

**Property and the Power to Say No:
A Freedom-Based Argument for Basic Income**

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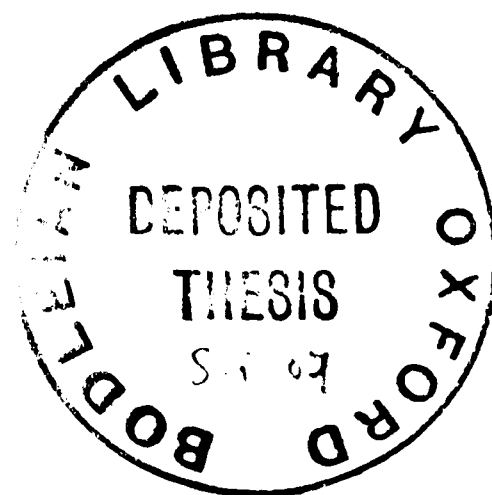
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Abstract

This thesis examines the relationship between property and freedom in both the continuous sense of the word and the status sense of the word. Status freedom concerns the distinction between a free person and an unfree person. Continuous freedom concerns the continuum of liberties that make a person more or less free, whether they affect her status as a free person or not. Part One defines a status freedom as effective control self-ownership—the effective power to have and to refuse active cooperation with other willing people. It argues why this concept of freedom is important, situates it among the recent theories of freedom, and examines the conditions necessary to secure it. It concludes that a free person requires at least some unconditional access to property and that basic income is one way to secure that access. Part Two considers what kind of property-rights regime provides the greatest freedom in the continuous sense. It argues that Lockean and right-libertarian property theories fail to establish that full liberal ownership rights are consistent with the greatest freedom for all. It concludes that a payment from property owners to the propertyless in the form of an unconditional basic income from is necessary to establish property rights consistently with maximal equal freedom. Part Three examines whether social duties can take precedence over the commitment to effective control self-ownership and basic income proposed in the first two sections.

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Introduction

Chapter 1: The Big Casino

All descriptions of artwork, architecture, documents, and secret rituals in this novel are accurate.

-Dan Brown¹

Suppose you're driving on a desolate highway through the semiarid plateau of eastern Oregon on the way home to your birthplace in Winnemucca, Nevada, at the end of your first year studying political philosophy at the University of Northern British Columbia. You daydream about the day you finish your studies, homestead some land near your hometown, raise sheep, eat mutton, and write papers that no one will ever read.

Just over the Nevada State Line, you see a sign on the side of the road reading "Welcome to the Small Casino," which stands alone in the middle of an otherwise empty landscape. While you were gone, your home state legalized gambling, and someone built the Small Casino here to serve gamblers who drive down from population centers such as Bend, Oregon and Walla Walla, Washington. You stop in for a free shrimp cocktail.

Except for the fact that everyone chose to be here, nearly every principle of distributive justice you learned in your studies is violated inside the Small Casino. At every table the odds are stacked in favor of the House, and otherwise, the games do a poor job of rewarding desert, merit, productivity, hard work, diligence, skill, welfare, or need. Some of the games, to some extent, reward some desirable characteristics, but all of the games incorporate a large element of luck and reward for undesirable characteristics, and on

¹ Brown (2003). *The Da Vinci Code*. London: Bantam.

average, at every table, the House always wins. Although people choose to be here, not everything can be dismissed as “option luck,” because they make their decisions against a background of brute luck inequalities. Gamblers with advantaged backgrounds tend to do better than others, and deep pockets have a perpetual advantage. Disadvantaged people don’t have the option to gamble in places that compensate for their disadvantages—but that is not the responsibility of the House. People choose to come to this place that accentuates their disadvantages, when they could easily have stayed home.

You meet a poker player who seems to have no spirit of cooperative enterprise. He tells you, “I play hard. I play vicious. And I play to win. I didn’t twist anybody’s arm to make them come here. The game isn’t always fair and I make use of any advantage I can to get ahead. The only thing that’s fair about it is that everybody knew the nature of the game before they chose to play. There’s nothing but available open land for hundreds of miles in every direction that people can use any way they want. If they don’t want to play our way, they don’t have to step into the Small Casino.”

