possible.

Both libertarians and critics of capitalism have argued that some form of self-ownership grounds our rights to a share, however large, small or disproportionate, in external, worldly resources. Critics of capitalism for example, appeal to self-ownership in critiquing the exploitation of workers' labor by capitalists. Workers own their own labor and therefore have full rights to the positive products of our labor. One cannot own one's labor if one does not own one's own person, so self-ownership is implicit in this critique. It is no surprise that ownership of the means of production by workers has been claimed as either inevitable or normatively commanded, as communal ownership can be viewed as a pragmatic solution (among other potential solutions) to ensure that workers do in fact receive their fair share of profits generated by their labor. I am not primarily engaged in an evaluation of Marxian or other analyses of the

⁹ I do not know of a theory that does not give an account of property, but I must assume that such a theory exists.

relationship between workers and those who control the means of production. Nevertheless, it is important to see that self-ownership can play a role, whether correctly or not, in a plurality of political traditions.

More generally, I submit that most people, at least in the liberal tradition, share the intuition that we have a valid claim to at least some of the products of our labor. This claim is generally conditioned by the materials on which we labor. For example, if I add my labor to *your* property, then I can claim *at most* only the value I produce with my labor. This presumes that I have received permission from you to work on your property, among other considerations. If I justly own a pile of clay, it is unlikely that you can stake a valid claim to the bowls and jugs you make out of the clay while I am sleeping and without my knowledge or consent. In fact, I may have a claim against you for altering the condition of my clay-pile, and may force you to return the pots and jugs back to their original condition or compensate me in some other way.

Ultimately, these examples serve only heuristic purposes and do not provide a robust account of property relations between persons, or between person and things in the world. Determining this sort of calculation is complicated, and so a quick and easy account of property rights and production is not to be had on the self-ownership thesis. However, this reflects the complex nature of property rights, production, value and free exchange between persons, and we should not expect *any* theory of property rights and production to easily yield a simple account of such issues. In fact, given the complexity of the issue, we have a *prima facie* reason to be distrustful of any theory that promises an easy and uncomplicated account of property rights and production.

The bulk of this dissertation is devoted to examining how self-ownership in particular informs property rights to things produced with one's own labor. Subsequent chapters aim to give a more robust treatment of this difficult and controversial relationship.

Just Desserts – What are we Owed on the Self-Ownership Thesis?

The problem of just desserts is a complicated issue, which engenders many contradictory intuitions. Self-ownership generates various accounts of our responsibilities to ourselves and to others, but these accounts sometimes conflict with many liberal intuitions regarding such responsibilities. One major point of contention between libertarians and their detractors is the lack of any political duty to assist persons in need.

The exclusivity of persons' property rights in their own person leads libertarians to argue explicitly and extensively *against* any and all enforceable, political obligations on persons to assist others. Their judgment against coercive assistance holds even if assistance could be lent at little or no cost, and even if a person may rightly be viewed as *morally despicable* for refusing assistance. It is this view which I intend to undermine, while retaining what I take to be fundamental about the self-ownership thesis.

I have broken my project into two parts. First, I analyze whether we can generate enforceable political obligations on the basis of special relationships (such as between parent and child) or as a function of the blameless needs of persons such as congenitally disabled individuals. I ultimately find that this analysis *fails* to generate the sorts of duties to help that I seek, for various reasons. I then move to an analysis of libertarians' argument against coercive assistance itself. I argue that the libertarian case against certain forms of politically enforceable

assistance is indefensible and offer instead, my own analysis of how self-ownership conditions not only our negative rights but also our positive obligations.

In addition to generating rights of non-interference and personal liberties, the libertarian analysis of self-ownership presents a view on our personal responsibilities to ourselves. Libertarians often argue that if you work and gather food for winter while I sit around (able-bodied) and do nothing, you are under no obligation to help me survive the winter, even if you have a surplus. Likewise, if another person gathers more than she needs for survival, and can afford time to rest and do philosophy, she is owed that luxury, so long as her surplus did not come at the cost of another's involuntary poverty. Any situations that arise as a result of theft, enslavement, bodily harm, or by the limitation of persons' freedom by another person or persons are prohibited by the self-ownership thesis and their rectification is demanded by it. If I steal the food you have gathered, I have violated your self-ownership by (as Nozick and others put it) forcing you to work for me in gathering that food, making you my part-time slave.¹⁰ If an individual or group hoards all of a scarce resource needed for others to survive, this limits the freedom of those without that resource to use their labor to meet their own needs. However, while I may bear some responsibility for failing to provide for myself when I am clearly able to do so, it is not clear that you or I are in all cases free from non-contractual or non-punitive obligations to others, as many libertarians suggest.

Though persons own their own body, our bodies and minds are variously equipped to provide for our own sustenance, safety, and general well-being. Consequently, we cannot hold children or the disabled *blameworthy* for failing to do what they cannot do. We do not expect children to be able to provide sufficiently for themselves. Nor would we expect an individual

¹⁰ I am unconvinced by Nozick's claim that even brief and momentary 'forced labor' is morally equivalent to slavery.

without legs to be able to walk around and gather fruit, carry heavy loads, etc. The case is similar for mentally handicapped persons. We cannot expect them to be able to always provide for themselves in a sufficient manner. Though such persons may garner our sympathies and possibly our charity, the *political* reality for them on a libertarian account amounts to ‘tough luck.’

Proponents of a Nozickean interpretation of self-ownership hold that only contractual obligations are enforceable by the state. However, I believe the self-ownership thesis allows for and may even *require* at least a modest system of mutual aid and assistance outside of the scope of traditional contracts.

The absence of non-contractual obligations to children (for example) on a libertarian account is troubling to many in the liberal tradition. It is not clear, however, that no such obligations exist. By knowingly and willingly creating them (as opposed to being forced to bear a child by way of rape) we may accept an implicit obligation to care for them, similar to the assumption that adopting a pet obligates us to feed and care for it. Children do not contract with their parents for care and assistance, though it is fairly uncontroversial that they are owed this assistance as a result of their vulnerable situation. The needs of a child are foreseeable, and as such, any parent who knowingly and willingly creates one may be held accountable for its care until the child can care for itself. However, if children are not self-owners, then it is unclear how the self-ownership thesis protects them from neglectful harm. Even if we do consider (for the sake of argument) that children are self-owners with all the rights of other self-owners, it is unclear that their mere neediness alone generates politically enforceable (rather than merely moral) obligations to *care for* them. Moreover, if a child’s parents are unable to care for the child as a result of economic or medical reasons, then on the libertarian account, the child is left

to the mercy of benevolent family, friends or strangers.¹¹ Proponents of a minimalist (libertarian) interpretation of self-ownership might argue in favor of this result, and find it unobjectionable. On their account, *someone* in the society *would* care for such children. Childless individuals and couples have had and will likely continue to have, a desire for their own child. Social organizations, religious faiths, and other voluntary-membership institutions in society have and will continue to assist in the adoption of unwanted children. In short, the needs of needy children would be met, not through a mandate on society but through the voluntary actions of citizens.

Unfortunately, this ‘solution’ is not a solution at all. It simultaneously (though perhaps implicitly) acknowledges the *needs* of children to be cared for without *demanding* that society fill that need when necessary. An advocate of this position must accept that children whose needs are not met by their parents or private institutions in their society are ‘unfortunate cases’ but not ‘unjust’ ones. Though it may not be immediately clear how a proponent of self-ownership might overcome this problem, I do not think it is insurmountable.¹² Remember that advocates of a Nozickean position claim only that self-ownership prevents the state from forcing individuals to help. The conclusion they reach from this is that a child has no legitimate claim on being cared for, except (perhaps) a moral claim on their parents.

If we have any, our politically enforceable obligations to the disabled are somewhat different than those we bear to children. Though we cannot hold disabled persons accountable for what they are unable to do, unless someone is clearly *to blame* for their situation, then the disabled do not even have the same sort of basic moral claim to care and assistance that children

¹¹ This is to set aside worries over children who were not knowingly or willingly produced, such as those which resulted from accidental pregnancy or in cases of rape, coercion, or limited access to abortion. These cases, too, are subject to the concerns I discuss above.

¹² The issues of parental rights and child welfare is the primary topic of the following chapter, where I deal with them much more thoroughly.

might have (for example, against their parents, that they care for them). However, if they too are self-owners, then they have the same (negative) right to life as anyone else. If we fail to help disabled persons meet needs they cannot meet themselves and harm befalls them as a result, we may bear some responsibility for that harm.

Though my above analysis fails to demonstrate that society *has* positive, politically enforceable obligations to children and congenitally disabled persons, it provides a basis for considering why we *don't* have any sorts of positive obligations, as libertarians claim. Even still, this analysis focuses on the *neediness* of a person's situation in determining whether or not a society or state has positive obligations to them. Libertarians often focus instead on the blameworthiness (personal responsibility) for a person's need. Children are not blameworthy for needing care, nor are congenitally or accidentally disabled adults. However, the same cannot be said about persons who knowingly and/or recklessly acted to create their disability; individuals whose neediness is the result of their own 'bad decisions'. The latter group seems to garner the most attention in libertarian literature as paradigm cases of free-riders – persons who would take 'part-ownership' in others rather than work to meet their own needs. I think Nozick and others who peddle similar arguments gain considerable traction by referring to such cases, often in 'desert island' type scenarios. The intuition they are fishing for is that if you find yourself washed-up on an island among a group of strangers, all of whom are of able body and mind, that persons who refrain from any cooperative activity and/or fail to act to provide for themselves have no legitimate claim on the resources you and your fellows have collected, produced, hunted, etc. I think that given such a stark picture of survival and association between relative strangers, there is not much wrong with this intuition. However, their story abruptly moves from the island, to a society of people working cooperatively, making daily decisions about the well-

being of themselves and those they care for, and claims that we can still make the sort of strong, ‘desert-island’ claims against social obligations to persons whose actions have failed to meet their own needs. The world is not a desert island. Rarely are we confronted by individuals whose situation is obviously and fully the result of only their own knowing and willful negligence. Even if we can explain how a person’s own ‘free’ decisions eventually led her to need the assistance of others, this does not entail she is blameworthy for needing our assistance.¹³ If my arguments regarding the blameworthiness of a person’s situation are reasonable, then I think even outside the scope of congenitally disabled persons and children, a proponent of self-ownership might be able to arrive at a reasonable basis for social obligations to others, at least at some minimum level. Further, libertarians’ focus on the blameworthiness of persons’ neediness gives us reason to doubt whether or not self-ownership in fact prohibits *any and all* political obligations to help.¹⁴

However, an analysis of blameworthiness of those in need of help can only get us so far. To adequately address liberal concerns about care and political obligations to assist, the libertarian argument against coercive assistance must be directly addressed. Innocence of need aside, Nozick and other traditional libertarians argue that self-ownership prevents any citizen from being *forced* to help another. He claims that even if we may have a moral obligation to help (as I discuss above), no one can *force us* to do so. This is a subtle but important distinction. It means that though I may have a moral duty to help you, you do not have a legitimate, *political*

¹³ I will grant that there are paradigm cases of self-inflicted blameworthy harm. A mountain climber knowingly takes her life into her own hands when scaling a peak, and her (literal) safety net is her own responsibility. No one can feasibly claim that the rest of society has a non-contractual duty to wait at the bottom of the cliff with a giant crash-pad. This does not mean that if someone finds themselves in a situation where they could easily help the climber should she fall (e.g. by making a (cost-free) phone call to mountain rescue), that they have no politically enforceable obligation to do so.

¹⁴ If only cases of need where persons are somehow ‘to blame’ for their own need and vulnerability serve as convincing premises in the libertarian argument against coercive assistance, then the host of ‘blameless’ cases do not fall under the libertarian conclusions.

right to my help. This claim is popular in libertarian and neo-Lockean literature. The validity of the claim itself is somewhat unclear, however. Let's see how it might work.

Nozick bases his argument against any sort of coercive 'helping' of others on two vague principles. The first denies the connection between moral duties to help and rights to *be* helped. We can have the former (duties) without the latter (rights). The second principle (and I take this to be the most important) claims that coercive assistance is unjust because it violates a person's self-ownership by using their body and labor without a person's consent. Even if the first principle is ultimately defeasible, the second attempts to explain why a 'just' state is nonetheless *prohibited from enforcing* persons' moral duties to others. Below, I reject both principles.

Taking an example from the pages of Peter Singer,¹⁵ suppose we find a child drowning in a puddle of water. We could save her life at little cost to ourselves. Singer argues that we have a moral obligation to do so. However, Nozick claims that a moral obligation to help is consistent with the claim that the child does not have a *right* to be helped. So long as no one is somehow to blame for her situation, then to use Susan Moller-Okin's characterization of Nozick's position, her death would be "unfortunate, but not unjust."¹⁶ How could this be?

On Nozick's interpretation of rights violations, the girl's rights would have been violated *only* if someone actively did things that led to her injury or death. Absent these active violations of her rights, no passive or omitted duty to help constitutes a violation of her rights. This distinction is weak, at best. There is certainly debate as to how to best distinguish action from omission and whether or not they generate different accounts of blame and culpability. However, I believe that this does not relieve those who omit actions from *any* responsibility,

¹⁵ Peter Singer, "Famine, Affluence and Morality," *Philosophy and Public Affairs*, vol. 1, no. 1 (Spring 1972): 229-243.

¹⁶ Susan Moller-Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989), 79.

though their responsibility may be less than persons who knowingly *commit* an action. This would allow that a person who cast the girl into the puddle is highly blameworthy for her death, whereas the person who refrained from helping her out might be somewhat *less* blameworthy though they are both to blame, to greater or lesser degrees. As we have seen, Nozick is willing to admit that refusal to help may be *morally* blameworthy – he accepts a person could have a moral duty to help. However, on his account, the only way to make sense of this blame is to say that our unhelpful citizen is blameworthy *only* of not fulfilling his moral duty to help her, and *not* blameworthy of violating the girl’s state-protected self-ownership rights by letting her die. This is walking a thin line, indeed. Such a claim cannot stand alone as a sufficiently strong argument against coercive assistance. In order to reinforce his position against coercive assistance, Nozick and other libertarians must appeal more directly to the self-ownership thesis.

Nozick’s second implicit principle claims that coercive assistance violates self-ownership. If you force me to help someone who needs my help, you have used me and my labor against my will. I alone have full and exclusive property rights in my person and labor. By forcing me to use my labor or other personal resource (say, for example, Rapunzel’s hair), you have made me slave to both you and the person I end up helping. Thus, the self-ownership thesis appears to be at the core of what many find to be an untenable conclusion: though we may have moral duties to help, justice does not hold any person accountable for refusing help, no matter how small the cost of giving assistance.

The following constitutes what I take to be the libertarian argument against helping (mentioned above) and one possible way of rejecting the argument. Most libertarians hold that (1) coercive assistance violates one’s rights of self-ownership and (2) moral duties to help do not generate enforceable political or legal duties to help. It is based on these two claims that we

arrive at the traditional conclusion regarding the drowning girl: Though I may be *morally* obligated to help the drowning girl, it is unjust for you or anyone else (including the state) to *force* me to help her. This conclusion can be and is generalized to a conclusion against coercive assistance in all cases. Libertarians must reject any strong connection between moral and political duties (2) in order for their positions to be coherent. Otherwise, the door is left open for individuals to have a legal or political right to be helped, even while this right is unenforceable by the state (or anyone else), given libertarians' claim that coercive assistance violates rights of self-ownership (1). The intuition leading to (2) is not a bad one, and we should not deny that at least in *some cases*, a moral duty to do x does not entail a legal obligation to do x , nor does it generate a legitimate legal/political claim by others that we do x . For example, I may have a moral obligation to be kind to strangers (or children, or grandmothers, if strangers don't garner your moral sympathies), but we do not want to say that strangers (or children or grandmothers) have a *right* to my kindness – at best they have only a right to be left alone. However, we should reject the claim that *no* moral obligations entail political ones; libertarians must reject this as well. Our political obligations or duties to others are reciprocal in nature; A's political obligation to Z entails Z's claim against A that she fulfill her obligation to Z. So, while libertarians must claim that (some) moral duties to help do not generate enforceable political or legal duties to help, they must also argue that coercive assistance violates rights of self-ownership in order for their position against coercive assistance to work. My criticism of their position focuses on weakening *both claims*.

Singer's own argument for how obligations to assist the needy includes the caveat that our obligation to help depends on not having to give up something of equal or greater moral significance. What Singer has in mind, of course, is that we would not be obligated to save the

drowning girl if we were on our way to deliver the security code which would stop the clock on an atomic bomb underneath Times Square, or if the water in which the girl was drowning was equally threatening to our own safety. In our case, however, our saving the girl would not require us to give up anything equal or of greater *substantive* moral significance. Instead, we would be asked to suspend our desire to keep on walking, or if you will, the macabre desire to watch as the girl drowns in front of us. Libertarians hold that we have the right to do both things, even if we are morally despicable for doing so. I think that within the scope of Singer's argument though, this judgment stands. On the view I am challenging, though we may have a moral obligation to help (for which Singer successfully argues) we may not have an *enforceable* obligation to help – our moral obligation is not a political one. This is precisely the conclusion of traditional libertarians. As such, analyzing the problem in terms of Singer's original argument will not generate a sufficiently strong case for having a political obligation to help. However, I intend to use the spirit of Singer's original argument to develop the case for such an obligation. Below is such an argument.

Suppose Robert is faced with Singer's case of the drowning girl. He finds himself in a position to help her, at little cost to himself. Though he foresees that not helping will result in her drowning, he does not help. Predictably, the girl drowns. I argue that insofar as Robert *could have prevented harm befalling the girl*, he is, at least in part, *responsible* for the girl's being harmed. 'Responsibility' here is used generally, in the sense that free and rational persons are 'responsible' for their actions; whether this responsibility becomes moral or not depends on the relevant context. Moral responsibility, or blameworthiness only arises in certain cases. For example,¹⁷ though I am in a *very general sense* responsible¹⁸ for not paying your mortgage when

¹⁷ This case was suggested to me by Melissa Seymour Fahmy.

I knew that if (someone) didn't pay it, that the bank would foreclose and you would be evicted, I cannot be held *blameworthy* for your eviction on any normal usage of the word. Moreover, being evicted from one's house for failure to repay a debt is not the sort of *harm* I have in mind (more on this below). What makes the case of Robert and the drowning girl a case of blameworthy harm? My *prima facie* response is to suggest that insofar as my *intentional* drowning of the girl constitutes harm for which I am blameworthy, then Robert's watching while the girl drowns also constitutes blameworthy harm, even if to a lesser extent. While I would be blameworthy for intentionally and actively harming the girl, I believe that Robert is blameworthy for allowing her to drown when he could have easily saved her. I will acknowledge a morally significant difference between these two cases; the law can and should do so as well. My active and malicious drowning of the girl is a *worse* violation of the girl's rights than is Robert's case, but he has violated her self-ownership protected rights nonetheless.¹⁹

Of course, not all instantiations of blameworthiness for harm constitute a rights violation. Otherwise, our account of enforceable political obligations becomes far too expansive to be of any use. What is at stake is whether or not the *harm in question* violates rights protected by the self-ownership thesis. I might be said to be blameworthy for harming you if you are foreseeably frightened by my scowl. Being frightened is a harm, but only in a very general sense. So too is being evicted from one's house. However, my *self-ownership rights* do not protect me from mean people, just from mean people who violate my self-ownership rights. Just what rights does self-ownership grant me? To an extent, this is what is at stake in analyzing the self-ownership

¹⁸ My analysis of responsibility as knowingly omitting an action whose omission might lead to foreseeable harm forces this usage of 'responsibility' here. But, I think that this is acceptable as long as a distinction between responsibility and blameworthiness can be made.