Although you may be able think of reasons to change background conditions, you can’t think of any legitimate justification to force people like him to stop doing what they want. Somehow, you happen to know that everyone here is a rational, fully informed adult who chose to come here to do what they are doing, knowing the risks and the inequities. They were free to stay away, but they chose to come to the Small Casino. You finish your free shrimp cocktail and leave without placing any bets—consuming something for nothing in violation of the norm of reciprocity. Like everyone else who doesn’t like the Small Casino, you are free to ignore it.

Every year as you return home from your studies, you see that the Small Casino has grown larger; more and more of the land and resources of Nevada are taken up and used for a purpose you want no part of.

Twenty years later, you complete your study of political philosophy, come of age, and head home to Winnemucca. When you reach the Nevada State Line, you pass under an arch over the road with a sign across it reading “Welcome to the Big Casino.” It straddles the highway, and covers the hills in all directions. From border to border, everything is owned by the Big Casino. You have nowhere to sleep and nothing to eat without the permission of the Big Casino. You were mistaken about the Homestead Act; you should have known it was repealed decades before you were born. Long before you came of age, all the land and resources of your homeland were made the property of someone else. You can’t just take natural resources and use them for your own purposes. If you want resources you have to buy them from the House—or one of the many small houses that make up the Big Casino.

The Big Casino is willing to let you buy in, to buy your own piece of whatever you want. All you have to do is to work for the Big Casino. If you provide some service to one of the owners, you can make it in their interest to part with some of their property, and you can get your own property to use as you will. Service to the people who control property is the only legal means of survival.

So, you walk into one of the small houses that make up the Big Casino and ask for a job. They say, “If you want to work here, play roulette with the other applicants to help us determine whether we should hire you and in what capacity. After that you’ll play poker with the other employees to see how soon you will advance.” Another Small Casino asks you to try your hand at craps, black jack, or the slot-machines. Wherever you go, you’re in

the Big Casino. A casino element is involved in whatever you do. To some extent the Big Casino rewards merit, skill, desert, talent, hard work, and diligence in ways that are relevant to the performance of necessary functions. To another extent it rewards luck or the skills that are not directly relevant to productivity but only to the casino games associated with attaining a position. It serves the needy only in proportion to how much the needy succeed in serving it. The Big Casino creates risk and unfairness, and it creates inequality in terms of who is subject to the risks created by the casino system. And always, the odds are stacked in favor of the House.

Depending on the combination of your luck, your relevant abilities (such as your skills at doing your job), your irrelevant abilities (such as your skill at the casino games involved with your job), you might strike it rich and attain your independence in as little as one day; or it could take a lifetime. If you succeed, you have succeeded in the Big Casino. You have become one of the shareholders of the Big Casino. You have become part of the House. But you don't want to play that game.

The owner of every Small Casino denies responsibility for the whole, because they are only responsible for one part, "If you don't want to play, you can go somewhere else." But there is no more open land; wherever you go, you're still inside the Big Casino. You go to the main office of the Big Casino Association, but it takes no responsibility for the way individual casinos behave. The Big Casino is merely a loose association of Small Casinos; it simply enforces rules of ownership and exchange, and leaves the owners of property to do with it as they will. No one takes any responsibility for the system as a whole.

The available work is varied and there is a choice of employers. You can work for any one of them, but no matter which one you work for, you work in the Big Casino, and you serve the goals of the House on its terms. You don't have to work directly for the Big

Casino. You can work for other gamblers, but there is still a casino element in finding this work, and their ability to reward you is proportional to how well they have succeeded in the Big Casino. Two people who have never served the Big Casino either directly or indirectly have no property to reward each other with. Until you have earned your independence, by satisfying the Big Casino's terms, you are its subject; your need for the means of survival forces you to accept its work, serve its goals, at its pay, under its conditions. The laws of your state make you a nominally free person, but the circumstances of the ownership everywhere within its borders put you into involuntary servitude.

Although you can ignore any one of its constituent parts, you cannot ignore the whole. You are not bound to any one master, but you are effectively born in servitude. No one would feel injured if you choose to starve on the street. But you will not choose to starve; you will give them your labor as surely as if you were in their debt. The freedom to serve or die is the same kind of freedom experienced by serfs and slaves. You have a choice of masters. But you are born to serve someone from the class of property owners. You are not free. You neither agreed to the laws and circumstances that brought about this situation, nor are you allowed to reject the role ascribed to you by it. You did not choose to create it, and you cannot choose to ignore it. The Big Casino neither derives from nor preserves your freedom.

Eventually, a band of philosopher-legislators starts a nonviolent, democratic revolution. They take over the Big Casino and rebuild it as the Big Cooperative in which everyone works together for democratically chosen goals. They intend to build a democratic Big Cooperative that distributes its products fairly according to what they believe to be an ethically sound theory of social justice, which might be equality of income, the difference

principle, welfare egalitarianism, resource egalitarianism, meritocracy, or one of many others.

Unfortunately, the philosopher-legislators find that the gambling tables are infused into every part of the economy and that removing them is costly. Although removing some casino elements is purely beneficial, removing many of the casino elements either decreases the economy's ability to turn effort into welfare or decreases freedom (by decreasing the choice of goals and actions available to individuals). They find also that no possible structure eliminates the casino element. Even a system of strict egalitarianism, in which everyone does identical work for identical rewards, implies good luck for those who like that work for those rewards and bad luck for those who don't. But even these ideals are imperfectly achievable. The philosopher-legislators have to make tradeoffs. The Big Cooperative prohibits many of these things people did in the Big Casino, to the resentment of everyone who liked to do those things, but no matter what they do, the Big Cooperative is still, in part, the Big Casino.

Not only do the philosopher-legislators have to decide what goals to pursue; they have to decide which of the casino elements to trade off for the purpose of achieving their conception of fairness. To some extent the Big Cooperative still rewards luck and irrelevant characteristics, and still stacks the deck in favor of the House. However, the philosopher-legislators decide that the Big Casino is good enough and fair enough for everyone who does not want to starve to be obliged to work for it. No one has access to the property they need to maintain their existence unless and until they work for the Big Cooperative. Depending on its rules and your luck you might eventually be able to earn your independence in several years; or it could take a lifetime.

Unfortunately, you are one of the people who don't fit in. Perhaps the Big Cooperative is meritocratic, and you're an egalitarian. Perhaps it's the other way around. Whatever the goals of the cooperative project, they are not your goals. You don't like the work, the terms, the rewards, your place in the hierarchy, or the lack thereof. If you can't command better terms, you'd like to be left alone. You go before the Cooperative Complaints Review Board. They rule that you were right to object to participation in the old Big Casino but that you no longer have a legitimate complaint. The New Improved Big Cooperative Casino is reasonably fair and shares its fruits with you. They discuss whether you have an adequate range of good options for service and they decide that you do. Therefore, they say you are obliged to serve the Big Cooperative as part of a duty to reciprocate to others. If you don't want to serve, the Big Cooperative Casino will leave you alone, but without food and without a place to sleep at night. If you want to be left alone with enough property to build a decent life for yourself, you have to fulfill their understanding of your obligation to serve their goals first.

You cannot ignore the Big Cooperative any more than you could ignore the Big Casino. You are not free. You are not free to pursue your own goals until you have made it in the interest of the Big Cooperative to part with enough property to let you be independent. The laws of the state say that you are a free person, but the circumstances of ownership in the state effectively put you into involuntary servitude. The philosopher-legislators represent the public at large and act on what they believe to be fair principles; but they are still the group that controls production, and you are still bound to their service. You neither agreed to the circumstances that brought about this situation, nor are you allowed to decline the role ascribed to you in this situation. You are still unfree. Your position neither follows from nor preserves your freedom.

The revolution failed to make you free because it failed to deal with the root cause of your unfreedom in the Big Casino—propertylessness. Individuals without property are obliged to work for the group that controls property before they can achieve even their bare subsistence, much less a decent life. Whether that group is a capitalist class or a democratic majority, you are its subject. As long as there are people without enough property to achieve independence, there will be people who are unfree.

1. The problem

Obviously, the story of the Big Casino is meant to illustrate that there is a casino element to the modern, industrial economy, but the deeper point of the story illustrates the problem that this thesis explores: The system of property ownership in a modern capitalist or welfare capitalist economy neither follows from nor preserves liberty. The criticism is aimed principally at the so-called “libertarian” (more accurately, “right-libertarian”) system of ownership, but I will argue that many proposed alternatives suffer the same critical lack of freedom.