¹⁹ Much of what turns on this distinction is the legal and political *costs* of various rights violations. My crime (actively drowning the girl) is likely to be punished severely, whereas Robert's crime ought to receive a lesser punishment, but a punishment nonetheless. We see this sort of distinction made in the law all the time, even when the outcomes (the harm in question) are the same.

thesis, but at the very least, self-ownership protects persons' life, liberty and property. The extent to which these three things are protected (or, as it were, what constitutes a violation of these rights) is to some extent up for grabs. However, though there are likely to be borderline cases between your being frightened by my scowl and my drowning of the girl, we can at least claim that the latter is a violation of self-ownership because it clearly denies both life and freedom, whereas a momentary fright does not meaningfully violate either your life or your freedom. Nor does my failure to pay your mortgage deny you the freedom to find cheaper housing, secure a job and rebuild your credit so that you might one day reacquire your home. In Robert's case, it seems clear that by not helping the girl, Robert has violated her rights. Rights violations are prohibited and the state can and ought to enforce citizens' respect for each others' rights. In this case, since Robert would have violated the girl's rights by not helping her, he has an enforceable, political obligation to help her.

A bit more might be said regarding some of my claims. Opponents of my argument may claim that Robert is not responsible for harm that befalls the girl because he did not *do* anything which *directly* led to the girl's being harmed. He did not push her into the puddle, hold her down, place the puddle where he knew her to walk, etc. On such a view, Robert's helping the girl would be strictly *supererogatory*. However, this denies that 'responsibility' can have any reasonable interpretation other than direct, strong causation. Under such a view of responsibility, x is responsible for y if and only if there is a physical connection between x and y such that y is explained in virtue of x's taking place. For example:

'My swinging of the bat in such and such a manner was responsible for the ball being hit over the fence.'

Libertarians may weaken this notion of responsibility to some extent (i.e. not require a *physical* connection, per se), but the relevant claim remains: x is responsible for y if and only if x is an intentional *action* that directly leads to y. On a libertarian account, Robert does not cause the girl's drowning; the water in her lungs causes that. Nor would the libertarian want to say that anything Robert *did* led to the girl's drowning as a result of being in the puddle, taking in a lungful of air, etc. Even if one accepts that Robert did *not cause* the girl to drown, I do not think it odd, or out of step with normal usage to say that given the circumstances, he is responsible for her drowning through his knowing and intentional *inaction*. On this account, x is responsible for y if x is *the most salient factor* in an explanation linking events x and y. For example:

‘The manager’s absence at the fourth straight staff meeting caused a mutiny among his staff.’

The manager here is responsible for the staff mutiny, even though he *did* nothing. This is the sense of *responsibility* I use when I claim that Robert is to some extent *responsible* for the girl's drowning. The girl's drowning is largely explained by Robert's *not* pulling her out of the water. Though Robert did not *directly cause* the girl to drown, the fact that she *did* drown can be explained in large part by the fact that Robert stood and did nothing, knowing the consequences of his failure to act, when he could have easily helped the girl.

Though Robert's case is meant to stand as a paradigm case of *individual* duties to offer assistance, I believe that the case for such individual responsibility becomes much less compelling as the circumstances linking an individual to an event become more complicated and as the corresponding sacrifice of life, liberty and property of the benefactor increases. However, I think this case has an analogue to a broader system of enforceable assistance. If it is true in the case of the drowning girl that the state can coercively mandate that Robert help her, I think that if

the girl could be helped, not by an individual, but only by a large group of people, each taking a dropper of water out of the puddle, commensurate with the size of their respective droppers, then the state is within its proper role to enforce everyone's individual role in this group effort. In this sense, though you or I may not be practically responsible for feeding a starving person in our city, we *can* be held responsible for paying our portion of taxes into a pool from which the person might be fed.

My analysis raises two related issues. The first has to do with the scope and limit to the *sorts of harm* that individuals, groups and society as a whole are *required* to help prevent. The second might help to understand the first, and has to do with the degree to which individuals, groups or societies are required to spend their labor, suspend their liberty or use their property in order to provide assistance in such cases. I shall address the second concern, as it is most conceptually linked to rejecting the libertarian argument and then explain how I think it helps address the first concern.

Even if a libertarian accepts that Robert has a political obligation to help the girl, he may rejoin that the state has an obligation to Robert to not force him to use his labor to help her, leaving us at an impasse. The libertarian's worry is this: even though the girl has some claim against Robert that he help her, Robert has a claim against the state that it not unjustly limit his freedom (to stand and watch or to walk on) or usurp his labor (bending over, pulling the girl out of the water). The question, then, is what makes *this case* an acceptable 'theft of labor' and curtailment of freedom, if the self-ownership thesis protects all persons' labor from usurpation and liberty from limitation? Obviously, our liberties *are* sometimes justly limited on the self-ownership thesis, though they must be limited only for the sake of others' self-ownership rights. Likewise, a just state, even on a libertarian analysis, sometimes *requires* us to labor in particular

ways in order to respect others' rights. I believe Robert's case falls under these sorts of acceptable constraints on self-ownership. The state does not merely protect against *active* violations of self-ownership, but also asks citizens to curtail their freedom to do 'whatever they please,' and to *labor* on behalf of others' well being. For example, I may be coasting down a steep hill on my bicycle to find you with your foot stuck in a pothole, directly in my path. It is absurd to think that the state is *beyond* its authority (e.g. has *violated* my self-ownership rights) to require me to *exert the labor* of applying my brakes. A libertarian might respond that this is the basis for traffic laws that specify that I yield to pedestrians, and my *obligation* is derivative of a contract I have made with other users of the roadway upon gaining a driving license (or, in this case, simply choosing to ride a bicycle on a public roadway with knowledge of the law – an implicit contract of a sort). However, I believe that these laws are themselves representative of the *positive* obligations we have to labor (albeit in small ways, such as applying one's brakes) on behalf of others, whether we have explicitly contracted with them or not. Robert's pulling the girl out of the water and my application of my brakes are to examples of justified incursions upon our liberty and labor. Neither requires a great sacrifice, and both allow that agents may continue to go on about their business once the requisite labor is exerted. Were the situations different, requiring a significant sacrifice of labor and liberty (and perhaps risk to life), then though both the girl's drowning, and your being hit by me and my bicycle are harms on the self-ownership thesis, the state could not require labor to be exerted on behalf of you or the girl. What constitutes a *significant sacrifice of labor and liberty* is a matter of debate, and a vague boundary exists between clear cases on either side. My own intuition is that it is best to err on the side of being conservative (contra Singer's ultimate conclusion about our *moral* obligations). Whether a person is responsible for assisting or not depends on the cost of offering assistance

understood as cost to life and liberty.²⁰ Though some cases can and should be made explicit (for example, by traffic laws) others are circumstantial. All of these cases, however, should be decided through public deliberation on the matter, as there is no principled way to draw a sharp line.

This raises again the first concern: the scope and limit of harms that persons, groups and societies are required to help prevent. For example, suppose Sally needs lifelong treatment for an otherwise fatal illness, and it just so happens that she lives in a society where someone has invented a machine that can effectively treat her. However, it costs a significant portion of her society's GNP to run the machine. Is Sally's society obligated to help her? At some point, it seems absurd to suggest that society is *obligated* to help Sally, as it is unlikely to even be possible to help without forgoing the more readily met needs of many others. More to the point, assistance cannot be *required* if it *severely restricts* the liberty and labor of any individuals within society without their consent. This reason, more so than simply economic infeasibility, is what makes requiring society to pay for Sally's treatment beyond the scope of justly coerced assistance; the economic cost of assisting her in this way (rather than say, providing palliative care) would likely require a significant restriction of the liberty and labor of other individuals in society. However, is a just society required to help individuals who need treatment for cancer and cannot pay for it themselves? The short answer, again, is that it depends on the costs of providing treatment on a fair basis to all persons who need it. And, what qualifies as an *acceptable* cost is a matter of public deliberation on the matter.

What this argument demonstrates is that the distinction between *moral duties* and *enforceable, political obligations* many libertarians make is not a sharp one. Certainly, not all

²⁰ Property is another issue. In the third chapter of this dissertation, I argue that property that is derived from natural resources is subject to a number of constraints, many of which serve to help prevent *easily* preventable harms to individuals, such as starvation in times of plenty.

moral obligations are enforceable by the state. Moral obligations take a diversity of forms and various consequences await their fulfillment or lack thereof. What my argument demonstrates is that *foreseeable harm* arising from a *failure to help* can be viewed as a rights violation, and a limited duty to help can therefore be justly enforced by the state without rejecting, or violating the self-ownership thesis.²¹ The mere existence of a causal relationship between a person and an event cannot be sufficient to generate moral responsibility or blame. As I mention above, we are all minimally ‘responsible’ for a great many harms that take place in the world. However, no one person can *practically* be held accountable for his or her small role, whether knowing or not, in bringing about harm to other persons. The example of the drowning girl is meant to stand as a paradigm case of blameworthiness for failure to help. Other cases will be much less compelling. My failure to donate my life savings to domestic aid organizations does not count as a violation of needy persons’ rights, though my failure to contribute equitably to this cause through a redistributive taxation system might. This is to say that society as a whole may have duties that no individual could reasonably have. Rather, it is an individual’s responsibility to contribute his or her share to their society’s duty.

Moreover, we need not take as our starting point a pre-political, *moral* obligation to help. The obligation to help can be generated as a purely political one on the self-ownership thesis with an exactly similar argument to the one detailed above. Once we see that knowing omissions of assistance can generate responsibility for harm suffered by persons in need of assistance, generating a legitimate, *political* claim to assistance is not particularly difficult, nor does it involve any violation of individuals’ self-ownership.

²¹ A libertarian would likely claim that any state-enforced obligation to help infringes on one’s freedom to do what they wish with themselves. Certainly *some* state-enforced obligations infringe upon this right, but not all. The obligations I have in mind are of the sort that libertarians already endorse – that is, obligations to *not harm* others. My analysis merely suggests that libertarians’ analysis of harm is too weak.

My claim is not an overly ambitious one; the conclusion I argue for, that a just state sometimes mandate help be given to persons in danger of harm, is not radical. What I take to be important is that I have reached these conclusions from within the scope of the self-ownership thesis, a concept utilized by libertarians to argue vehemently *against* coercive assistance. In so doing, I hope to have laid the groundwork for a more thoroughgoing defense of self-ownership within the liberal tradition. Furthermore, the conclusions I have drawn here do not carry over to coercive assistance outside the scope of foreseeable harm.²² This particular argument argues merely that the self-ownership thesis justifies coercive assistance in cases where we are avoiding harms, not seeking benefits. It is a different matter to show how failure to benefit someone counts as a rights violation. However, failure to help avoid foreseeable harm is a more than reasonable candidate.

Abandoning Self-Ownership?

What are the stakes of surrendering self-ownership? Self-ownership helps us explain and justify property rights to our own labor and (to an extent) to worldly resources. It also justifies common liberal (and even non-liberal) intuitions about the robust strength of bodily rights – rights persons have over their own bodies that are *at least* significantly stronger than any other persons’ claims to them. I do not claim that other theories are incapable of providing this account, but only that self-ownership allows one to parsimoniously explain individual rights in a liberal state.

²² For example, my neighbors may need help with their yard waste, and the state could provide a tax-funded leaf and limb pick-up service. However, nothing about the above argument rejects the libertarian position that forcing taxpayers to fund such a service (regardless of whether or not they themselves benefit in some way) is a violation of property rights derivative of self-ownership.

Other theories attempt to explain the above transgressions in various ways.

Utilitarianism for example might claim that in taking my food and clothing, my neighbor has reduced the aggregate utility and so violated the greatest happiness principle, or some variant of this. However, it is unclear upon what basis I can even say that my neighbor has taken *my* food and clothing, rather than that my neighbor simply took clothing I made and food that I gathered. Property rights in our own person can help to condition and constrain property rights to external resources in a way that is reciprocally sensitive to individuals. Similarly, our rights to dispose of our own labor how we see fit are explained and protected by the self-ownership thesis. Even if we can give a utilitarian analysis of the utility exchange in my neighbor's theft, it may be the case that the theft is perfectly permissible, if not required by utilitarian principles. Self-ownership, on the other hand, yields a universality to human rights that utilitarianism (on common criticisms), among other theories, lack. This does not mean we must abandon the attractive features of such a theory. Within the bounds of the self-ownership thesis, we may apply utilitarian principles so long as they do not violate the rights generated by self-ownership.

Another sense in which we ought to find the *prima facie* claims of the self-ownership thesis attractive relates to bodily integrity. In his discussion of self-ownership, Gerald Cohen admits that even many socialists would be reluctant to give up the basic claims about ownership of one's own body that self-ownership provides. Though such theorists deny the validity of robust private property rights in external worldly resources, few socialists, Cohen contends, would readily allow body parts, organs, or entire bodies themselves to be viewed as public goods to be distributed along with other natural resources. Cohen thinks it would be absurd, even to radical egalitarians, to allow organs to be distributed according to a lottery; when your number

comes up, it would be your turn to donate a kidney, a lung, some intestine, an eye, etc.²³ If we reject property in one's own person as a basic tenet of political association, we have a difficult time explaining precisely why a 'surplus organ lottery' is objectionable.

Self-ownership provides us with a clear and direct explanation of wrongdoing in cases of forced labor, assault, suppression of freedoms and theft of personal property and resources. Self-ownership also provides the most direct account of personal bodily integrity. It is my hope that we may *also* be able to use the self-ownership thesis to account for wrongdoing if you are starving and I fail to give you food from my large surplus.

The goal of this chapter has been to address the plausibility of the self-ownership thesis in the face of common objections. I do not take the above arguments to be a thorough and complete defense of self-ownership; I only wish to have laid the groundwork for what is to come. In the next chapter, I will address a serious challenge to the coherence of the self-ownership thesis. Susan Moller-Okin argues that Nozick's (and libertarians') interpretation of how self-ownership generates property rights is incoherent and dystopic when women are taken into account.

²³ Gerald Cohen, *Self-Ownership, Freedom and Equality* (Cambridge: Cambridge University Press, 1995), 70.

Chapter 2: Child-Ownership

In her book, *Justice, Gender and Family*, Susan Moller-Okin carefully examines the principle of self-ownership as it is espoused by Robert Nozick, and judges that his entitlement theory is absurd when women are taken into account. Nozick's basic claim is that as self-owners, all things that we produce with our labor become our property, in equal measure to the extent to which we own the resources involved in such production. I will henceforth call this the 'production yields property theory.' According to this theory, a woman who produces a child with her labor has full property rights in her child. As Okin notes, though a woman must acquire a sperm, this is usually freely given; if no volunteers are available, sperm may be purchased. She then simply maintains her own health and nutritive needs, and produces something that quite literally enters the world with an attachment to her.²⁴ This is to say that on Nozick's theory, women own the children they produce.

Okin claims that Nozick fails to fully recognize this problem and its implications, largely due to his neglect of gender differences and treatment of the family as a given, background institution. She argues that because Nozick neglects sex and gender differences, it turns out that Libertarianism, which rests on self-ownership and the subsequent production yields property theory, is a "self-contradictory"²⁵ thesis. Furthermore, she claims that any attempt to fix the problem involves rejecting Nozick's entitlement theory, or denying women *equal rights* to do with their property what they wish. From a libertarian standpoint, rejecting the production yields

²⁴ Nozick uses similar language in describing his entitlement theory when he claims "Things come into the world already attached to people having entitlements over them." *Anarchy, State and Utopia*, 160.

²⁵ Okin, *Justice, Gender and the Family*, 86.

property theory (such as Nozick's entitlement theory) is untenable, and from the standpoint of justice, applying property rights differently on the basis of sex or gender²⁶ is untenable. If it turns out that self-ownership is inextricably linked with Nozick's entitlement theory and other manifestations of the production yields property theory, then the concept of self-ownership is in jeopardy. If, however, Okin's concerns can be addressed by retaining self-ownership but rejecting the production yields property theory, then the self-ownership thesis can be retained as a primary basis for political justice. In what follows, I explain Okin's critique, and then examine two attempts to salvage self-ownership from being inextricably implicated in the libertarian view that Okin finds repugnant and contradictory. I ultimately reject the production yields property theory in order to bypass the problems for the self-ownership thesis suggested by Okin's critique.

Okin's Main Objection

As I asserted in the previous chapter, the libertarian analysis of self-ownership entitles all persons to full and exclusive property rights to their own person. On Nozick's analysis, the self-ownership thesis grants all self-owners (persons) full, liberal property rights to the things they produce. I call the view that one owns what one produces the 'production yields property theory'. Because women are uniquely positioned to produce children with their bodies and labor, on Nozick's entitlement theory (a version of the production yields property theory), they own their children. While a woman is free to emancipate her child, she is not required to do so. On Nozick's reading of the self-ownership thesis, Okin argues, the state would be outside of its proper role to prevent a woman from exercising property rights over her child. These maternal

²⁶ Okin utilizes the terms, 'gender' and 'women' throughout her critique. Clearly, the differentiation that matters for her critique is the biological ability to conceive and bear a child – a characteristic that is not dependant on gender, but on physiological sex. I do not intend on equivocating between 'sex' and 'gender' or between 'female' and 'woman' though I shall use Okin's own language to explain her critique.

property rights may include forcing the child to work for her, selling it, or even killing and eating it for food. This fact creates two inherent problems for Nozick's interpretation of the self-ownership thesis.

The first problem is that child-ownership could possibly prevent future generations from ever owning themselves, rendering the theory of self-ownership incoherent as a ground for political justice. The second problem stems from the problematic nature of considering a child as property. That a mother might require lifelong slavery from her child, or that she may even kill and eat it are in *direct conflict* with widespread moral intuitions on the subject. Both of these problems stem from a common source: the production yields property account given by Nozick and other libertarian self-ownership theorists. The production yields property account is problematic insofar as property rights to things produced are viewed as, by and large, conditioned *only* by others' property rights. Nozick often speaks of our property rights to things we produce as an extension of our self-ownership. Indeed, it is the exclusive ownership of one's labor, which ostensibly serves as the basis for such property rights. Notably, Okin's critique depends upon this view of self-ownership – one that grants full and exclusive property rights not only to our own person but to the things we produce with our labor, such as children.

I do not believe that self-ownership grants us the sorts of robust property rights to things we produce that would lead to the sorts of conflicts Okin envisions.²⁷ We might well retain self-ownership but not have robust (or any) property rights in the things we produce. It is not obvious that self-ownership entails a commitment to *unlimited* or *unrestricted* property rights to things (and persons) beyond oneself. Though persons own *their own labor*, the nature of *that* ownership differs from ownership of things produced *with this labor*. Property rights to one's

²⁷ I do not disagree with Okin that Nozick's employment of the self-ownership thesis leads to the problems she outlines. However, I shall argue that self-ownership can be retained even if one rejects Nozick's analysis of it.

own labor are relatively unproblematic, as long as our property rights to our labor do not override the self-ownership rights of others.²⁸ Full and exclusive ownership over things (and/or persons) in the world raises some of the many problems facing libertarians and self-ownership theorists alike.²⁹ Though persons' claims to things in the world may in some way stem from their (fully owned) labor power, persons' claims to things in the world are not as robust as their claims to their labor.

It is in this context that I present a solution to Okin's problem without rejecting the self-ownership thesis.³⁰ Solving Okin's two main problems requires rejecting the production yields property theory. By disconnecting property rights from production the problematic conclusions that Nozick's entitlement theory generates can be avoided. If we reject the production yields property theory, then mothers do not own their children as immediate products of their labor. If children are not their mothers' property, the problems Okin envisions no longer arise. Instead, I argue that mothers' parental rights to their children are constrained by social concern for the welfare of the child, balanced by mothers' reproductive freedoms and autonomy in raising their children. I will argue that restrictions on rights to the things we produce (such as children) are neither sexist, nor unusual or out of step with the self-ownership thesis itself. In order to accomplish these tasks, I shall first unpack the problem as Okin presents it.

²⁸ For example, I argue in chapter one that our rights to use (or refrain from using) our labor are not so robust that we are permitted to refrain from laboring on behalf of others in danger of immediate harm.

²⁹ I distinguish between libertarians and self-ownership theorists as such, because I do not believe that one's commitment to self-ownership requires acceptance of libertarian conclusions.