Propertylessness is a persistent characteristic in most economies in the world today. Many people enter economic interaction with no property of their own, nothing with which to produce their own goods to satisfy their own needs unless and until they serve someone who controls property.² Propertylessness causes poverty and destitution. It forces people to accept forms of service that they would otherwise reject. Sometimes it forces people into

² Spencer (1872). *Social Statics*. New York: D. Appleton and Company; Steiner (1994). *An Essay on Rights*. Oxford: Blackwell; Waldron (1993). "Homelessness and the Issue of Freedom." *Liberal Rights*. Cambridge: Cambridge University Press: 309-38.

both service and poverty. Laws that force individuals to enter economic interaction in a state of propertylessness threaten their status as a free person.

A. The casino element

Luck, nepotism, irrelevant requirements, and odds stacked in favor of people with past advantages are part of the way of the world. We simply don't have the information or the moral certainty to eliminate unfairness. Unless everyone with a dollar to spend spends it according to some universally agreeable principle of fairness (or people are prohibited from spending privately), and everyone has the perfect knowledge necessary to make decisions consistently with that theory of fairness, the casino element will remain. Better rules might reduce that casino element, but there is very little hope that society can eliminate the casino element to everyone's satisfaction. The economy is not fair and neither you nor I know how to make it fair.

A lot of energy has been expended on the difficult, if not impossible, task of devising the principles and institutions of a just economic system without the casino element. Many right-libertarians have responded by asking: what's wrong with capitalist acts among consenting adults?³ What is so bad about the voluntary exchange of goods and services among free people? If consenting adults want to play a game with a casino element, entailing inequalities and disadvantages, who has the right to stop them? The libertarian ideal (that freedom as the absence of force is important for everyone) is a good one, but capitalism, as offered by right-libertarians, is not a system of unforced voluntary exchange of goods among free people. Although it is true that voluntary exchange will

³ Nozick (1974). *Anarchy, State, and Utopia*. New York: Basic Books, Inc., p. 163.

cause some inequality, a central argument of this thesis is that the extreme poverty, destitution, and unfreedom of the lower class are not the results of voluntary trading of property but of how property is defined and defended by states. An important argument of this thesis is that the most troubling inequalities are not the result of voluntary trade among consenting adults, and can be solved without interfering with people's ability to trade as they wish.

An egalitarian attempt to eliminate the casino element but to retain forced participation misidentifies the problem in the modern economy. There is nothing wrong with people choosing to play games with rules that do not meet a certain standard of fairness. There is something wrong when people are forced to play games that are not of their own choosing. The problem is not that trade produces the wrong pattern of outcomes, but that the poor do not enter trade with the same freedom as the rich, and that their starting point is determined by force, not by their voluntary agreement.

B. Failure to preserve freedom

Part One of this thesis argues that a right-libertarian ownership system and the one in place in modern industrial economies fail to preserve every individual's status as a free person, because *those without property must work for those with property to attain even their basic survival*, much less a decent life. This situation exists because ownership is pervasive. The name, "the Big Casino," borrows the technical term, "big," from economic theory (and has nothing to do with BIG as in the basic income guarantee). A "small" firm is too small to have more than negligible control over the market. A "big" or "large" firm is large enough to have market power (or "price-setting" power). The group that constitutes

the owners of property is not only big but pervasive. Even if every one of them is small, the group that owns property owns everything that can be held privately. When a person without property appears on the scene, everything with any material value is already owned either by the state or by an identifiable group of private individuals. She has nothing of her own. This fact might not give any one member of the ownership group any great personal power, but it gives the propertyless a distinct lack of power over their own lives. The propertyless worker does not face the choice of whether or not to interact with the class that controls property. Her freedom is limited to the choice of which one to serve.

Once one class has no choice but to serve members of another class, the freedom to choose which member to serve is not sufficient to remove an aristocratic, or more accurately, feudal, element to that relationship. By feudal, I mean an economy in which one group of people is born in servitude (whether to a person, to a class, or even to a democratic collective). When people take out loans, they promise to work for someone else's benefit. As long as they enter debt voluntarily and have the ability to declare bankruptcy rather than face debtors' prison, debt does not have to threaten their status as free people. But a person born without individual access to property is as unfree as if she were born in debt without means of default. The feudal period was characterized by rigid class distinctions and with subjects born owing specific duties to specific members of the aristocracy. Today, people are not subject to any one master. The aristocracy is somewhat fluid. Many working people accumulate property throughout their lives. But one critically important element of feudalism remains: some people are born in servitude to another group of people, because the laws of the state have put someone else's property rights between them and the resources they need to survive.