³⁰ Okin claims that Nozick's entitlement theory is "clearly premised on the notion that each person owns themselves." *Justice, Gender and The Family*, 86. Okin does not assert that self-ownership obviously leads to Nozick's entitlement theory, but she does not challenge this connection. This may be because it is so often presumed that self-ownership does in fact entail the production yields property theory. In any case, I do not wish to attribute an outright rejection of the self-ownership thesis to Okin. She only rejects the libertarian analysis of self-ownership – something I do as well.

Okin and the incoherence of Nozickean Libertarianism

Okin argues that Libertarianism neglects both women and the family, a neglect that once exposed, renders Libertarianism incoherent. “Libertarianism,” Okin argues, “tacitly assumes, beyond the reach of its principles, a realm of private life in which the reproductive and nurturant needs of human beings are taken care of.”³¹ A woman’s unique ability³² to produce a child with little more than a sperm and her own bodily labor throws a wrench in Nozick’s entitlement theory; if we apply entitlements justly across all persons, women are entitled to ownership of their children.

Nozick’s entitlement theory is based on three general principles: justice in acquisition, justice in transfer, and rectification of injustice in holdings. On Nozick’s account, *justice in acquisition* requires the provision that the resource was previously un-owned and that no other persons are made worse-off by an acquisition than they would have been, had that resource not been acquired. *Justice in transfer* is maintained so long as that which is transferred is justly held and freely transferred, whether in the case of an economic transaction or in bequest or inheritance. A distribution of holdings (property) is just on Nozick’s theory if it arises through repeated applications of the first two principles. Any deviation from this requires the application of the third principle, which unfortunately Nozick fails to develop. It is notable that though Nozick bases his theory of acquisition loosely on Locke’s theory of property, initial acquisition of a resource on Nozick’s account requires little or no actual labor on the part of the acquirer, only that the acquisition satisfy Nozick’s weak proviso: that the resource/object was previously un-owned and that no one is made worse-off by the acquisition had the resource remained un-

³¹ Okin, *Justice Gender and the Family*, 75.

³² With technological advances such as artificial wombs, anyone with access to male and female gametes might feasibly produce a child. This potentiality would broaden the scope of Okin’s critique but would do nothing to avoid it.

owned. Labor only comes into the picture insofar as we own things we produce with our labor and resources. However, we need not *actively* labor on things to own them. If I grow a rare and useful medicinal fungus under my toes (perhaps as a result of *not* exerting the labor to clean them) I still have property rights to that fungus. On Nozick's account, it is not merely my labor that contributes to my ownership of things, but the relationship things bear to me, *as* an owner, which generates ownership of new things.

Okin argues that Nozick's entitlement theory fails to account for reproduction and the self-ownership of children, a failure that forces us to reject Nozick's analysis of self-ownership. First, Nozick claims that self-ownership entitles all persons to the full and exclusive use of their talents and abilities, whether innate or acquired. If we own ourselves, then we own not only our innate, or natural talents (such as childbearing, sightedness, speed, cognitive capacity, etc) but also our acquired ones, so long as we did not acquire them unjustly, as might be the case if we had forced another person to teach us a skill against his or her will. Thus, on Nozick's account, "to collectivize personal assets ... is to fail to recognize the distinction among persons, in much the same way that Rawls had himself found objectionable in utilitarianism."³³ Regardless of one's commitment to self-ownership, a political theory that grants women full and exclusive³⁴ control over their bodies and their capacities for reproduction is widely desired by both libertarians and their adversaries. It is clear that Nozick is committed to such a view. Okin argues that this commitment, along with the implications of Nozick's entitlement theory lays the

³³ Okin, *Justice, Gender and the Family*, 75.

³⁴ I use the term 'exclusive' here, because Nozick and others consistently use the term in describing rights derivative of self-ownership. In practice, it is inaccurate to think of our rights, even to our own persons as being exclusive in the strictest sense of the term. Our freedoms are always tempered by others' freedoms, if not by additional considerations.

groundwork for the inevitable and self-contradictory consequence of Nozickean self-ownership.³⁵

If women have full and exclusive use to their own reproductive capacities, and the self-ownership thesis yields robust property rights to the things we produce, then Nozick's only solution is to make the unintuitive claim that pregnancy and childbirth fall outside the range of 'productive' capacities. In his 'Demoktesis' thought-experiment in *Anarchy, State and Utopia*, Nozick actually addresses the issue of child-ownership. He critiques Locke's view on the matter, though fails to offer his own analysis of the problem. Locke proposes that ownership of what one produces is contingent upon having a full understanding and involvement in its production. However, Nozick finds this proposal absurd; this sort of understanding and involvement would preclude just about all forms of production from yielding property. A farmer does not need to understand (and certainly cannot exert robust control over) seed germination and photosynthesis to sow seeds and claim ownership over the harvest he or she reaps.³⁶ Locke's second 'solution,' Nozick thinks, is *equally incapable* of solving the problem. Locke proposes that since God owns us, we cannot own each other, and hence cannot own the children we produce. God's ownership of 'Man' is predicated upon the fact that He created us – but so too does a woman create her child, even if through different means.³⁷ Nozick continues in what seems to be the beginning of an interesting analysis:

Since Locke does not hold that (1) something intrinsic to persons bars those who make them from owning them – to avoid the conclusion that parents own their children, he

³⁵ I use the phrase 'Nozickean self-ownership' to distinguish Nozick's interpretation of the self-ownership from my own.

³⁶ Nozick, *Anarchy, State and Utopia*, 288.

³⁷ Nozick, *Anarchy, State and Utopia*, 288.

must argue either that (2) some condition within the theory of how property rights arise in productive processes excludes the process whereby parents make their children as yielding ownership, or (3) something about parents bars them from standing in the, or a particular, ownership relation, or (4) parents do not, really, make their children ... someone of a Lockean persuasion would have to work out a variant of 1 or 2.³⁸

Nozick ends his discussion of parental³⁹ ownership of their children on this note, with no resolution to the problem. Someone of a Lockean persuasion like Nozick must indeed either claim that children cannot be owned (1) or that reproductive labor does not yield ownership (2). Okin argues that Nozick cannot deny either of these claims if he is to remain consistent with the rest of his theory.⁴⁰ This is quite right. As she notes, Nozick (along with Locke) claims that persons *can* be owned (Locke thinks this is only conditional on their being captured aggressors of an unjust war, while Nozick thinks that persons can actually sell themselves into slavery). If persons can *be* owned on Nozick's theory, then certainly children can be owned by their mothers (or 'parents' to use Nozick's phraseology). Second, there is nothing about the nature of reproduction that would bar this form of production from yielding property rights. In fact, Okin argues,⁴¹ given the fact noted above, that women have full and exclusive use to their bodies and their capacities, there can be no controversy over whether a woman owns the child she produces or not – it is produced with her own labor and comes into the world *literally* bearing an attachment to its producer. Okin's critique of Nozick's position does not end here. She argues

³⁸ Nozick, *Anarchy, State and Utopia*, 289.

³⁹ Okin notes the gender-neutral usage of 'parents' here as evidence of Nozick's disregard for the unique and, as it turns out, problematic capacity that only women have to actually *produce* children once a sperm is acquired.

⁴⁰ Okin, *Justice, Gender and the Family*, 81.

⁴¹ Okin, *Justice, Gender and the Family*, 81-82.

that a theorist (such as Nozick) whose position on property rights is so stringent as to preclude forcefully violating them even to save a starving person would be highly inconsistent to claim that a mother's property rights to her child are abrogated if they are in conflict with the life and well-being of that child.⁴²

Appealing to a Lockean or Nozickean proviso on acquisition of resources will also fail to help Nozick escape from being committed to child-ownership.⁴³ Children are not scarce resources, and are not made from external, worldly resources any more so than one's own hair-shirt is made from external, worldly resources.⁴⁴ Recall that Nozick's own proviso only stipulates that acquisition of property must not leave anyone else worse-off in relation to that property had the acquisition not taken place. Okin notes that absent a mother's production of a child, the 'property' in question would not have existed, and so no one else could possibly be made worse-off by its acquisition by the mother.⁴⁵ Nor could Nozick claim that a mother does not own the child she produces even if by some odd circumstance it is "relatively effortless or unintentional"⁴⁶ on her part, as he "defends the property rights of the naturally talented to the full fruits of their talent ... and of those who 'stumble upon' something to what they have found, however valuable."⁴⁷

⁴² Okin, *Justice, Gender and the Family*, 82.

⁴³ Okin, *Justice, Gender and the Family*, 83-84.

⁴⁴ Obviously, all persons are constituted by matter once part of plants, animals, soil, streams, oceans, etc, but the distinction drawn here is that one does not fashion children literally out of the dust of the earth, but in a way that utilizes a woman's own reproductive organs.

⁴⁵ Okin, *Justice, Gender and the Family*, 84.

⁴⁶ Okin, *Justice, Gender and the Family*, 83.

⁴⁷ Okin, *Justice, Gender and the Family*, 83.

Finally, Okin argues, Nozick cannot claim that reproductive labor is somehow different from other forms of production because of the ‘special’ nature of what is produced, as he specifically rejects any such notion.⁴⁸ She writes:

Thus, [Nozick] would appear to have no valid objection to a woman’s producing a child for whatever purpose she chooses: to keep it in a cage to amuse her, perhaps, as some people keep birds, or even to kill it and eat it, if she were so inclined.⁴⁹

Given the inevitability of child-ownership on Nozick’s entitlement theory, Okin asks whether Nozick’s concept of moral side-constraints might apply to infants. Moral side-constraints (as opposed to moral goals or ends) are for Nozick, overriding protections that self-owning *persons* have; we are forbidden to violate them no matter what our ends might be. In this way, side-constraints might serve as limitation of a mother’s otherwise robust property rights to do whatever she wishes with and to her child-property. However, Okin notes that Nozick’s own position on moral side-constraints does not apply to infants. He limits the justification of these side-constraints to fairly robust, Kantian notions of moral personhood such as “rationality, free will and moral agency.”⁵⁰ Nozick further specifies the requirements for protection under side-constraints:

... being able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being that limits its own behavior in accordance

⁴⁸ Okin, *Justice, Gender and the Family*, 84.

⁴⁹ Okin, *Justice, Gender and the Family*, 84.

⁵⁰ Nozick, *Anarchy, State and Utopia*, 49.

with some principles or picture it has of what an appropriate life is for itself and others, and so on.⁵¹

Obviously, Okin notes, infants fall outside the range of beings to which Nozick thinks moral side-constraints apply. Okin reminds us that infants are “necessarily dependent on the good will of others [for a long time] before attaining the capacities that Nozick regards as the basis for a person’s having moral side constraints to protect him from violation of his rights...”⁵² This however, is not the end of Nozick’s troubles. What appears at first to be only a problem for child welfare turns out to threaten the coherence of Nozick’s analysis of self-ownership.

Okin points out that for a child to be owned, or “justly acquired” by her mother, there is a tacit assumption that a mother owns herself. But if she was the product of *her* mother’s labor, and thus her *mother’s* property then how did the child’s mother become a self-owner? Indeed, Okin states 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 anyone’s owning anything else.”⁵³ This is the ultimate contradiction that not only reveals a problem with Nozick’s ‘entitlement theory,’ but to Nozick’s entire system of property-rights-based justice. *How is it that a person comes to own themselves?* Okin is correct in pointing out that Nozick does not offer an independent argument for self-ownership. One might be tempted to set this question aside if Nozick’s analysis of self-ownership were not conceptually problematic. However, Okin has clearly shown Nozick’s interpretation of self-ownership is contradictory. If persons have full and exclusive property rights to the things they produce, then women have property rights to their children. Barring emancipation, a child may always be the

⁵¹ Nozick, *Anarchy, State and Utopia*, 49.

⁵² Okin, *Justice, Gender and the Family*, 85.

⁵³ Okin, *Justice, Gender and the Family*, 86.

slave of its mother, abrogating its self-ownership and the basis for rights on the self-ownership thesis in the first place.

Despite Okin's analysis, I believe that the concept self-ownership can be salvaged. In the following two sections, I provide an analysis of two attempts to overcome the problems Okin identifies, without rejecting self-ownership altogether. Though I argue that both theorists ultimately fail to adequately resolve Okin's objections, their analyses inform my own approach in important ways.

Jeske's Proposal

Okin moves past her critique of Nozick and suggests that instead of being the property of their mothers, children are beings for whom *both parents* (along with social support) are obliged to provide care.⁵⁴ However, Diane Jeske worries that without self-ownership, we lack a clear basis for "women's rights to abortion and a mother's presumptive right to care for her child."⁵⁵ For example, self-ownership yields a woman's right to not have her body interfered with by others, thus allowing her to retain control of whether or not she has an abortion. Also, on Jeske's account, a woman's right to have the final say in raising her child is granted through her *ownership* of her child.⁵⁶ Jeske offers an interesting alternative to Okin's critique, one that retains self-ownership, but which ostensibly avoids avoiding "the objectionable moral

⁵⁴ Okin, *Justice, Gender and the Family*, 171.

⁵⁵ Diane Jeske, "Libertarianism, Self-Ownership and Motherhood," *Social Theory & Practice* 22 (1996): 137-61.

⁵⁶ The role and responsibility of fathers is conspicuously absent from this discussion. The responsibilities and rights that fathers have in child-rearing are an important issue, but one that is beyond the scope of the current problem. I do think that fathers can have both responsibilities and rights, but that these are in both cases subordinate to a woman's rights to her body. The rights and responsibilities of fathers might be derived from contractual arrangements between women and men (marriage, sperm donation, etc) and from laws regarding the issue (child support and so forth).

conclusions drawn by Okin.”⁵⁷ Her analysis entertains two main alternatives. Either a child owns itself and its rights as a self-owner trump its mother’s property rights, or a child does not own itself, but it retains some rights in common with self-owners that at least prevent its mother from intentionally harming it.

Jeske first suggests that we consider children self-owners at birth. If a child *is* in fact a self-owner, then she has rights to her own person, which trump the property rights of her mother (to her child) to a certain degree. On this view, a child’s mother would be prevented from doing the child harm, because that child has the same rights as any other self-owner – certain “negative” rights such that the child not be wrongly interfered with – basically the same negative rights all self-owners have, to be left alone.⁵⁸ These rights would override any rights a mother has to dispose of her child-property as she sees fit, just as, Jeske states, my right to dispose of my knife in any way I see fit still does not permit me to sink it into your arm.⁵⁹ However, even if one accepts Jeske’s claim that children are self-owners, this only generates *negative* rights for a child to not be actively harmed by her mother. Jeske concludes:

So it may be the case that we cannot force mothers to care for their children, but we can still step in and help the infant to sustain herself—if the mother tries to prevent us from doing so, then we can say that she is violating the infant's right to preserve her person.⁶⁰

However, if we accept Nozick’s account of the capacities required for self-ownership such as “rationality, free will and moral agency,”⁶¹ then a defense of infants’ negative rights on

⁵⁷ Jeske, 138.

⁵⁸ Jeske, 148.

⁵⁹ Jeske, 148.

⁶⁰ Jeske, 51.

⁶¹ Nozick, *Anarchy, State and Utopia*, 49.

the basis of *self-ownership rights* will not work, as infants have virtually none of these capacities. Jeske acknowledges the controversial nature of claiming that children are self-owners and therefore enjoy the rights that accompany self-ownership. Instead, she supposes that children are not self-owners, but have “some rights in common with self-owners, and those rights take precedence over the ability to dispose of one’s property as one sees fit.”⁶² Nevertheless, it is unclear that *these* rights solve the core problem that Okin raises: the conflict between a mother’s property rights to her child and the child’s autonomy upon reaching self-owning maturity.

Jeske makes her claim that children have *some* rights against abuse and neglect by their owners through an analogy to animal rights. Animals, like my dog, can be owned without their permission, but Jeske claims this does not mean that I can do whatever I wish with my dog. Insofar as my dog is a sentient creature, she claims that my ownership rights do not entitle me to torture or neglect him in a way that prohibits others from intervening on his behalf, such as keeping him locked in my garage without food or water. She suggests that in purchasing or otherwise acquiring my dog, I “enter into some implicit contract with society to care for it.”⁶³ So too, Jeske asserts, might women enter into similar contracts with society to care for their infants and children. Throughout her essay, Jeske assumes a general version of the production yields property theory, as she must if she wishes to claim that in fact, mothers own their children. On this view, insofar as children are direct products of a woman’s body and labor, they can be produced (and owned, on Jeske’s view) *without* gaining special permission from society at large. It is therefore unclear upon what basis a woman ‘contracts’ with society in the production of her child, if the production yields property theory is retained, and Jeske ultimately denies that society can *force* a mother to actively care for her infant. Nevertheless, there may be *some* ground for

⁶² Jeske, 154.

⁶³ Jeske, 155.

basic protections on the production yields property theory. Jeske appeals to my dog's capacities (such as sentience) in generating limitations to my property rights to the dog. My child's capacity for sentience, she thinks, might at least constrain what I can do to it, even if I am not coercively compelled to care for my child, so long as I do not prevent others from intervening on its behalf. I am sympathetic to this view, though it is unclear whether this solves the problems Okin raises. Insofar as Jeske is addressing the lesser problem of child-welfare, her solution goes only part-way in addressing the sort of overt abuse and neglect Okin worries about. And even if mothers are justly prevented from abusing and neglecting their children, they still *own* them, and it is this fact that I think generates the most problems for Jeske.

Jeske sees child-ownership as desirable in the retention of robust reproductive rights, and in retaining a woman's right to direct the rearing of her offspring, but I believe it leaves us with some significant problems, which outweigh such benefits. Primarily, I believe that conflict between mothers' ownership rights to their children and a mature child's capacity for self-ownership is not clearly resolved by Jeske's analysis. Moreover, if an account of reproductive and parental rights can be generated without appealing to child-ownership, then we no longer have to tread so carefully around the issue of child-ownership rights and the conflicts that they generate.

Okin's critique arises out of Nozick's claim that self-ownership grounds robust, exclusive property rights to the things a person produces or otherwise justly acquires. I agree with Jeske's argument that our property rights can be tempered by the nature of the object or being owned (such as a child's sentience), but it is difficult to reconcile this claim over and against mothers' full, liberal property rights to their children. Even if (and I think Jeske is right about this) property rights are not an 'all or nothing affair,' Jeske must coherently explain how mothers'

property rights to their children are overridden by their children's ostensible self-ownership rights upon reaching maturity. If a mother's property rights to her child do not become weaker over time⁶⁴ (as Jeske explicitly claims), but instead, a child's self-ownership rights become stronger over time, then it is unclear why a mother's property rights to her child are not simply in direct conflict with the child's full rights of self-ownership. If my mother's property rights to me are the basis for her autonomy in raising me, then it seems that so long as her property rights have not diminished (it would be difficult to explain how they might have, barring some voluntary surrender of rights), that even once I develop the capacities required for self-ownership, that my mother has at least an *equal share* in directing my life. And, while there may be *some* things she cannot require me to do (just as she may have been prevented from abusing or neglecting me in infancy and childhood), I am unconvinced that Jeske has clearly demonstrated that my mother's rights to direct my life, whether 'paternalistically' or for her own benefit and profit are not simply in direct conflict with my own ostensible rights to direct my own life.

Along with Jeske, I believe that abandoning the principle of self-ownership has as many pitfalls for developing a system of political justice as rejecting it might avoid. More importantly, I agree with Jeske's judgment that Okin's critique rests on Nozick's inattention to the subtleties of how self-ownership works, rather than on the incoherence of self-ownership itself. Where I differ from Jeske is in my analysis of how self-ownership works. Jeske seeks to retain not only self-ownership, but the production yields property theory, and with it, child-ownership. Though she provides a compelling case against the abuse, mistreatment and neglect of children by their mothers, her account of child-emancipation is only tenuously plausible so long as mothers retain full, liberal property rights to their children. I believe that *rejecting* child-ownership does a

⁶⁴ Jeske, 152.

better job in clearing the way for a coherent account of child welfare and the development of autonomous self-ownership in children, without seriously jeopardizing women's reproductive or parental rights. In the following section, I analyze an argument from Duncan MacIntosh that comes closer to a solution to these problems, insofar as he attempts to reject child-ownership by mothers, followed by my own analysis of self-ownership and reproduction.

MacIntosh's Solution

Duncan MacIntosh offers a compelling solution to Okin's problem – one that carefully analyzes the relationship between liberty, self-ownership and production. Ultimately, MacIntosh argues that in fact, there *is* something about the nature of children (or the people they become) that bars whomever produces them from owning them.⁶⁵ Unfortunately, MacIntosh's argument ultimately fails to resolve Okin's problem.

MacIntosh defends Nozick's entitlement theory against Okin's criticism. He makes several key claims. First, he argues that Okin mistakenly takes Nozick to be basing his political theory on a theory of personal property rights. Instead, MacIntosh claims that Nozick bases his theory on liberty – the maximum possible liberty for all persons. On MacIntosh's rendering of Nozick, property right arises as an extension, or a realization of liberty. Persons have the right to exert exclusive control over themselves and their bodies so long as they respect this right in other persons; this is just what it means to own oneself.⁶⁶ However, we also get property in things in the world as an expression of liberty. In this way, our right to acquire things is in the same vein as our negative liberties – we can acquire things so long as we leave (on MacIntosh's account) an

⁶⁵ Duncan MacIntosh, "Who owns me; me or my mother? How to escape Okin's problem for Nozick's and Narveson's Theory of Entitlement," in *Liberty, Games and Contracts*, ed. Malcom Murray (Burlington: Ashgate Publishing Company, 2007), 157-172.

⁶⁶ MacIntosh, 163.

equally valuable amount of stuff for others.⁶⁷ In this regard, MacIntosh seems committed to the production yields property theory.

Since MacIntosh claims Okin's analysis of Nozick mistakenly prioritizes property rights over liberty, he argues that her objections can be easily solved. He offers support for his view that Nozick gives priority to liberty over property rights:

... Nozick defends negative liberties first, property second. People are not owed liberty because they may own things; they may own things because they are owed liberty, and so may own anything – and only things – their ownership of which does not interfere with another's liberty.⁶⁸

In this way, my acquisition of property is tempered by your liberty. I cannot acquire property at the cost of your liberty. Ostensibly, children could potentially develop into *persons* with the labor of their mothers or other caregivers. Thus, on MacIntosh's view, though a mother produces her child, a mother cannot acquire as property the person she produces through raising it, since to do so would limit that *person's* liberty against their will and/or without their consent. He writes: "Giving ownership of people to their makers would violate the liberty of those made; and according priority to *their* liberty is a condition of *all* people having maximum co-possible negative liberties, perhaps even any negative liberties at all."⁶⁹ Providing a justification for this conclusion within the framework of Nozick's entitlement theory takes some doing, and occupies the bulk of MacIntosh's energies.

⁶⁷ MacIntosh is intentionally vague on how he interprets the 'Lockean Proviso,' though it seems that he is willing to offer a more restricted (and hence, more egalitarian) proviso than Nozick. In either case, he does not appeal to the proviso on acquisition to attempt a solution to Okin's problem, so little turns on it.

⁶⁸ MacIntosh, 168.

⁶⁹ MacIntosh, 168.

MacIntosh is right about the source of Okin's central criticism. He states that, "... if the principle that one owns oneself and the principle that one owns what one makes are co-foundational, there is an irresolvable conflict. Yet, if the principle that one owns what one makes is foundational, we have Okin's matriarchal dystopia."⁷⁰ I too reject the idea that, 'one owns what one makes' stands as a foundational principle (what I have called the production yields property theory). Where I differ with MacIntosh is on his claim that Nozick agrees⁷¹:

Nozick seeks to accord every person the maximum liberty compatible with a similar liberty for all. This entails liberty to hold property where that does not interfere with the similar liberties of others. This is why offspring own themselves: were they owned by their mothers, they would have *no* liberty; so a greater liberty for *all* would result from individuals being self-owned upon becoming persons, which is why the rights of people to what they make cannot be so extensive as to permit them to own people they make.⁷²

I think what MacIntosh says in the last sentence is obvious; if mothers own children, then children cannot own themselves. But this conflict of liberties – the liberty of mothers to dispose of their property and the liberty of her adult child to the autonomy granted by its ostensible self-ownership – is not a failing of Okin's analysis. Rather, it is the *very contradiction* in Nozick's entitlement theory that leads her to reject it. MacIntosh claims that Okin's problem is solved once a child becomes a person, as the child's liberty 'trumps' his or her mother's property rights. Furthermore, he claims that since children "are, or become persons"⁷³ that those who make them cannot own them. I think that both claims are poorly supported, though the latter is incoherent

⁷⁰ MacIntosh, 159.

⁷¹ This is an important issue, insofar as MacIntosh is explicitly defending Nozick's (and Jan Narveson's) entitlement theories against Okin's criticism.

⁷² MacIntosh, 159.

⁷³ MacIntosh, 158.

given the context of the problem and MacIntosh's treatment of it. Nothing about a child's emergence as a person provides a justifiably strong claim *against* a mother's ownership of that child on MacIntosh's Nozick-inspired account.

MacIntosh agrees with Okin, Jeske and myself that infants, young children and individuals with "serious developmental disabilities"⁷⁴ lack the traits necessary for personhood, and therefore, self-ownership. He is not defending the claim that infants and small children *are* persons, but that they *become persons* – persons with rights that override any property rights claims of their creators. It is precisely because infants and children *lack* the traits associated with personhood that they do not qualify as self-owners who might legitimately *object* to being owned by their creator. However, once a child becomes a person, he or she cannot be owned by his or her mother (or other 'maker') because, as MacIntosh notes, persons must give consent to be owned. Just as I could sell myself into slavery (on some libertarian accounts), so could my child once it reaches personhood. However on MacIntosh's account, I could no more own the person I produce from my child than I could acquire you, without your consent. I am sympathetic to this view, but it does not clearly overcome Okin's problem of child-emancipation, so long as one wishes to retain a 'production yields property' entitlement theory like Nozick's.

Ultimately, MacIntosh's solution rests on a variant of the first possibility Nozick entertains – that there is something intrinsic to persons that prevents others from owning them (without their consent). MacIntosh's position is problematic for several reasons. First, he does not adequately account for a mother's just treatment of her child. He suggests that because it will *become* a person, it is protected by the moral side-constraints Nozick claims condition self-owning persons' treatment, though he fails to provide a justification for this assertion; what I

⁷⁴ Macintosh, 161.

might some day *become* has no *overriding* effect on how I am to be treated now, if I am already the property of another.⁷⁵

Second, while it is uncontroversial that at some point, many children become mature, autonomous moral agents – persons with capacities indistinguishable from other self-owning persons – all we are left with here is a stalemate. MacIntosh argues that claiming ownership over the *persons* one makes is to unjustifiably limit their liberty against their will in a way that is non-symmetrical to that of other people. He claims that this undermines the primary goal of having property rights in the first place – to realize the greatest possible liberty consistent with all other persons having equal liberty. We do not have to deny MacIntosh’s claim that having certain capacities makes one (exactly like) a self-owner to see that there arises a contradiction in Nozick’s system, between the claims of the mother and the claims of her (grown) child. Again, however, the conflict MacIntosh clarifies here is no different than the one that Okin claims Nozick’s entitlement theory generates. This is to say that Okin could easily concede that property rights are derivative of liberty but maintain that a conflict of *liberties* remains on Nozick’s entitlement theory: the liberty of mothers, realized as property right, against the liberty of their children. As MacIntosh himself asserts, self-ownership is nothing more than a person’s *liberty* to do what they want with his or her body and labor. On Nozick’s entitlement theory, a person owns what they produce precisely because they produce it with their own labor. Mothers produce infants and so own these infants. Given the right conditions, a mother can potentially produce a *person* out of her child, a person with the capacity for self-ownership. But on Nozick’s entitlement theory, it seems as if she would then own the *person* produced. MacIntosh claims that property right must subordinate itself to the rights (derivative of liberties) of other

⁷⁵ My future capacities might condition how I am treated now, but only in an instrumental way, and only so long as there are no pre-existing normative claims which conflict with ‘future capacities’ considerations (such as being owned by my mother).

people. This may be true in the case of others, over whom I have no property claims, but I do not think it *automatically* follows in the case of infants or even persons produced by their mothers. Anyone attempting to reject Okin's conclusion *from the perspective of the entitlement theory*, as MacIntosh does, must 'explain away' the connection between a mother's self-ownership (her *liberty* to do what she wishes with her body and labor) and her ownership of (liberty to do what she wishes with) whatever she produces with her body and labor, even if that includes other persons.⁷⁶

Insofar as he MacIntosh is explicitly defending Nozick's entitlement theory, I believe he makes a false move in separating and subsequently prioritizing liberty over property right. Built into this prioritization seems to be the key to his solution – that mothers' property rights are ostensibly overridden by the liberties of persons they produce. However, in trying to show the relationship between property right and liberty, he makes the connection between the two an essential one – that is, property right just *is* liberty to do what one wants so long as they do not interfere with others' equal right. Instead of demonstrating how seemingly legitimate ownership of a human child (on Nozick's entitlement theory) vanishes upon adolescence and the supposed emergence of self-ownership, he simply (and articulately, I might add) re-asserts the conflict Okin reveals.

MacIntosh claims that the future capacities (and corresponding normative claims) of children protect them from mistreatment by their mothers. However, without adequately solving the problem of child-emancipation, it is unclear upon what basis we should think that *any* child has a legitimate future claim against its caretakers that they not abuse it prior to acquiring the capacities of personhood. Moreover, mothers' ownership rights on the entitlement theory are, if

⁷⁶ This is precisely what I shall do below, though by offering a different analysis of self-ownership than the one utilized by Nozick's entitlement theory.

not stronger than, at least as strong as and therefore in direct conflict with any sort of claims to future capacities that their children might have against them. MacIntosh does not explain how the emergence of personhood *overrides* prior maternal ownership of children, nor does he present an argument for how this (eventual) self-ownership conditions how we can treat a child before it attains self-ownership. In fairness to his proposal, I have attempted to address these problems, though I argue that future self-ownership claims fall short of solving the problem, for several reasons.

Children who will develop into self-owning adults *may* have a basis for claims against their parents, claims that their future self-ownership be protected. However, this claim only overrides mothers' ownership claims if MacIntosh could account for child-emancipation, which he fails to do. Moreover, such a claim relies on facts about what a child might *some day become* in order to condition its treatment *now*. But even if one accepts a 'future claims' view, *if mothers own their children*, then a child's future capacities are only ever instrumentally useful in informing its treatment, and only if a child *will in fact become* a self-owner. This is because if mothers have *full, liberal property rights* to their children, then they have a prima-facie right to decide how a child is to be raised, even if this includes *preventing* it from developing the capacity for self-ownership. Put bluntly, a good, hard shake will, in all likelihood, prevent a child from developing the requisite mental capacities of rational moral autonomy, and therefore, void any 'future claims' on the basis of its eventual self-ownership. This is because the nature of the property right that mothers have over their children on Nozick's entitlement theory is, if not stronger, at least as strong as any claim that a child might have, putting children's claims at odds with a mother's ownership rights, if not in a position to be overridden by a mother's property

rights.⁷⁷ Moreover, there are some children, who through no overt action by their mothers, *will never* develop the requisite capacities for self-ownership. Severely mentally disabled individuals would receive no protection from abuse under this sort of theory. Only children without known mental disabilities, whose mothers *intend on raising them so as to foster the capacities necessary for self-ownership* would be protected, and even then, only provisionally. As child-owners, mothers may change their minds at any point before the emergence of the capacity for self-ownership, and set about to derail the development of this capacity. So, it turns out that the capacity for *future self-ownership* does not avoid all of the problems created by child-ownership, even if for the sake of argument we grant MacIntosh the claim that children who develop the capacity for self-ownership will be automatically liberated from their mothers.

In the following sections, I propose a solution to Okin's critique that faces the limitations of Nozick's entitlement theory head-on. Not only does my solution overcome Okin's problems of child-welfare and child-emancipation it also addresses the problem of including individuals who will never have capacities necessary for full self-ownership.

Ownership constraints and the Lockean proviso

As I claimed at the outset of this chapter, nothing about self-ownership obviously yields ownership of things in the world. For example, accepting that I have the same, robust ownership over my labor that I have over my own body and mind, what makes my laboring on things in the world produce *new property*, rather than simply being a donation of my labor to the improvement, destruction, production, etc of whatever I labor on? Locke's 'labor mixing' concept is prima-facie implausible – even Nozick expresses doubts over this aspect of Locke's

⁷⁷ I *do* think that the future claims of children can have a significant role in determining child-welfare laws and the like, but not on the analysis that MacIntosh defends. Only if mothers *do not own* their children can we unproblematically make *future capacity* claims regarding child-welfare.

theory. Nevertheless, Nozick retains something very close to a ‘labor mixing’ view: the production yields property theory. I claim instead that property relations are *not* entailed by self-ownership. However, this claim does not imply that such property relations are wholly unjustifiable. Setting aside worries over labor-mixing, Locke seemed to understand that there are additional qualifications on how property relations are justly produced. His famous ‘proviso’ on acquisition is an attempt to explain how, in the absence of any *a priori* relationship between self-ownership and world-ownership, we might justify acquisition of property in the world.⁷⁸

Loosely, the proviso seeks to account for the acceptability of acquisition insofar as *other persons* are concerned. In order to sustain ourselves in a way that leads to a good life, we must take possession of things in the world in some form or another. However, assuming natural resources are un-owned prior to our acquisition of them, no one person has any greater *prima facie* claim to privatize these resources than any other person. Given these relatively uncontroversial background conditions, what *would* justify anyone’s privatizing of resources? Ostensibly, we are justified in exerting more robust control over natural resources, the sort that might properly be called property rights, so long as we leave, as Locke famously claimed, *enough and as good* of those resources for others. Setting aside worries about how the ‘natural’ world has been irrevocably changed over generations such that we no longer have the same sorts of opportunities for acquisition that our ancestors had, the broad goal of any sort of proviso on ownership seems to be that other persons, both in one’s own generation and in future ones, are at least equally able to *utilize* worldly resources to pursue a good life for themselves and their loved ones. Concern for future generations arguably fuels much of the current debate about

⁷⁸ I will spend the bulk of the following chapter discussing the Lockean and Nozickean provisos as they relate to acquisition of external, worldly resources, and so will not enter into a lengthy analysis here. The problem of child-ownership is somewhat dis-analogous to the problem of worldly-ownership, as children are not natural resources to which any and all persons might have a legitimate claim.

sustainability and long-term impact of current generations' consumption habits. When we acquire something, our property rights to that thing are not immediately derivative of our self-ownership. Rather, a Lockean proviso justifies private ownership and acquisition of resources so long as other current and future owners' opportunities for living a good life are not thereby diminished as a result of privatization.

I do not provide a rigorous account of a Lockean ownership proviso here. I simply claim that ownership of things in the world does not arise solely out of ownership of oneself if it arises out of self-ownership at all. Self-ownership might instead be viewed as a necessary, but *insufficient* condition for ownership of things in the world. If our ownership of things in the world *also* depends on the satisfaction of a Lockean proviso, then a simple, production yields property account, based on self-ownership and appealed to by Nozick, Jeske, and MacIntosh, and problematized by Okin, is drawn into question.

What I have called the 'production yields property theory' claims that because we own our labor, we own what we produce with our labor. Nozick is committed to some version of this, as he claims that redistributive taxation which takes some of what a person produces and gives it to others is a *theft* of labor and as such, makes that person a *partial slave* to the recipients of the redistribution. On Nozick's view, 'stealing' a person's labor and making them a 'partial slave to others' is a clear violation of a person's rights of self-ownership. However, redistributive taxation (among other actions) only counts as a theft of labor and/or partial slavery, etc, if the *products* of a person's labor are owned *in the same way* that a person owns himself or herself. I think that in order for this to be true, we must presuppose *some* sort of transitive relationship between labor and things in the world akin to Locke's labor-mixing theory. On this view, once I labor on something, I now *own* the thing I labor on *in the same way* that I own my labor,

somehow transferring the moral and political properties of *self*-ownership to other things in the world, as if they were now extensions of my physical body. I am very skeptical of this sort of claim. Instead, I think such a claim is a backwards justification for the intuition that persons have (at least) *some* legitimate claim to the products of their labor, even if this claim is in some cases ultimately analyzed as something *other* than property right. If this intuition can be analyzed and defended in a much more conceptually rigorous manner, then there is no need for the sort of mysterious commitments upon which a theory of ownership based on ownership of one's own labor relies.

I claim that the justification for acquisition of property in the world relies on a Lockean proviso of a sort, grounded in democratic deliberation about the resources in question and the nature of one's rights to them. This proviso may have many different facets depending on the sort of thing a person wishes to acquire. Plentiful, renewable resources might have very little stipulations on their acquisition whereas scarce resources would have more stringent stipulations. Furthermore, contrary to a libertarian account of property rights, though a person may gain justification for privatizing a resource, their rights to that resource may be justifiably limited as part of the stipulations on their privatizing it. For example, I may be allowed to mine uranium, but only in a certain manner, and only for use in electric power plants, and not for making bombs. These limitations on use are justified on the same basis as limitations on acquisition – if all persons have an equally strong *prima facie* claim to things in the world, then if privatization is allowed, all persons will have a justifiable say in how these resources are to be used.⁷⁹ I believe that constrained by the self-ownership thesis, this process would yield a system of acquisition

⁷⁹ The precise method for making such decisions is an open question. Clearly there are practicable and impracticable ways for deciding – giving any and all persons veto power over the privatization and use of resources would make privatization practically impossible. Leaving such decisions up to a democratic process carries the same sort of problems associated with democratic rule quite generally, but is closer to what I have in mind. I shall spend more time dealing with this problem in the following chapter.

and property rights that tempers the efficiency of privatization for individuals, with the good of all persons. Furthermore, any conditions on acquisition and use must be subject to reasonable revision as relevant conditions change. For example, property rights to use previously abundant resources might be restricted if and when such resources become scarce. One cannot count solely on market forces to constrain how a person uses his or her property under conditions of scarcity, as an owner of such resources might easily hoard or even waste them out of spite for humanity instead of conserving them and turning a profit by selling them on the now tightened market. Rationality of owners cannot be assumed on any *normative* account of property rights and social good, nor would it guarantee ideal or even positive outcomes even if it could be assumed.

This brief picture of proviso-contingent property rights shows that retaining self-ownership is consistent with the constraint of external property rights in accordance with the legitimate interests of others, in both present and future generations. But, to return to the more challenging question at hand, how ought we to understand property relations between mothers and their children? The above discussion on acquisition and property rights seems to only apply when we are discussing property in *worldly* resources. *Children* are produced as a *direct* product of a woman's body and labor. It is for this reason that Okin and Jeske claim that Locke's 'enough and as good' proviso won't help us decide in this case, as babies are not natural resources. Furthermore, it is undesirable to allow robust restrictions on women's reproductive capacities, as such a move would mark a regression in the advancement of women's equal basic liberties. Instead, I believe that a solution to this problem lies in a new analysis of self-ownership that denies a self-sufficient property relationship between mothers and the children they produce.

Solving MacIntosh's Problem

MacIntosh fails to adequately account for child welfare because he cannot account for child-emancipation. Not only do *some* children never become self-owners (and hence, would not be 'freed' from their mothers' ownership on his view) but it is unclear even how the development of the capacity for self-ownership would *override* mothers' ownership claims, insofar as MacIntosh is defending Nozick's view. Justice is historical for Nozick and property rights to things produced are as strong as one's self-ownership rights – so a mother's property rights to her children cannot be violated without also violating a mother's self-ownership rights (given Nozick's 'partial slavery' argument). MacIntosh merely re-asserts the conflict between adult children's capacity for self-ownership and their mothers' property right claim. In order to solve this impasse, it is necessary to *reject* child-ownership by mothers. This solution marks a yields interesting and important results for the theory of self-ownership as a whole. My analysis retains some of more fundamental aspects of self-ownership, but rejects child-ownership by mothers, by rejecting the production yields property theory. If mothers do not *own* the children they produce, but instead have socially constrained normative rights over their children (parental rights) then the problems Okin raises can be avoided. This allows for a coherent analysis of child welfare and the emergence of autonomous self-owning persons, which I provide at the end of the chapter.

Rejecting the production yields property theory

The worry regarding child welfare springs from a much more pressing problem that Okin raises. If children are the full, liberal property of their mothers, then not only do we have a questionable basis for justifying child-welfare laws, but the lack of an account of child-emancipation threatens the coherence of the self-ownership thesis. If mothers own their

children, it is unclear upon what basis they might be forced to surrender them. This problem arises out of the claim that self-ownership yields full, liberal property rights to whatever a self-owner produces. If in fact the self-ownership thesis *entails* the production yields property theory, then Okin's problem is unavoidable without *also* rejecting self-ownership. However, if self-ownership does *not* entail the production yields property theory, then self-ownership can be retained, even if we reject the production yields property theory and the consequences for child welfare and self-ownership that it seems to produce. In order to analyze this problem, I shall first examine how the production yields property theory is thought to operate. I shall argue that it does not follow analytically from the self-ownership thesis, and can be rejected while retaining coherent and robust self-ownership rights.

The production yields property theory has a strong intuitive appeal. If I own my body and my labor, then no one else has an overriding say in what I do with my body and labor. Thus free to labor, if I take something I own (my hair) and another thing I own (my labor) and put them together to make something distinct from my body and labor (a hair-shirt) it seems to follow that I *own* that hair-shirt. However unobjectionable this argument seems, the conclusion that I own my hair-shirt, even if *true*, does not follow necessarily from the premises. After all, an exactly similar argument claims that mothers own their children, and is *far* from unobjectionable. I might very well own all of the things that go into the production of a new entity, but not *own* that entity. Nothing about self-ownership⁸⁰ entails that our ownership rights to our bodies and labor are transitive. There are good reasons to think that in virtue of owning our bodies and labor, we have strong normative claims to the products of our labor. However,

⁸⁰ I should note that so-called 'entitlement theorists' such as Nozick, MacIntosh and others, speak as if self-ownership *does* imply something like the production yields property theory. However, (and as Okin points out) they do not offer a direct argument for it.

these normative claims are not immediately derivative of our self-ownership rights,⁸¹ nor should we think they must be as robust as our self-ownership rights.

On a traditional libertarian analysis of the production yields property theory, the connection between laboring and ownership of the products is made in the opposite direction. On this view, if *someone else* (you, the guy down the street, or the government) can stake a claim in what I produce, then that person (or group) has in some way, forced me to labor on their behalf against my will, in direct proportion to the stake they claim in the products of my labor. Thus, anything other than full, liberal property rights to that which I produce is a violation of my self-ownership, ostensibly insofar as what I produce is representative of my labor power, over which only I have overriding control. This argument, basically a version of Nozick's 'partial slavery' argument against redistributive taxation, is unconvincing. Only if I can *first* establish that I have full, liberal property rights to the products of my labor does making the connection between, for example, redistributive taxation and forced labor at all plausible. If on the other hand, I do not have full, liberal property rights to that which I produce, then the libertarian's 'forced labor' argument fails to establish that I do, and thus appears to beg the question.

This speaks to a possible objection to my rejection of the production yields property theory. On this objection, if I own my body and labor but do not own the products of my bodily labor as an immediate consequence of my self-ownership, then it seems as if my freedom to use my body and labor in a productive way is less than full, and possibly only *nominally* intact. To say I am free to produce but do not own the products is to say that I have productive freedom in name only, or so the objector might claim. However, I am *not* claiming that rejecting the production yields property theory abrogates or nominalizes our productive freedoms. I only

⁸¹ Nor need they be 'property rights' as they are commonly understood. So long as the normative claim self-owners have to their bodies and labor are equally recognized, it is reasonable to expect that the manifold manifestations of their productive powers yield *different sorts* of rights over the things produced.

claim that ownership of the products of one's labor does not follow *directly from* self-ownership. If one *has* normative rights in the form of *property* rights to the products of one's labor, these normative rights are only *conditioned* by the fact that one spent one's labor in production, and are not independent of additional social considerations.

What *would* ground normative rights (including property rights, rights of control and direction, supervisory autonomy, rights of disposal, *parental rights*, and so forth) to the products of a person's labor? Though these rights are not *sufficiently* founded in self-ownership, self-ownership rights give them their shape and reciprocal nature. While I might not *own* the products of my labor, no one can force me to labor in order to produce them. In this minimal sense, my freedom to produce (or not) is preserved. In the case of *commodities* produced with my bodily labor (such as services, performances, hair-shirts, etc), I am free to produce these things and retain normative control over them on the basis of rational public discourse regarding that which I produce. Because the self-ownership thesis preserves equal liberty for all self-owners to use their bodies and labor, any laws governing rights to the products of one's labor will apply equally and impartially to all persons, protecting against the exploitation of various classes of persons (or types of production). Insofar as such laws apply impartially to all persons and are generated through democratic discourse by persons who are, have been or will be producers, they are very likely to balance the freedom of individuals to either produce or abstain from producing ideas, inventions, art, literature and so forth, and the good for individual producers to profit from their products, with the good of society to benefit from them. Moreover, no restrictions can be placed on persons' productive capacities that render their productive freedoms merely formal or nominal.⁸² As a result, property rights to the products of

⁸² Such as would be the case if one's freedom to produce were only allowed on the conditions that they surrender all or effectively all of their products to the state or to some other person not of their choosing.

our labor are not *arbitrarily* limited. Property rights and other normative claims to performances will likely arise out of contracts between performers and their audiences. The basis for property rights in one's performance is not the fact that in laboring, one has produced something that is owned in the same way that one owns one's labor, even if the performance is a direct manifestation of bodily labor (such as Wilt Chamberlain's basketball playing). As a performance, Chamberlain's basketball playing becomes something *more than* simply his bodily labor, and it is *this* thing that is traded in the marketplace. For example, Chamberlain might choose instead to play basketball with friends on an empty court, and certainly we do not want to say that he has *produced* something in this latter case. As such, though there is nothing preventing a democratic society from placing additional constraints on the 'proceeds' from such a transaction, say, in the form of an income tax. So long as an income tax (or other tax structure) is fair to all producers (e.g. applies impartially), then anyone who produces under such a scheme has their rights to the products of their labor *reasonably* restricted. Because the laws governing these sorts of restrictions come from a democratic process, they are unlikely to become so robust as to seriously limit the incentive of individuals to produce commodities, ideas, art, literature, services, or anything else they might choose to produce. A balance between the desires of individuals to produce (and their freedom to refrain from producing) and social constraints on production will undoubtedly be found, even if this balance fluctuates over time.

In addition to the balance between producers and social constraints on production, different 'products' will have different rights associated with them. Market commodities will likely deal in property rights and restrictions will include not only taxation of profits from these commodities, but also restrictions on the sorts of commodities that can be legally produced. I cannot legally produce enriched uranium, and for good reason. This is simply a productive

freedom I do not have, insofar as I am an embedded social creature. The sorts of restrictions on production, and their justifications are certainly open to debate, and I do not engage in a broad consideration of these restrictions beyond the current problem. However, issues such as recreational drug production, prostitution, and so forth, are examples of commodities that may or may not be justly restricted. Reasonable drug laws would likely take into account the relative strength of the drug in question, its therapeutic and social assets as well as the destructive liabilities of its condoned production and consumption.⁸³ Arguments against at least certain manifestations of prostitution are compelling, insofar as they are based on the often exploitative and violent nature of the ‘profession.’ However, sexual freedom outside market transactions seems to be something beyond the reach of legal restrictions, unless it unknowingly threatens the health and safety of persons involved (such as sexual contact with a person who has an undisclosed STD, or other sexual behavior that threatens the health and safety of persons involved without their explicit knowledge). So long as *like cases* are treated similarly and impartially across the class of producers, and no one is coerced into producing, (which *would* be a violation of self-ownership rights) there is no injustice done. A person’s self-ownership rights *would* be violated if her normative claim to the products of her labor were asymmetrical to those of other persons producing similar things. However, simply retaining real freedom to labor or refrain from laboring is not the only thing that shapes the sorts of limitations to our property rights. The self-ownership thesis generates and protects individuals’ freedom to labor to pursue their own good. Hence, any constraints to the products of a person’s labor that severely limited this freedom would be prohibited on the self-ownership thesis; these sorts of restrictions to productive freedom are at the core of objections to capitalist means of production. If workers’

⁸³ For example, laws prohibiting the production and consumption of methamphetamines and crack cocaine seem justified, whereas laws prohibiting the production and consumption of marijuana do not, especially in light of the legality of stronger and more socially destructive substances such as alcohol.

only choice is between selling their labor power at a price set by capitalists or starving, then they do not have a meaningful freedom to exercise their productive labor power how they see fit.

This, however, is primarily the topic of the following chapter.

The above discussion of *rights* to the products of one's labor helps frame our current problem. Mothers produce children, but what are their normative rights regarding their children? As I claim above, I believe it is fallacious to claim that just because I own the things that go *into* the production of something, that I have similarly robust *property* rights to the thing produced. One central reason for this is that labor power is an abstract resource. My *ownership* of labor power only entitles me to its control; once my labor power is 'objectified' in some new product, it is no longer the same thing that it once was. It is neither active labor power nor under my control in a way that is connected to my self-ownership. But, again, this does not mean that I have no normative claim to that which I produce with my labor power. When a woman produces a child, she uses her body and labor to create a new entity. Insofar as it is *her* body and *her* labor involved, she retains full reproductive rights, as no one else can interfere without directly violating her bodily integrity or forcing her to labor against her will (in the case of anti-abortion laws, for example). Rejecting the production yields property theory frees children from being owned by their mothers, without denying mothers parental rights of *some* sort. Instead, it *denies* that parental rights are based on unconstrained or extremely robust property rights to the child. Once a child is born, a woman's claim to it is contingent upon the sorts of parental rights that society has decided are appropriate to grant to mothers vis-à-vis their offspring. The nature and shape of these rights is the subject of the following section.

Parental rights, child welfare and the emergence of autonomous self-ownership

Insofar as I have argued that self-ownership does not generate child-ownership, society at large is in a position to determine the nature of parental rights in a way that is sensitive to and consistent with the facts of a child's production, its nature, and mothers' interests in raising their children. The unique biological relationship that a child bears to its birth parents, along with the interests of birth parents and their children go a long way to condition the nature of parental rights. Parents quite generally have an interest in retaining parental rights – rights that grant substantial autonomy in raising their children. Perhaps more importantly, mothers' reproductive freedom generates the basis for a social contract between mothers and the rest of society; mothers are free to *abstain* from reproduction and so constraints on mothers' rights to their children must be acceptable to women quite generally. This is because women are participants in the process of democratic deliberation that forms and constrains parental rights. It is unlikely that most women would choose to bear children if they could not retain an adequate degree of parental autonomy, though I do not believe this is a threat even in the most radical legislative twists. The self-ownership thesis, in protecting a woman's *meaningful freedom* to exercise her reproductive capacities, protects against social restrictions on her rights to her child that would effectively render her choice to create a child null. By this, I mean that mothers would not have a meaningful choice about whether or not to conceive and bear a child if they had extremely limited or *no* parental rights to their offspring, and so the self-ownership thesis protects against such draconian rules.

These restrictions on parental rights can (and I believe would) come with stipulations on children's care and upbringing that are determined out of socially overlapping consensus on the matter, much as child-welfare laws constrain and sometimes abrogate parents' rights vis-à-vis

their children in western societies today. Similarly, since children are not their mothers' (or parents') property, if a parent (or parents) are apparently not prepared to abide by the conditions for care of their biological child, it is perfectly legitimate for society to grant temporary or permanent parental rights to some other willing and qualified individual or institution within society. Among these provisions, one can imagine that social standards on health care and nutrition, socialization, education and so forth would be enforced as conditions for retaining parental rights in the first place.⁸⁴

Though the precise stipulations on parental rights set by a given society are not wholly determined by the self-ownership thesis, one additional condition that does seem necessary is the setting of temporal limits on parental rights. As children mature and develop, their freedom from their parents should gradually increase, culminating in a socially determined 'emancipation' point, after which children who possess the capacities necessary for self-direction and moral autonomy will be granted the freedom to exercise these capacities free from parental constraints; they will be recognized as possessing *self-ownership*. If social constraints on parental rights are based in part on the moral properties of children, then it is reasonable to require that children are granted the appropriate level of autonomy commensurate with their moral powers. In 'usual' cases this will lead to autonomous adulthood, whereas in situations where the maximum developed capacities of a person fall short of full moral personhood, their autonomy may be conditional and limited in accordance with the capacities such persons *do* have.

⁸⁴ I believe that a just society should assist parents in providing these resources to their children if parents are willing but financially unable. In enacting universal child-welfare laws, a society takes on responsibility for seeing that all children are cared for, and so long as parents are willing to serve as caretakers for their children, they are perhaps best situated to do so, even if financial support from the state is required.

Transitional Stages

There are several concerns not addressed above. Though I have proposed a structure within which one may understand parental rights and their constraints, I have not detailed the ‘responsibilities’ of mothers to their children between conception and birth. A mother’s responsibilities to her child during pregnancy are arguably robust, insofar as she intends to carry the child through to its birth. However, a woman’s self-ownership rights forbid any coercive enforcement of these sorts of responsibilities.⁸⁵ It is in this way that regardless of the ‘status’ (or lack thereof) of an un-born child, a mother’s right to terminate her pregnancy is protected by the self-ownership thesis. With this in mind, it seems clear that the ‘problematic’ period vis-à-vis motherly *responsibilities* to a child and its welfare lies between the conception and birth of a child.

In a majority of cases, one might assume that mothers retain their parental rights, barring an overriding reason against the retention of these rights. However, in cases where a mother *does not* intend on ‘keeping’ her child, arrangements can be made ‘simultaneous with birth’ for other agents to acquire parental rights to the child.⁸⁶ In addition, there are cases where a mother does not wish to retain parental rights to her child, but no arrangement for the transfer of these rights is made in advance, whether through negligence, in the case of a ‘surprise birth,’ or other

⁸⁵ Though a woman’s self-ownership rights prohibit coercive enforcement of moral responsibilities to her un-born child, it is not clear that a woman’s parental rights would not be contingent upon meeting certain baseline criteria during pregnancy. Currently, United States law generally errs on the side of biological parental rights, making parental rights contingent more upon fitness to parent, rather than fitness to carry a child during pregnancy. A mother’s crack use during pregnancy, while harmful to her child, may not prohibit her from keeping her parental rights to the child, whereas her crack habit may stand as a sufficient evidence that she cannot perform parenting duties and to deny her parental rights upon the birth of her child.

⁸⁶ ‘Birth’ is not a coherent point at time, but a process with varying duration. Any arrangements for the ‘transfer’ of a child from its birth-mother to an adoptive parent or agency should undoubtedly err on the side of the mother’s safety and health. For example, the transfer should not be simultaneous with the start of the birthing process or at any arbitrary intermediate stage (e.g. ‘crowning of the head’), but at some pre-determined point once the child is no longer physically intertwined with its mother. Were the transfer to be made at any earlier point, such an arrangement would threaten the self-ownership rights of a mother to defend herself against the potential innocent aggression of the child should its delivery pose problems.

similar cases. There is nothing on the self-ownership thesis preventing legislation that protects against mistreatment and abandonment of such children, so long as there are institutions in place to receive and care for them. Laws preventing the abandonment of children are perfectly just, just as laws preventing harm to other, non-self-owning entities such as stray animals in no way violate persons' self-ownership rights.

* * *

While my arguments do not specify *all* the details for how a society ought to restrict the parental rights, I have provided a logical space in which a just society can fill-out such an account. By rejecting a robust or self-sufficient connection between producing a child and owning it, I have not only dissolved the basis for Okin's objections, but I have articulated a significant change to the self-ownership theory from its Lockean origins. I have moved past doubting a robust connection between laboring and ownership and provided reason to believe such doubts legitimate. It is with the separation of self-ownership from world-ownership that I move to the following chapter on the subject.

Chapter 3: Self-Ownership and World-Ownership

Perhaps the most troubling aspect of Nozick's libertarianism is his analysis of the relationship between self-ownership and ownership of natural resources. Nozick allows unilateral privatization of natural resources,⁸⁷ granting individuals robust property rights to the things they acquire, with only a minimal proviso on the justifying conditions of their acquisition. In this chapter, I argue that the self-ownership thesis yields a coherent account of property rights to natural resources that avoids the problems generated by a libertarian analysis. I use Gerald Cohen's analysis of property rights to natural resources in order to demonstrate that the central problem with libertarian analyses of property rights to natural resources is the corresponding loss of real freedom and autonomy⁸⁸ for the propertyless. I maintain that *properly constrained* property rights to natural resources are consistent with retention of autonomy protected by the self-ownership thesis, while still allowing for the economic efficiency promised by unequal distributions.⁸⁹ Moreover, I argue that the self-ownership thesis provides only baseline constraints on the acquisition and use of natural resources, and therefore does not prohibit more robust constraints on property rights – constraints that are useful to achieve a *flourishing* society.

⁸⁷ Natural resources include renewable and non-renewable resources such as land, minerals, timber, fossil fuels, etc.

⁸⁸ I shall use the conjunction of 'freedom and autonomy' in my analysis of self-ownership. Though these two terms have a significant overlap in meaning, I use both to denote what is not captured by using only one or the other. For example, there is a sense in which an animal in the wild is free, but not autonomous. The same can be said for workers under certain conditions. They are free to sell their labor, but the conditions of this sale and the lack of any other tenable options severely limit their autonomy to choose what sort of life they wish to lead. Likewise, a slave may be granted significant autonomy in deciding how he or she is to carry out various tasks, but this autonomy does not make them any less of a slave to their owner. Only by possessing *both* freedom *and* autonomy can a person own themselves in a meaningful way.

⁸⁹ While efficient use of resources in production is urged in the interest of individual welfare, regardless of political theory, there is a sense in which allowing privatization *also* contributes to individual autonomy and so allows the attainment of a 'good life' in a way that is non-paternalistic and in keeping with the liberal tradition.

A flourishing society is one in which individual freedom and autonomy is not only protected but also enhanced through social and economic opportunities, access to education and health care, and so forth.

In chapter two I argued that self-ownership does not generate full, liberal property rights to the products of our labor. Instead, I argued that any normative claims persons have to the products of their labor are based in democratic deliberation regarding a plurality of factors. These include the fact that a person utilized *his or her* body and labor to produce a new thing, and that persons are free to produce or to refrain from production. In addition, facts about products themselves inform democratic deliberation on the subject; the scarcity and social value of a product, the intrinsic and relational moral properties of things produced, etc, all play a role in deliberation about normative rights to the products of one's labor. In this chapter, I claim that property rights to things in the world are similarly generated. As it is *prima facie* unclear how self-ownership gives rise to ownership of natural resources in the first place, I claim that self-ownership does not *generate* property rights. However, I argue that the self-ownership thesis is a useful and plausible basis for generating and protecting individual freedom and autonomy in a just state. It is individual freedom and autonomy, which serve to generate constraints on the acquisition and use of natural resources.

The source of my objection to Nozick arises from Nozick's analysis of *justice in acquisition*, and the way he interprets the 'Lockean proviso'.⁹⁰ Libertarians claim that property rights are extremely robust; once legitimately acquired, no one else has a say in how one's property is disposed of. The crux of this claim is that we are in fact able to legitimately acquire

⁹⁰ I draw a distinction between 'Locke's proviso,' 'Nozick's proviso,' and 'Lockean provisos.' The first two refer to each philosopher's actual provisos on acquisition, and the latter refers to a class of interpretations of Locke's proviso, (of which Nozick's is one), that intend on retaining the 'spirit' of Locke's original proviso.

property without any (or with extremely minimal) caveats on its use and disposal. To construct his proviso, Nozick focuses on Locke's 'enough and as good' proviso. Gerald Cohen⁹¹ is critical of Nozick's interpretation of the Lockean proviso, as he thinks that Nozick negligently disregards other competing interpretations of a 'Lockean proviso' in favor of his own very lenient one. Nozick's own proviso on acquisition reads as follows: "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."⁹² Cohen claims that Nozick's proviso fails to consider other counterfactual situations against which we might judge whether others are left 'worse-off' by an acquisition.⁹³ Nozick only allows for one possible counterfactual situation, the state wherein the resource in question *is previously unowned*. Once we see that there are other relevant counterfactual situations to consider, Nozick's 'Lockean proviso' appears too weak to be justified. Cohen attacks Nozick's argument by proposing various counterfactual considerations *other* than "had the world simply remained un-owned."⁹⁴ (It is important to note that if one grants Nozick that the world is initially un-owned prior to a person's acquisition of any part of it, that Nozick's proviso is not as arbitrary as Cohen suggests. Insofar as Nozick insists on the *historical* nature of justice, comparing the welfare of persons *prior to* the acquisition of some resource is the only relevant *historical* basis for making a welfare comparison. There are good reasons to doubt the normative weight Nozick gives to 'what actually happened' in determining the justice of a situation. For, insofar as we are interested in what *ought* to be allowed, political philosophers needn't commit themselves simply

⁹¹ Gerald Cohen, *Self-Ownership, Freedom and Equality*.

⁹² Robert Nozick, *Anarchy, State and Utopia*. 178.

⁹³ Cohen, *Self-Ownership, Freedom and Equality*, 78.

⁹⁴ Cohen, *Self-Ownership, Freedom and Equality*, 79-80.

to what, as a matter of contingent historical fact, actually happened; instead, a more robust consideration of other possibilities is urged.)

Cohen asks us to consider a world with two people, call them Bill and Jane. They live in a world that is un-owned by either and from which they are both able to gather enough materials for survival without affecting the other's opportunities for gathering. This is a desert island case, but it goes a long way to show Cohen's claim, and even though such conditions might not be replicated in the 'actual' world, it does not matter, as Nozick is committed to his acquisition principles regardless. On Nozick's proviso, Bill's acquisition of *all resources* in the world is perfectly just so long as Jane's relative economic well-being is at least as good as it was prior to Bill's acquisition. Supposing Bill's acquisition takes place and the resulting distribution gives him what he had initially, plus some extra, and gives Jane what she had initially. If she receives an extra share, it may be less than Bill's or possibly none extra at all. It is in this very narrow sense that Jane is *unharm*ed by Bill's acquisition of all the resources. However, Cohen claims that there are other relevant counterfactual claims to consider, in light of which Jane *is* harmed by Bill's acquisition.⁹⁵ Suppose instead that *Jane* acquired all worldly resources, thereby reversing the situation. Jane might well prefer that scenario to Bill's acquisition. Alternatively, if Jane appropriated all the resources *but was a poor organizer*, on the resulting distribution, Jane's and Bill's shares would be *equal to* what they were under conditions of common ownership, even though Bill no longer has the freedom to appropriate and improve his share (or even the freedom to do much of anything without Jane's say-so). Finally, suppose that Bill appropriates all the land (as in the original case), but Jane is a *better* organizer. The increased productivity enriches Bill, while Jane may still only receive compensation equal to what she

⁹⁵ Cohen, *Self-Ownership, Freedom and Equality*, 80.

could gather under conditions of common ownership. As Cohen states, “even when privatization generates additional value, the privatizer need not be the value-adder, and, if one thinks that value-adders merit reward, then one should note that Nozick’s condition does not ensure that they get any.”⁹⁶

Cohen’s counterfactuals do a good job of showing the inadequacy of Nozick’s proviso, but they fail to lead Cohen to the right analysis of the relationship between self-ownership and property rights to natural resources. At stake is the question of what a Lockean proviso actually requires. Nozick’s proviso fails to prevent privatization from harming individuals who are no longer free to appropriate resources for their own use. Cohen ultimately analyzes *harm* in a far more robust and counterintuitive way, making what he claims would stand as a ‘sufficiently strong’ Lockean proviso unsatisfiable. He claims that individuals are harmed on the self-ownership thesis if there is an “unignorable alternative”⁹⁷ distribution on which they would be made better off. I claim instead that the self-ownership thesis provides the basis for constraints on acquisition that protect against the loss of freedom and autonomy threatened by Nozick’s proviso, but which are still compatible with privatization of resources. I suggested in chapter two that something like a Lockean proviso on acquisition might provide an account of the conditions justifying the privatization of property. Though in that chapter, I was dealing specifically with parental rights to one’s offspring (among other products of one’s body and labor), I argue that a sufficiently rigorous proviso in the spirit of Locke’s can serve as a non-question begging basis for constraining property acquisition.

I agree with Cohen that simply owning ourselves does not yield a right or special ability to acquire things in the world. If self-ownership generates anything desired by contemporary

⁹⁶ Cohen, *Self-Ownership, Freedom and Equality*, 82.

⁹⁷ Cohen, *Self-Ownership, Freedom and Equality*, 87.

liberal theorists, it generates negative rights to *not be harmed*. I believe this is what underlies the spirit of Locke's original proviso. However, in a world with so much abundance or so few self-owning persons where acquisition cannot meaningfully harm others, the issue of *justifying* private acquisition becomes almost moot. We would simply not need to worry about justifying privatization and use of resources, since the practical limits of any one person's privatization would not bump up against any other person's, so long as individuals can spread out to access the world's resources (as opposed to the case where, for example, if everyone in the world lived on a small island without the technology or resources for boats, the superabundance of the nearby continent would do little to mitigate the conditions of scarcity on the island). So, in a world fertile with productive possibilities, the plight of the proletarian is hard to envision. In a world of moderate scarcity, where private acquisition *does* have a significant effect on other persons, acquisition can and should be constrained insofar as that acquisition harms others. In such a world, proletarians are harmed insofar as their freedom and autonomy to pursue their own conception of a good life is essentially nonexistent, and their life path is chosen for them by forces beyond their control. I solve this problem by focusing on how acquisition ought to be constrained by the self-ownership thesis, while avoiding the apparent confusion⁹⁸ over how to generate a Lockean proviso consistent with self-ownership in today's world.

What constitutes harm?

Understanding exactly what constitutes *harm* is no easy task, and a great deal turns on how the issue is analyzed. There is some sense in which both Cohen and Nozick simply offer different analyses of what constitutes *harm* by way of privatization. However, neither of their

⁹⁸ I am referring of course, to Nozick's unsatisfactory proviso, and Cohen's claim that no such proviso is actually consistent with the self-ownership thesis.

analyses are adequately informed by the self-ownership thesis. The self-ownership thesis guarantees individuals a baseline freedom and autonomy – a freedom from coercion that is not retained by distributions emerging from Nozick’s proviso. Cohen recognizes this harm but offers an analysis of harm that goes so far in the other direction that (as he admits) no proviso protecting against such ‘harms’ can be satisfied. The libertarian account of harm (or, if you will, a *rights violation*) is limited to cases where someone actively aggresses against another person. On this interpretation, it is easy to see why Nozick’s only stipulation on acquisition is that other persons are not made any *worse* off than they were previously – though Nozick’s understanding of being *worse off* is purely economic. That is to say, the metric on which an individual’s well being is measured for Nozick is abstract and universal – say for example, the equivalent dollars per day represented by the productive capacity of a person before and after privatization of a resource. So, if I am able to gather a certain quantity of food from common land prior to your acquiring it, I must either be allowed to continue to gather the same amount *or* be compensated by you for an equivalent *value* in some other resource, that I might trade for my necessities. In this way, my ‘well being’ is equalized between pre and post acquisition. However, this is not the only way I might be *harmed* by your acquisition, *nor does it adequately capture what I have lost* as a result of your acquisition. For example, my *freedom* to increase my productivity, either through additional labor or ingenuity, is no longer my prerogative. Instead, I must seek your permission to increase my share of the products of my laboring on your property, even though on Nozick’s view *you* did not need to seek my permission to place me in my *subservient position*. Any productivity beyond my pre-privatization level is subject to your discretion and usurpation. I am unlikely to work harder for *nothing* in return, but if I wish to increase my ability to plan for the future, my ability to do so is limited by whatever contract you draw up. Because there are

likely to be others in my situation who also wish to increase their income, I have to compete with other laborers for the lowest bid on my labor. Meanwhile, you are able to enrich yourself off of my and others' labor, so long as they are willing to agree to the terms of your contract, a willingness that is largely *coerced* due to their lack of private property. This is the sort of harm caused by libertarian analyses of property rights to natural resources such as Nozick's. However, this harm goes beyond simple economic dependence on capitalists by proletarians. This economic dependence is only one part of the core harm allowed by Nozick's proviso. Once I lose the freedom to privatize resources, I also lose *robust, meaningful freedom to pursue my own conception of a good life*. This is because I am in a position of economic, political and social *subservience* to the owners of natural resources, and placed there against my will, as Nozick's proviso does not require my consent in any way. In addition, I believe Nozick's insistence on the historical nature of justice is incoherent. His proviso stipulates that no acquisition must leave others worse off than they were prior to that acquisition. For initial acquisitions, this refers ostensibly to the time at which the resource in question was free for all to use – an almost mythical state of 'common ownership.' It is *far* from clear what sorts of freedoms individuals had under these conditions, and regardless of their economic well being (whether very constrained, as one might think of the economic well-being of ancient or primitive peoples, or alternatively, robust and fruitful) it seems impossible to analyze the justice of any current state of affairs by comparison to some vague time in the past, before the age of privatization. Natural resources have long since been privatized. If they are to be justly held, they must not abrogate individual freedom to pursue a good life. For, if self-ownership is to be a meaningful basis for individual freedom and autonomy, it must prohibit conditions arising that threaten any meaningful exercise of this freedom and autonomy. Libertarians defend the institution of private

property as one of the main things that allows for individuals to plan ahead and pursue a good life. It cannot be the case that the formation of private property for that purpose also prevents others from similar freedom in their pursuit of a good life.

When harm is viewed in this way, it is unnecessary to conjure up the existence of manifold counterfactual situations as Cohen does, in order to see how Nozickean privatization has harmed me, and certainly my children, as they cannot acquire resources privatized before their birth on Nozick's entitlement theory. The self-ownership thesis both generates and protects individual freedom and autonomy. Nozick fails to recognize the manifold ways in which privatization (and certainly unilateral privatization without prior contract and/or consent) can harm others by violating this freedom and autonomy. Proletarians under Nozick's proviso lack real freedom and autonomy, and this is why Nozick's proviso violates self-ownership rights. Cohen's critique reinforces this analysis. The fact that there are other relevant counterfactual considerations to be considered merely serves to show the ways in which privatization can help or harm those affected. However, it *does not follow* that because propertyless individuals on a Nozickean distribution would be harmed, that *all* distributions other than ones that satisfy Cohen's requirements for a 'sufficiently strong' Lockean proviso would harm individuals as well, at least on the self-ownership thesis. If acquisition rights can be structured so that all individuals retain real, substantive freedom to improve their positions vis-à-vis a given distribution, (insofar as they are capable of so doing), and such that individuals are protected from avoidable harms (e.g. starvation in times of food abundance), then private acquisition seems entirely possible and consistent with what justice requires on the self-ownership thesis.

In order to better understand this analysis of harm, it is necessary to understand what freedom to pursue one's own conception of a good life requires. One way of answering is to

give a negative analysis of the problem; what constitutes a *violation* of this sort of freedom? Obviously, any situation wherein a person must choose to accept the terms of a labor contract or starve when there are more than enough resources to make this dilemma a false one is a violation of a person's freedom and autonomy. A plurality of choices does not automatically solve this problem. It is not enough for me to have a choice of several so-called 'opportunities' for productive labor if all of them are equally undesirable or are generated through a process that fails to respect my freedom and autonomy, such as a contract negotiation wherein I have no real bargaining advantage. However, I reject the view that the protection of freedom and autonomy on the self-ownership thesis requires robust and universal preference satisfaction, such as that which Cohen suggests. Reasonable conceptions of a good life must be compatible with others' conceptions. This is why capitalists' conceptions⁹⁹ of a good life are unjustifiable. They cannot consistently pursue profit at the expense of others' coerced labor power. Individuals' conceptions of a good life must be constrained by mutual respect for and compatibility with others' conceptions, insofar as they are all equally protected by the self-ownership thesis. Freedom to pursue individual conceptions of a good life is predicated upon a certain degree of economic freedom, and this requires that the private acquisition and use of natural resources previously available to all be constrained in ways that protect meaningful economic freedom for non-privatizers. Freedom to pursue a good life also requires structural constraints within society, such that all persons have guaranteed equal basic welfare and opportunity.¹⁰⁰ Basic welfare

⁹⁹ 'Capitalist' here denotes a capitalist in the libertarian sense – an individual who has full, liberal property rights in his or her capital resources, and who uses their position to purchase labor power as a commodity from propertyless individuals whose 'choice' in the matter is only nominal. Generically 'capitalist' means of production – owners, workers, etc – is not in itself indefensible so long as workers retain what I describe above as real, meaningful freedom and autonomy to pursue their conception of a good life.

¹⁰⁰ I make this claim within the context of relatively wealthy industrialized economies. Under conditions of extreme scarcity, the self-ownership thesis will constrain privatization in different ways, though I do not explore the issue here.

includes nutrition (healthy food, water, etc), security (housing, freedom from excessive crime and threats to life and limb from other persons and reasonable protection from environmental hazards), and, I believe, health care (access to basic medical services and readily available treatments for common ailments). Equal basic opportunities, requires access to education, non-discrimination policies, equal access to positions of social and political power, and so forth. Together, equal basic welfare and equality of opportunity suffice to protect the sort of freedom and autonomy generated and protected by the self-ownership thesis. These considerations will require a variety of constraints on the sorts of private property rights individuals can have, especially if there are many others who lack property rights to natural resources.

Interestingly, Cohen's argument against the self-ownership thesis lends further support to my claim that it is *loss of freedom* that constitutes the harm sanctioned by Nozick's proviso. Instead of assuming that the world is initially *unowned*, Cohen asks us to consider a starting point of initial *joint ownership* of resources, where all persons jointly-own all worldly resources.¹⁰¹ Cohen claims that joint-ownership of worldly resources (as an alternative to a Lockean proviso) is *incompatible* with freedom and autonomy of individual self-owners. He argues that joint ownership would make any rights to ownership in oneself practicably impotent, as there would be very little a person could do without the consent of all others, severely eroding the autonomy self-ownership protects. Furthermore, he identifies this 'harm' as the same sort that emerges from Nozick's proviso.

¹⁰¹ An exactly similar criticism to the one Cohen launches against private acquisition in an initially un-owned world can be used against the starting point of joint-ownership. If *acceptability by others* is the primary criterion for acquisition, then a jointly owned world fails this test as surely as Nozick's privately owned world. Even if we assume that the world is natively jointly-owned (a counterintuitive view) nothing prevents us from analyzing whether we should *remain* in such a state.

The reason for this problem, Cohen argues, is that the self-ownership rights of citizens in a jointly-owned world is merely formal, or juridical. This is because the sort of control that each individual has over the aggregate, while symmetrical, is extremely robust, sufficiently so to render individual autonomy almost meaningless. There is almost nothing an individual can do in such a world without the consent of all others.¹⁰² So while all individuals retain a formal ownership over their own person, the sort of robust autonomy thought granted by the self-ownership thesis fails to emerge from this state. If this were all one could say about Cohen's thought experiment, then perhaps the libertarian claim that individual freedom and autonomy is incompatible with socialist equality of condition would hold sway against a jointly-owned world. However, Cohen claims that though the autonomy of citizens in a jointly owned world is extremely constrained, it is *no more constrained* than the autonomy of propertyless proletarians in a world wherein access to worldly resources is controlled entirely by a small minority of capitalists. And, Cohen argues, since libertarians vehemently defend as just a world in which proletarians proliferate, they must also accept, he thinks, a jointly owned world where citizens have no more effective autonomy than in worlds generated by Nozick's proviso.

Thus, Cohen's jointly owned world serves to underscore the real problem with Nozick's acquisition proviso: that any analysis of acquisition that leaves persons in a state of effective unfreedom is an abrogation of their self-ownership rights. The jointly-owned world (along with worlds arising from Nozick's view) does not deny that individuals are self-owners, but self-ownership can be retained only *nominally*; is a state of affairs that renders self-ownership rights virtually meaningless. If self-ownership precedes an analysis of property and acquisition, then

¹⁰² Cohen suggests that a person might only be truly free to let themselves die in such a world, for any other sustained exercise of autonomy would necessarily require the use of external worldly resources, over which all other citizens have veto power.

realizing the basic freedom and autonomy to pursue one's own conception of a good life promised by the self-ownership thesis should be the *baseline constraint* of any such analysis.

As I see it, there are two main tasks involved in solving the problems with Nozick's proviso. The first is to provide an account of how resources can be justly divided between persons (read: privatized *to an extent*) such that the good for all persons (constrained by self-ownership) is taken into account. The second task is to show that a *just distribution* of resources does not abrogate, but rather, has the potential to enhance the individual freedom and autonomy promised by the self-ownership thesis. In the following sections, I provide such an account, followed by a rejection of Cohen's claim that self-ownership is incompatible with more egalitarian outcomes for individuals.

Analyzing Acquisition

By establishing the harm done by libertarian (and capitalist) distributions, as the loss of freedom and autonomy of the propertyless to pursue a good life, a baseline restriction on acquisition and use of worldly resources emerges that provides *at least* a negative framework within which one can analyze acquisition and property rights. This harm arises through acquisition provisos such as Nozick's (and Cohen's jointly owned world) that leave individuals with no substantive autonomy. Therefore, acquisition of resources ought to be constrained in a way that preserves and enhances individual freedom and autonomy. Even though self-ownership does not *give rise* to property rights to external worldly resources, it *constrains* the acquisition and use of these resources, insofar as access to natural resources in some form or another is necessary to exercise meaningful freedom and autonomy in pursuit of a good life. So the self-ownership thesis requires at the very least, that no acquisition of worldly resources severely limit

the freedom and autonomy of individuals who can no longer appropriate the resources in question. This is to say that no just state should allow acquisition and use of resources that leads to the formation of a proletarian class that the libertarian-capitalist view sanctions and which Cohen is critical of. Regardless of a society's other caveats on property rights, no individuals should find themselves in a position whereby they must sell their labor power on a coercive market to the owners of the means of production.¹⁰³ But, because all persons have an equally valid *prima facie* claim on external worldly resources,¹⁰⁴ neither would a just state allow persons lacking 'normal' productive capacities to starve or suffer as a consequence if their starvation and suffering were preventable. For example, my argument in chapter one regarding the justice of legally enforceable assistance to avoid foreseeable harm is consistent with the sorts of baseline protections all persons in a society are given on the self-ownership thesis. However, the conditional nature of property rights to *natural resources* allows for far more robust constraints on the acquisition and use of natural resources that could extend protections for individual welfare beyond the baseline for which I argue in chapter one. Property rights to natural resources are not the same as property rights to our selves and our labor, insofar as they are not generated by self-ownership, but only *constrained* by it. In addition to being constrained by self-ownership, property rights to natural resources may be subject to other additional constraints, determined by the democratic will of the citizens of a just state, or by some other fair deliberative

¹⁰³ My account is mute on the issue of whether an individual can freely choose to place himself in such a position. It is unclear why a rational person would choose this if it were systematically protected against. I am unsure any system of political justice can fully protect individuals from their own poor judgments, though it might prevent others from knowingly taking advantage of them.

¹⁰⁴ Having a *prima facie* claim to resources is not the same as having a property right to those resources. The latter would look more like Cohen's jointly-owned world. I invoke this 'prima facie claim' simply to point out that any privatization of resources ought to be accompanied by provisions to protect the basic welfare of all persons, no matter how well endowed by nature they might or might not be.

process, so long as these constraints respect the baseline constraints of self-ownership – freedom and autonomy to pursue a good life.

For example, Rawls’ difference principle appears to be a plausible and just way of constraining acquisition and use of property consistent with the self-ownership thesis, even though members of a democratic state may not choose it as the explicit method for governing resource distribution. My above analysis of how self-ownership restricts acquisition and use of property does *not* entail something as robust as the difference principle, though it does require a commitment to Rawls’ principles of equal basic liberties and fair equality of opportunity.¹⁰⁵ However, my appeal to self-ownership in constraining property right *does not prohibit* the adoption of some sort of Rawlsian state whose social and economic inequalities are constrained by the *difference principle*. Even though the difference principle might not be adopted as a structural method for economic policies in a democratic state, it may be appealed to as a political ideal, useful in democratic deliberation about property rights, resources and individual welfare.

I draw a distinction between the protection of individual freedom from *unjust* coercion (i.e. the lack of freedom of the proletariat) and the positive social ideal of *flourishing*. A flourishing society not only protects individuals from the loss of freedom and autonomy allowed by Nozick’s proviso, but works to enhance individual freedom and autonomy through a plurality of social policies including not only basic welfare and equality of opportunity,¹⁰⁶ but also robust public education systems, universal health care, and social policies and institutions aimed at the inclusion and integration of all persons into political society. Because the acquisition and use of resources is only *negatively* constrained by the self-ownership thesis, and because self-ownership is *not violated* through additional restriction of property rights so long as basic individual

¹⁰⁵ John Rawls, *Justice as Fairness: A Restatement*, (Cambridge: Harvard University Press), 42.

¹⁰⁶ As I discussed in the above section, “What constitutes harm?”

freedom and autonomy is maintained, the self-ownership thesis in no way *prohibits* the adoption of more robust constraints on property rights that serve to further enhance freedom and autonomy and to promote a flourishing society. I do not view autonomy as somehow in opposition to social interdependence and mutual support and cooperation. Rather, I believe that autonomy is enhanced by recognition and support of socially cooperative institutions. So, even if the self-ownership thesis does not *require* robust constraints on property rights in the pursuit of a flourishing society, I believe it encourages the pursuit of this sort of flourishing.

As I argued in the previous chapter, our rights to acquire and use things in the world are constrained by both the nature of the objects and entities acquired and by social deliberation on their acquisition and use. By leaving the stipulations on acquisition and use open to a public decision making procedure, the large diversity of resources in question can be better dealt with. One of the problems that both Nozick and Cohen (among others) face when examining the merits and drawbacks of various schemes for ordering property rights, is that they view property right as an ‘all or nothing’ affair. Property rights on such a view are only restrained by others’ property rights, whether in their own person or to things in the world. While it is much more plausible to think of one’s self-ownership rights as being constrained only in this way, our property rights to natural resources are *not* constrained in only this way, especially since they do not arise *out of* our self-ownership rights, as has been implicitly claimed by Nozick and others of a Lockean persuasion. If I acquire a given resource, I do not thereby gain robust control over the use and disposal of that resource (approaching or equal to the sort of control I have over my body and labor), limited only by others’ self-ownership and property rights. In addition to these minimal restrictions (which, I have argued, include not using the resource to coercively extract labor from others, or otherwise denying them freedom to pursue a good life) other restrictions on

the use and disposal of the resource may be justly determined by the rest of society so as to achieve a variety of ends. The resource in question will undoubtedly play a role in determining these stipulations. For example, I might acquire prime farmland, but only on the stipulation that I set aside a portion of my harvest for the needy and to insure against future food shortage, and that I take steps to maintain the health of the soil and water on the land, etc. Renewable resources may have fewer constraints on acquisition and use than non-renewable resources, so long as provisions are in place to allow for the continued renewal of such resources. Non-renewable resources that cannot be recycled (such as fossil fuels) ought to have restrictions on their use so that their ultimate consumption does not imperil future generations. At the present moment in history, it seems reasonable on this view to stipulate that the acquisition and consumption of non-renewable energy resources also require a significant investment in a renewable replacement for these resources, or at least a ‘weaning-off’ of their use before they are no longer available, given our dependence on abundant energy resources.¹⁰⁷ In any case, a thorough analysis of the sorts of stipulations on property rights to natural resources is not the goal of this thesis, and the above discussion is only intended to provide a better idea of what my view requires. Arriving at a robust analysis of property rights and their constraints is precisely the job of a fair, deliberative process – one that equally respects all persons’ ability to form a conception of a good life (even if it does not equally respect *all conceptions* of a ‘good life,’ if some are in direct conflict with mutual respect).

There are contingent, economic reasons for preserving some sort of private-property scheme. For example, markets and competition are an effective and relatively efficient way of producing abundant material goods and their corresponding social goods such as increased

¹⁰⁷ The issue of climate change weighs heavily here too, though it is not within the scope of my thesis to adequately address it.

leisure time, health, mobility, education, opportunities for broad cultural and social interaction, security, etc.¹⁰⁸ I do not deny that in the pursuit of greater economic efficiency, certain manifestations of market economies (e.g. capitalism) may actually *discourage* the robust realization and enjoyment of many of these goods (family and community interaction, and play and recreation, for example). However, I view the efficiency of the market, not as an end, but as an instrument for the attainment of the social goods that motivate efficiency and production in the first place. Moreover, even if certain citizens view the pursuit of profit as a primary end in their conception of a good life, this should *not* require others in society to slavishly commit themselves to this end on behalf of those who hold it. On my analysis, the self-ownership thesis would prevent situations arising wherein individuals have no real choice regarding whether or not to work to realize capitalists' ends. However, so long as freedom to choose how one labors is retained, joining in the pursuit of economic efficiency and financial profit is the prerogative of individuals. Just as I am free to pursue knowledge and understanding as a philosopher, you are free to pursue an expanding portfolio as a stock trader, or to work on behalf of others' portfolios as an accountant or financial analyst.

Social *flourishing* recognizes a plurality of individual and group goals for their lives, many of which are best realized when the products of an efficient economic structure are distributed and/or used in a more egalitarian fashion. By flourishing, I intend the opportunity for education, access to basic health care, the absence of which tends to threaten an individual's ability to lead a normal life, social, political and economic opportunities, and significantly, the exercise of individual freedom and autonomy protected by the self-ownership thesis. Because property rights to natural resources are contingent upon an agreement between owners and the

¹⁰⁸ There may be other, more effective and efficient means of production that also respect individual freedom and autonomy as I have described it. If so, then there are compelling pragmatic reasons to pursue these means. There is no reason to suppose that western, market economies are the pinnacle of economic organization.

rest of society, these rights can be structured in a way that balances the efficiency of private ownership with the attainment of individual and social goods of a flourishing society.

Cohen's Analysis

Cohen's analysis of Nozick's proviso is useful to expose its core problem. However, Cohen ultimately rejects the compatibility of private property and self-ownership due to what I claim is a mistaken analysis of the 'Lockean proviso' on acquisition. Though I believe his criticism of Nozick's proviso is correct, his analysis of the 'solution' to this problem does not follow from the self-ownership thesis, nor does he give adequate reason for accepting his analysis of the 'Lockean proviso.' Indeed, insofar as Cohen's 'sufficiently strong' Lockean proviso is *in principle* unsatisfiable, it is worth examining why he thinks that 'sufficient strength' of such a proviso renders it incoherent. Because Cohen's view fails to appeal directly to the self-ownership thesis, there is nothing to constrain his analysis of harm. Whereas I understand harm as the loss of freedom and autonomy to pursue one's own conception of a good life, Cohen's view sees harm as the inability to have one's economic preferences satisfied. Understanding why this is a problematic and unjustified analysis of the self-ownership thesis sharpens the case for my view.

Cohen's analysis of Lockean provisos is unsatisfiable, and he believes this shows that the self-ownership thesis is incompatible with the formation of private property. However Cohen's analysis is indefensible. It is not required nor even suggested by the self-ownership thesis. Cohen's 'sufficiently strong' Lockean proviso requires that any given distribution arising from it be *acceptable* to all persons within the distribution. To better elucidate his analysis, Cohen presents an analysis of Rawls' difference principle – a distributive principle that he claims is

decidedly *not* a Lockean proviso. Properly interpreted, the difference principle is not constrained by the actual preferences of those in society, or by the least-well-off, as Cohen says some theorists have mistakenly claimed. Indeed, the difference principle is explicitly constrained by the preferences of rational agents who are very much *outside of* the distribution. Thus, Cohen believes that the difference principle itself is *not* a Lockean proviso, nor could a distribution that satisfies it also satisfy a *sufficiently strong* Lockean proviso. But, why should we think that a Lockean proviso requires such a strong (and as Cohen admits, unsatisfiable) criterion as *universal acceptability*?

Again, in order for a particular distribution to satisfy a *defensibly strong* Lockean proviso, Cohen demands that no persons on that distribution could possibly object to their lot. However, it seems that Cohen's main concern (though he may not recognize it) is *not* with Lockean provisos as such but with the attainability or lack thereof, of an *unobjectionable* distribution. Arriving at such a distribution is impossible on Cohen's account. On an unequal distribution of resources, those with less can *always* complain that there are *other* distributions wherein they have more (defined in economic terms), and on egalitarian distributions, highly productive individuals can always complain that they might fare better on an unequal distribution where they enjoy a greater share of their productive output. Even if it happens (by sheer dumb luck) that *everyone* in society is content with his or her share on a given distribution, such a condition is unstable, as future generations (or changes to the distribution) can, and most likely will, upset the equilibrium. So, while Nozick's requirements on acquisition are far too weak to satisfy the requirements of justice, Cohen's own are far too strong. Universal acceptability of a distribution – what Cohen demands for 'sufficient strength' of a Lockean proviso – would be

unattainable on *any and all* distributions, whether socialist, progressively liberal, or libertarian.¹⁰⁹

To be fair, Cohen's analysis appears to simply extrapolate from the general requirements that Nozick places on acquisition – namely, how acquisition affects others. Nozick's requirement is that an acquisition makes no one worse off than they would have been had the property in question remained in common use. It is Cohen who suggests that the *general rule* in application here is one of *acceptability by others*. By interpreting Nozick's proviso in this manner, he can readily build his argument against Nozick. Insofar as an acquisition's acceptability is *not* limited to a choice between either (a) the acquisition, or (b) no acquisition, Nozick's requirement is inadequate for determining the acceptability of an acquisition to others. However, it is not clear that Nozick intended his proviso as a condition of *acceptability* by others – or that a Lockean proviso can or should be construed in this way. On Nozick's view, it is irrelevant whether others *dislike* my acquisition of a plot of land, so long as they are no worse off than they were before. An acquisition is just so long as it does not *actively harm* others – though this harm is abstractly *economic*. Since justice is *historical* for Nozick,¹¹⁰ he thinks that I cannot be harmed by your acquisition of a resource, since prior to your acquisition, the only *historically relevant* conditions to which we might compare the outcome of your acquisition would be the conditions wherein the resource was in common use (i.e. *unowned*). Now, we need not commit ourselves to Nozick's 'historical' view of justice. It is important, however, to see that Cohen's interpretation of the Lockean proviso is far from obvious, and so his criticism of 'less than

¹⁰⁹ Cohen, *Self-Ownership, Freedom and Equality*, 87: "... it almost certainly follows that not only capitalism, but every economic system will fail to satisfy a defensibly strong Lockean proviso ..."

¹¹⁰ It is important to note that Nozick explicitly argues against what he terms, 'a time-slice' view of justice, favoring instead, a view of justice that examines what actually happens. If you acquire a resource, the reason that I cannot justly object to your acquisition is that I am not harmed by it. By interpreting harm as preventing what might have happened, had you not acquired said resource, we are violating the historical conception of justice that Nozick argues for.

sufficiently strong' Lockean provisos cannot rest upon simply extrapolating from Nozick's own, admittedly unsatisfying proviso. The requirement that a distribution be acceptable to all persons affected is *Cohen's own invention*, and there is no independent reason to accept this criterion as the sole or primary basis for qualifying a distribution as just on the self ownership thesis. As a matter of contingent fact, I might always appeal to some other distribution on which I am made better off, but this fact alone does *not* demonstrate that a suitably strong proviso on acquisition requires Cohen's stringent (and unsatisfiable) interpretation. More importantly, the self-ownership thesis does not require robust and universal economic preference satisfaction. By construing 'harm' in this way, Cohen strays *far* from the conceptual framework of the self-ownership thesis and from even any mainstream analyses of what constitutes *harm*.

Conclusion

Self-ownership does not *give rise* to property rights to natural resources, but it *does* constrain the acquisition and use of these resources. I claim that the self-ownership thesis *requires* that privatization not deprive individuals of their freedom and autonomy to pursue a good life. The self-ownership thesis is a meaningless basis for individual rights unless it can protect real, substantive freedom and autonomy for self-owners. I have argued that this requires economic and social freedom to pursue one's own conception of a good life, compatible with others' conceptions and pursuits. This economic and social freedom in turn requires that acquisition and use of natural resources be constrained in ways that guarantee these baseline freedoms. Because radical redistribution of resources is neither practicable nor even wise from the standpoint of economic efficiency, freedom and autonomy of individuals ought to be protected instead through a guarantee of basic welfare and equality of opportunity. Self-

ownership does not *require* further restriction and specialization of property rights except to limit cases where these restrictions would lead to a loss of basic freedom and autonomy protected by self-ownership. However, because further constraints upon the acquisition and use of natural resources are not prohibited by the self-ownership thesis, a just state can order property rights in ways that balance efficiency and productivity with the flourishing of all citizens. Moreover, I claim that because the self-ownership thesis defends freedom and autonomy, it encourages the adoption of social policies and constraints on property rights that serve to *enhance* individual freedom and autonomy in a consistent and fair manner.

I have argued that Cohen's analysis identifies the problem with Nozick's proposal, but fails to adequately address it. This is because Cohen focuses on analyses of Lockean provisos instead of examining how *self-ownership*, while not providing *a priori* justification for property rights in worldly resources, might constrain acquisition of these resources in a way that avoids the problem of unfreedom inherent in Nozick's capitalist and Cohen's jointly-owned worlds. Consequently, there is no reason to suppose that the freedom and autonomy generated and protected by the self-ownership thesis is incompatible with an unequal distribution of resources, so long as property rights to these resources are recognized as being contingent upon protection of all individual's self-ownership rights. A just state is one which protects individual's self-ownership rights – rights which include real freedom to pursue a good life – while ordering normative claims to natural resources and social goods in such a way as to *further enhance* individual freedom and autonomy equally across all persons in society. Rather than defend liberty in name only, as Nozick does, I claim the self-ownership thesis demands the realization of a degree material and social equality in order to meaningfully guarantee the liberty it promises.

As a consequence, liberty is no longer properly viewed in opposition to equality on the self-ownership thesis.

Chapter 4 – Self-Ownership, Liberty and Property rights

Proponents of the self-ownership thesis have argued that it is the basis for the fabled rights of life, liberty and property. I have argued that self-ownership does indeed inform us about our political rights to our lives, our bodies, our freedoms and our property rights. However, I have also argued for the rejection of the foregoing libertarian analysis of these rights; the strength and even the logical basis of some of the rights libertarians ‘derive’ from self-ownership can and should be questioned. I rejected the libertarian case against coercive assistance, denied that laboring is a sufficient basis for property to the products of our labor, and argued that our property rights to natural resources are not produced by self-ownership at all, but rather, only constrained by the self-ownership thesis. From my analysis emerges a self-ownership thesis that can respond to humanitarian concerns regarding state-mandated help to those in need, concerns over the treatment of children and women’s reproductive rights, and egalitarian concerns over the distribution of natural resources so that the basic needs of all persons can be met, with their self-owning freedom intact and robust.

In chapter one, I dealt with the libertarian case against coercive assistance. I argued that state-protected rights *not to be harmed* that libertarians argue for entail that in certain cases the state may enforce duties to help others *avoid* foreseeable harms. These harms are the sorts of harms that were someone to actively cause them (e.g. striking another person), would be considered violations of one’s self-ownership rights. I argued that persons, groups or societies can only have a politically enforceable obligation to help if they are blameworthy for *allowing* such a harm to take place. This requires that they *could* have in fact prevented the harm without

significant cost to their own self-ownership rights, such as a threat to their life or body, or at the risk of significantly restricting their freedom and autonomy to pursue a good life. On my analysis in chapter one, the *cost* of helping, understood as cost to liberty and labor,¹¹¹ should therefore be small, or be distributed equitably over a large group such that it is small for each person. There are undoubtedly borderline cases wherein it is unclear whether requiring assistance to be given would constitute an unacceptable limitation to persons' self-ownership rights, and I suggested that there are pragmatic reasons to err on the conservative side of this boundary, adding that it is the job of public deliberation to determine the legal boundaries of enforceable assistance, insofar as a sharp boundary appears out of the grasp of philosophical analysis alone. Thus constrained, the range of politically enforceable duties to help was fairly narrow on my preliminary analysis. Only serious and foreseeable harms that could be prevented at a small cost to individuals, groups or society as a whole would generate corresponding obligations to help. In a fairly wealthy society, this would likely include provisions for basic food and shelter to those who need it, emergency medical care (though perhaps not long-term medical care), and limited Samaritan laws that range over other contingencies.

My argument in chapter one was meant primarily to reject the libertarian argument against coercive assistance, rather than offer an entirely new analysis of self-ownership. Though there are undoubtedly libertarians who would disagree, I believe my argument in favor of coercive assistance is consistent with a libertarian reading of self-ownership. I claimed that self-ownership does not prevent a just state from mandating that at least in *some cases*, individuals, groups or society as a whole are obligated to offer assistance to avoid certain foreseeable harms.

¹¹¹ The question of cost in terms of property is a more complex issue. Self-ownership generates robust property rights to our own bodies and labor, but it does not mean that a person's self-ownership rights are violated whenever their property is usurped in the service of another. Assuming we *can* have property in things other than ourselves, the nature of that property is only ever *constrained* by the self-ownership thesis, rather than arising *out of it*.

However, this is where the argument in chapter one stopped, making no further claims about other rights and responsibilities generated or constrained by the self-ownership thesis. In chapters two and three, I offered a broader analysis of self-ownership, property rights and the compatibility of the self-ownership thesis with a more egalitarian society, an analysis that rejected the traditional libertarian interpretation of the self-ownership thesis.

Chapter two explicitly dealt with the idea that self-ownership generates full, liberal property rights to things we produce with our labor. In it, I addressed Susan Moller-Okin's critique of the libertarian analysis of self-ownership, not by rejecting her critique (I think she is right) but by offering an analysis of self-ownership that does not lead to the libertarian conclusions Okin finds so problematic and contradictory. The central idea that leads to the conclusions Okin critiques is the production yields property theory. The logic of this idea is straightforward: we own our labor, therefore we own what we produce with our labor. However, I rejected this view insofar as it not only leads to the absurd conclusions that Okin critiques, but more significantly, because I do not believe that self-ownership actually *entails* property rights to the products of our labor. On my analysis, mothers may retain or acquire parental rights to their children by way of sanctions derived from democratic discourse. Parental rights, though tempered by self-ownership, do not arise solely out of it. The sorts of rights that parents have to their offspring are contingent upon the rest of society's considered views on child welfare and parental autonomy, balanced by the retention of meaningful reproductive freedom.¹¹² Though I only offered a sketch of these rights, my analysis serves to protect against the unilateral abuse of children before they have developed the capacity for self-ownership – one of Okin's primary

¹¹² I argued that denying women at least a basic prima facie claim to parental rights in their offspring would effectively nullify any real, meaningful freedom to exercise their reproductive talents.

concerns on the production yields property theory.¹¹³ More importantly, it allows for the social (and corresponding political) protection of a child's right to autonomy from his or her parents once they *do* acquire the capacity for full self-ownership. A central constraint on parental rights that arises out of the self-ownership thesis is that parents surrender their parental rights once a child has attained status as a self-owner. For children who do not develop the requisite capacities for self-ownership, a society may allow parents to retain their parental rights over such children corresponding to the degree of freedom and autonomy such individuals *do* have.

My argument against the production yields property theory severs the connection between a mother's labor in producing her child and her *ownership* of that child, while retaining robust reproductive freedom and abortion rights.¹¹⁴ Whereas other attempts to defend the self-ownership thesis against Okin's analysis tend to do so by implicitly or explicitly accepting the production yields property theory, my defense of self-ownership recognizes this concept as being at the core of the problems Okin recognizes, and I defend self-ownership by rejecting the production yields property theory. However, my argument *also* separates laboring from ownership of the products of one's labor quite generally. In this way, my analysis avoids the charge of applying only in a sexist way to female reproductive capacities, and stands as a novel analysis of self-ownership and property rights.

¹¹³ It has been objected that my analysis merely *relocates* the problem of child-welfare that Okin raises. However, though I concede that it is *possible* that a society as a whole might not enact protections for child welfare, I believe this is unlikely. Moreover, by placing *social* constraints on child-welfare, parents are no longer free to arbitrarily mistreat their offspring, but must instead adhere to social standards. Okin's primary concern was that our acknowledged social values regarding the care and upbringing of children could not be justly applied on Nozick's analysis of self-ownership, as mothers would have unilateral rights of control (property rights) over their offspring. In this important sense, the *nature* of the child-welfare problem (if it is a problem at all) is different on my analysis than on Okin's.

¹¹⁴ A mother's rights to her body supersede any 'rights' of a child prior to its birth. It is unclear whether it is meaningful to speak of an unborn child as having any rights at all. It bears no *natural* property relation to anyone, and its physical relationship to its mother places her in an exclusive position to decide its fate vis-à-vis her body.

One issue I only tangentially explored in chapter two is that of property rights to *other* things that are direct instantiations of persons' bodies and labor, *besides* children. Examples include the venerable hair-shirt, a philosophy lecture, an artistic dance, athletic performance, scientific invention, etc. Obviously, persons cannot produce *anything* with their bodies and labor without the use of *some* natural resources, but assuming legitimate possession of such resources, all self-owners have robust rights to their own bodies and labor, rights that prevent others from arbitrarily forcing them to use their bodies and labor against their will. So, though individuals do not own the *things* they produce as an *immediate* product of their laboring to produce them, the self-ownership thesis prohibits others from *forcing them* to labor to produce these products. I think it is this fact that generates property rights (of a sort) to the products of one's labor. Because society cannot force individuals to produce the things they are capable of producing, and because individuals do not own these products derivative of their labor alone, a 'deal' of sorts can be struck between producers and the rest of society (the majority of whom, presumably, are, have been or will also be producers of one sort or another). Society grants property rights to the producers of these 'ex-corporis' products, but only on certain conditions, subject to the nature of the product in question and its relationship to individuals and groups within society.

By balancing the freedom of production and the good for the producer with social goods, constraints on property rights to ideas, inventions, and other intellectual property, for example, do not violate individuals' self-ownership rights, nor do they allow individuals to have unlimited or coercive claims to objects of social value (such as vaccines and medicines). Performances and services too are justly restricted on the self-ownership thesis, so long as no individuals are prohibited from performative activity,¹¹⁵ or otherwise coerced into providing a service or giving

¹¹⁵ Such activity would include dancing along the sidewalk, public performance art, athletic endeavors, or 'street preaching,' for example.

a performance. What counts as *coercive* is, I think, much more constrained than what libertarians such as Nozick view as coercive.

As I argued in chapter two, only if persons have a legitimate claim to full, liberal property rights in the products of their labor can they justly complain that they have been wronged if a market exchange for their service, performance or other ‘ex corpus’ commodity is taxed or constrained in some other way by the state. Moreover, I claimed that the Nozickean ‘forced labor’ argument made in support of our property rights to the products of our labor moves backwards from redistributive taxation to forced labor, and can only proceed by tacitly assuming the principle it is trying to prove: that we own the products of our labor in the same way and to the same extent that we own our labor. Self-ownership, I claim, only grants individuals the freedom to labor or to refrain from laboring, in pursuit of their own conception of a good life. Once our labor is objectified in some *new entity*, it is no longer the sort of thing over which we have full, autonomous control. Hence, if I do not *own* the product of my labor simply in virtue of laboring to produce it, then it is fallacious to claim that usurpation of a portion of that product amounts to ‘forced labor’ by the usurper (usually the state). However, my argument does not deny that persons have *any* normative claims over the products of their labor; only that these claims are not self-sufficiently derived from self-ownership. Instead, I claim that our rights to the products of our labor are the result of democratic deliberation on the subject, balanced by individuals’ freedom to labor productively in pursuit of a good life.

Democratic deliberation on the relative strength of normative rights to the products of our labor is aimed at balancing the good of individuals’ productive capacities both for themselves and society. Because self-ownership guarantees individuals freedom from coercion, and because social good is contingent upon individuals being *motivated* to produce beyond a mere

subsistence level, the sorts of constraints on individual rights to the products of their labor will vary depending on the nature of the objects produced: their scarcity, their social value, the relative time and effort required to produce them and so forth. Moreover, with mobility within a society, (and out of it), excessive taxation, beyond that which tends to encourage social flourishing, will likely result in economic stagnation at odds with the goals of redistribution to enhance social flourishing.

This analysis of the self-ownership thesis *retains* the sort of autonomous control individuals have over their labor-power, rather than collectivizing it in a way that *forces* persons to produce on behalf of others. However, my view denies that placing social constraints on individuals' rights to the products of their labor counts as an unjust restriction of their freedom to labor. It is this very freedom, along with the requirement that self-owners be treated equitably vis-à-vis their productive powers, that balances the good for individuals to produce and benefit from their productive labor in the pursuit of a good life, with social flourishing¹¹⁶ not obviously attainable on a libertarian analysis of self-ownership, labor and property rights. Out of this analysis emerges a social order that respects individual freedom to choose what, how, and when persons use their bodies and labor to produce social goods, while at the same time upholding egalitarian intuitions that *all* persons ought to benefit from the existence of social goods.

My rejection of the production yields property theory dovetails with the conclusions of chapter three. In it, I rejected a substantive connection between self-ownership and ownership of natural resources. I argued instead that property rights to natural resources are based on a plurality of factors, with self-ownership generating baseline constraints on private property rights to natural resources. I appealed to Gerald Cohen's criticism of Nozick's analysis of justice in

¹¹⁶ As I envision it, social flourishing enhances all persons' abilities to pursue a good life in a way that fairly considers all individuals' freedom and autonomy (rather than privileging the freedom and autonomy of property owners over that of non-property owners, for example).

acquisition: Nozick's interpretation of the Locke's famous 'enough and as good' proviso on privatizing natural resources. Though I rejected Cohen's solution to the problem raised by Nozick's proviso, his analysis points to what I claim is the central problem with Nozick's interpretation of the self-ownership thesis. The core problem with Nozick's acquisition proviso (and others similar to it in the libertarian tradition) is the loss of meaningful freedom and autonomy of the proletarian. Locke claimed that acquisition of natural resources was only permissible if there were enough and as good resources for others to appropriate. Though this suggests that, *prima facie*, acquisitions must leave enough resources for others to freely appropriate, Locke justifies a more robust privatization of resources by appealing to the potential efficiency of privatization – thus yielding greater productivity than common ownership could have yielded. This analysis lays the groundwork for Nozick's view; combined with his bent on 'justice as historical,' Nozick's acquisition proviso allows for total and unilateral privatization so long as others are made 'no worse off' than they would have been under the mythical conditions of so-called 'common ownership.' However, Nozick analyzes harm in purely economic terms, and supposes that even many generations after a society emerges from common ownership (and the ostensible hand-to-mouth existence of its members), that property-less individuals cannot object to their lack of property by appealing to the aggregate wealth of their capitalist society.

More important than simply objecting to the *prima facie* unfair distribution of wealth in a Nozickean world, it is the loss of real freedom to direct one's life that is most problematic for Nozick's view. If I own only my body and labor, and have no normative claim to other resources (because you have appropriated them), then I am not really free in the liberal sense of the term. I can only labor how and when you say, and only if you deem my labor power of value to you. Cohen's thought experiment of a jointly-owned world brings this point into sharper

focus. Because members of a jointly-owned world have no real freedom to use the resources of that world without the consent of all others, the freedom afforded them on the self-ownership thesis is nominal, at best. However, their freedom is no less robust than that of propertyless proletarians whose position is justified by Nozick's proviso.

Finally, I claimed that Cohen's 'counterfactual' argument against the weakness of Nozick's proviso is useful, but not as an analysis of Lockean provisos quite generally. Instead, it serves to show how Nozick's proviso can harm individuals. It does *not* show that individuals are harmed in a meaningful sense by *any* distribution (arising from a proviso) wherein they might appeal to some counterfactual distribution on which they were made better off. I claimed instead that the self-ownership thesis provides a concrete, baseline constraint to the privatization of worldly resources. Whether or not there are individuals who may no longer privatize resources for their own use, no one's privatization of a resource can leave others in a position whereby their freedom to direct their lives is nominalized. Protecting self-owners' freedom might be achieved in principle by radical resource redistribution, though I claim that this is not required. The only baseline stipulation on privatization justified by the self-ownership thesis is that no persons find themselves in a position whereby they no longer possess the freedom and autonomy necessary for the pursuit of a good life. This requires at minimum, that individuals have basic equality of opportunity and an equal basic guarantee of welfare.¹¹⁷ Individuals may appropriate resources, but only on the condition that they not use these resources to exploit the labor power of others, or otherwise limit others' freedom to pursue a good life. This protection can be achieved through redistributive taxation schemes, or through profit sharing and other stakeholder initiatives. More importantly, one need not suppose that a robust welfare state is the

¹¹⁷ A promise of basic welfare and equality of opportunity is premised upon the material ability of a society to guarantee these things. In societies as wealthy as western democracies, such basic social programs are likely to be affordable.

only outcome that might emerge from these constraints. I argue that because self-ownership only *constrains* private property rights, and does not *give rise to them*, that more robust constraints on property rights and redistribution of wealth are compatible with the self-ownership thesis, so long as these constraints are applied fairly and result from democratic deliberation and public transparency.

Taken together, my arguments generate a novel interpretation of the self-ownership thesis. I have limited the scope of the rights that self-ownership sufficiently establishes to the boundaries of a person's body and labor, and his or her freedom and autonomy to pursue a good life. Furthermore, I claim that in some important ways, these rights are more readily violated than libertarians suppose, such as when propertyless individuals are essentially forced to work for property owners on pain of starvation, while in other ways, they are less obviously violated, such as when the state forces me to stop and help a drowning girl out of a puddle of water. Detractors of my view might accuse me of trying to assert two conflicting theses; that self-ownership rights are *not* violated by legally enforced assistance, but that they *are* violated by distributions arising from Nozick's and other similar acquisition provisos. However, it is traditional libertarian analyses that assert the conflicting claims. Libertarians claim precisely the opposite: that self-ownership prevents the usurpation of even a trivial amount of my labor, while it allows (or even in some cases, justifies) large-scale acquisition of resources that leave large portions of the population propertyless, and without real freedom and autonomy. This is backwards; it is much harder to explain the *harm* caused by requiring me to donate some small bit of labor to assist someone in grave danger of *serious, bodily harm* than it is to explain why proletarians' self-owning freedom and autonomy is not merely *nominally* intact, but robust and realizable. The libertarian view claims that it is unjust to require a small sacrifice of freedom and

autonomy (compatible with continued pursuit of a good life) in the defense of another's life and limb, but defends as just, the plight of workers who must accept whatever limited contract a capitalist draws up. In conjunction with my view that property rights to the products of one's labor and to natural resources are not inherently 'full, liberal property rights,' my analysis yields a political structure that demands more robust individual protections, and allows for the development of social initiatives and programs aimed at social flourishing, rather than leaving the attainment of social goods wholly to market mechanisms.

The Future of the Self-Ownership Thesis

To a large extent, my analysis has focused on what the self-ownership thesis *does not* generate or justify: full, liberal property rights to the products of one's labor, ownership of one's offspring, or unilateral rights to privatize natural resources. Nor does the self-ownership thesis defend a person's so-called 'right' to inaction in the face of another's desperate need for assistance in avoiding serious harm. In this way, my dissertation has focused on removing real problems for the self-ownership thesis as it has been analyzed and employed by libertarians. The plausibility and real strength of the self-ownership thesis is that it serves as such a strong and readily analyzable basis for basic rights and freedoms, which a proper moral consideration of persons in a liberal society demands. I do not claim that the self-ownership thesis is the *only* possible framework within which one might generate these sorts of rights and freedoms, but the claims and language of the self-ownership thesis do a remarkably good job at clearly and unambiguously generating and articulating these rights and freedoms. Moreover, I believe that rejecting the self-ownership thesis makes individuals more vulnerable to violations of rights commonly claimed by many in the liberal political tradition.

As a self-owner, I have overriding freedom and autonomy to direct my life and labor in a meaningful way in pursuit of a good life. The self-ownership thesis grants this freedom, in equal measure, to *all* individuals in society. It is insufficient for a theory of political right to simply operate with the good of individuals in mind. Paternalistic theories,¹¹⁸ which take the good of society and its members as their primary goal, do so at the risk of denying members of society the very thing that I believe allows for a good life – the freedom to choose one’s life path, activities, associations, etc. Overriding freedom and autonomy to direct one’s life and labor is an *essential part* of leading a good life, and any theory that denies this freedom whether universally or in part, will fail to attain its goals (if in fact it has among its goals the good for its members). In such a state, one simply plays their role in another person’s analysis, theory or dictum about what constitutes a good life. The question of precisely what constitutes a good life has generated intractable disagreement amongst philosophers. This disagreement alone should suffice to show the importance of at least freeing individuals to seek an answer to this question on their own. Moreover, the self-ownership thesis grants individuals who reject the prima-facie value of freedom and autonomy to pursue a good life, the right to choose a life whose primary values are *not* individual freedom and autonomy, but instead, some other set of values.

My self-ownership guarantees me clear and robust protection against avoidable incursions against my body. Denying self-ownership undermines the basis for these protections. If I do not *own* myself, then it is unclear that I have protection from bodily incursion. It is possible that my body and its parts be sometimes invaded and usurped for the benefit of others (and maybe even for my own benefit, but against my will); I do not *own* them, so perhaps they

¹¹⁸ Such as utilitarianism, insofar as the good is aggregated and individuals’ ‘rights’ are only upheld insofar as they tend to contribute to this good. Totalitarian states and theocracies are also among theories that are paternalistic in nature. However, even social democracies can become paternalistic, either in their support of particular economic systems or social policies that ignore and/or fail to protect individual freedom and autonomy to pursue a good life.

are free to be used for others. I do not suggest that denying self-ownership makes individuals' bodies the playthings of others in society. However, it is non inconceivable to suggest that even if all individuals were treated *fairly* regarding their bodies, a society that rejected self-ownership might allow the distribution of spare body parts¹¹⁹ in lotteries. Robust protection for individuals' bodies is essential for advancing a whole host of individual rights, some of which are widely embraced, others that are only now beginning to be recognized and defended in western society. A woman's right to her body – a body she *owns* and over which she has overriding control – are readily and clearly defended and protected by my analysis of the self-ownership thesis. Though other theories assert a woman's rights to her body, I believe that none do so as clearly and explicitly as the self-ownership thesis. Theorists who wish to defend this right should be gladdened by a clear and coherent defense of the self-ownership thesis. The self-ownership also clearly informs other pressing issues in bioethics. Advances in human genetics have raised a whole host of questions regarding the *ownership* of genetic information. The self-ownership thesis protects individuals from unfettered access to their own genetic code. Even if processes developed for accessing certain genes can be privatized, this privatization ought not unreasonably restrict access to potentially life-saving medical procedures such as genetic testing.

Sexual freedom too is made unambiguously robust by the self-ownership thesis. Individuals have the rights to engage in mutually consensual behavior, insofar as no one else has an overriding say in how they use their bodies in pursuit of a good life. This is especially important, insofar as much of the anti-homosexual movement is couched in explicitly *religious* and therefore non-universalizable arguments against homosexual activity as a legitimate part of pursuing a good life.

¹¹⁹ Eyes, kidneys, parts of one's liver or intestines, or a person's blood, bone marrow or skin are among the sorts of 'spare' parts that can be taken from individuals while still allowing them to retain basic bodily functioning.

The *language of ownership* in particular is a great asset. It clearly guarantees that no one else can stake a property claim to me. This is important for several reasons. Even though western society commonly perceives itself as well removed from the cultural legacy of human slavery,¹²⁰ it is important nonetheless to reinforce the immorality and injustice of such practices. If I do not already own myself, then it remains an open question, in a society that employs the language of property and ownership, whether or not I might be bought and owned by others, in virtue of any number of perceived justifications, whether they be my different culture, language, religion, political affiliation, race, relative material poverty, or my sex. Viewing all persons as *self-owners* accomplishes this handily. Also important to a just society is the rejection of sexist family relations wherein women are viewed either explicitly or implicitly as the property of their husbands (or the other way around, though I know of no recent historical examples of this). Carole Pateman¹²¹ reminds us that as recently as the 1980s, conjugal rights were still in effect that made it an open question whether or not a woman could actually be raped by her husband, implying that wives were the sexual property of their husbands. Asserting all persons' self-ownership rights avoids the possibility of social institutions legitimately placing participants in subordinate relationships regarding their bodies, their lives and their freedom and autonomy. If women own themselves, their husbands cannot own them or exercise control over their bodies.

By defending all persons' freedom to pursue a good life, the self-ownership thesis also prohibits wage and debt slavery, and other forms of supposedly voluntary 'contracts' that effectively render one of the parties in a state of unfreedom with regard to pursuit of a good life. For example, predatory lending, among other practices aimed at keeping borrowers in debt to lenders are precisely the sorts of economic practices I believe the self-ownership thesis prevents

¹²⁰ I do not claim that this perception is accurate, or that it entails a denial of the ongoing historical consequences of human slavery.

¹²¹ Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), 7.

would-be lenders from engaging in. This, unlike some economic policies, is *not* paternalistic. It is not a restriction on what individuals can do to pursue their own good, but rather, a limitation on what others, who have the necessary means to pursue their own good, can do to exploit those who find themselves in an apparently desperate situation. The fact that individuals choose to take a predatory loan, or fall into such a scheme inadvertently (e.g. through credit card debt and so forth) despite the apparent irrationality of such a decision shows that similar to the motivation of the poor to purchase lottery tickets, such individuals are inherently vulnerable vis-à-vis their deliberative capacities in virtue of their economic situation. Policies that prohibit taking advantage of the economically vulnerable are no more paternalistic than laws that protect the physically weak from the physically strong, or laws that protect individuals against rape when they are unable to consent.

I do not claim that the above analysis of individual rights and social good is impossible to achieve on theories that deny the self-ownership thesis, or place little emphasis on the intuition that we own ourselves. However, I believe that denial or marginalization of individual self-ownership makes such arguments more difficult to make, and might even jeopardize the realization of some of these rights and freedoms. Moreover, my analysis of the self-ownership thesis *retains* and *enhances* protections on individual freedom and autonomy while shedding the more questionable and even morally repugnant consequences of libertarian analyses such as Nozick's. I eschew the radical individualism of libertarianism without denying liberal moral intuitions about the weight that individual freedom, autonomy and bodily protection carry in a just state, and which the self-ownership thesis clearly generates and protects. I believe this new analysis of self-ownership allows for a more egalitarian society in which all persons can flourish. The self-ownership thesis, as I have analyzed it, protects freedom in more robust ways than any

forgoing libertarian analysis, while leaving room for the attainment of pragmatic social goals.

My analysis protects individual rights without doing so at the cost of meaningful and realizable social equality. This achievement dissolves the apparently intractable dilemma of freedom versus equality posed by libertarians and their critics.

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