One can imagine a person who becomes rich by selling services only to the poor—but not without making desirable exchanges with people who control property. Imagine Joe is a destitute person who finds a rag in a trash can. He uses it to shine the shoes of minimum-wage workers. His customers are the poorest working people in society who live paycheck-to-paycheck and accumulate no wealth throughout their lives. Gradually, Joe builds a successful business with hundreds of employees and still serves the same clientele. Does this example refute the argument that people must benefit people with property to become propertied? Not at all, for three reasons. First, there is no way one person or a group of destitute people can support themselves. If Joe's clientele were destitute, rather than minimum-wage workers, no amount of service to them would have won Joe any property. Joe's ability to support himself by serving minimum-wage workers is indirectly dependent on their ability to serve people with more property in exchange for their wages. Second, the opportunities to become rich by serving others are proportional to how much property they have. The more property a person has, the more ability they have to reward people who want to serve them. It is often argued that this is why private companies direct huge amounts of investment toward producing goods and services for the already well off and very little investment (or thought) toward getting basic nutrition to the world's destitute. Third, in a market economy, it is possible to become propertied without benefiting the poor and the destitute, and it is impossible to become propertied without benefiting someone who is propertied. Once Joe earns money, from whom will he buy a house, land, and anything he wants? He must go to the propertied class. Even if his customers are made up entirely of impoverished workers, he cannot attain property without trading with—and therefore benefiting—the propertied class. Any resources he might want to use are owned by someone else, and he must find some way to make it in their interest to

part with those resources voluntarily. Joe is prevented from working for himself; his ability to benefit himself by working for others is proportional to how much property they have, and he will have to buy everything he uses from people with property. In this way, the propertied class is entitled to benefit from the fruits of his labor, as much as if he was born in debt to them. Legally, we are not all born dependent on each other; one specific group of us is born dependent on another group of us.

C. Failure to follow from freedom

Part Two of this thesis argues that the system of property rights in a right-libertarian economy or a market economy with strong property rights does not follow from voluntary interaction between free people. I characterize “the argument from liberty”⁴ for right-libertarianism as being that a right-libertarian property-rights regime provides the most extensive (or the most important) equal freedom to all individuals. Few right-libertarians who employ the argument from liberty will argue with the factual claim that the propertyless must go to those with property to earn their daily bread. They will argue that this situation does not constitute an obligation to serve or that it does not make the propertyless unfree. Most importantly, they will argue that the situation I described as a form of feudalism is the necessary result of voluntary exchanges of goods and services in a society that preserves freedom as noninterference.

The *exchange* of property rights does not threaten freedom. The threat to freedom discussed in this thesis derives not from who owns property but from how property rights

⁴ I take the phrase “the argument from liberty” from Kagan (1994). “The Argument From Liberty.” *In Harm's Way: Essays in Honor of Joel Feinberg*. Coleman and Buchanan, Eds. Cambridge: Cambridge University Press: 16-41, but I characterize the argument differently.

are defined and assigned. The central criticism of right-libertarianism in this thesis is that right-libertarians apply their theory of voluntary agreement and noninterference only in the context of a very specific preexisting property-rights regime that does not itself follow from any voluntary agreement and constitutes substantial interference with the propertyless.

Right-libertarians argue either that laws defining property rights in natural resources follow from noninterference or that there is some natural right to appropriate very strong rights to property. I will argue that liberty has a limited role on the distribution of property in a right-libertarian economy or in today's economy. People who accumulate large amounts of property do get it by making voluntary trades with the people who held it previously, but the *exchange* of property is not the main cause of poverty or destitution. Few people begin with large amounts of property and squander it; many people enter economic interaction with no property unless and until they serve people with property. The propertylessness of individuals was caused by the decision to define permanent and transmissible rights of ownership, not by the subsequent trading of those rights. The decision to privatize natural resources under terms of permanent, transferable ownership was made long ago with no input from the people who were made propertyless by that decision. The poor did not choose to be born into a world where someone else owns everything, and they are not made free by a legal system that puts them in servitude to the people who own the resources they need for their survival.

Freedom is not a constraint on the "re"-distribution proposed in this work, but the motivation for it. The problem is not the voluntary aspects of a market economy, but the involuntary aspects of capitalism as currently constituted. Right-libertarians apply the principle of voluntary agreement selectively—to the *exchange* of property rights but not to the *assignment* of property rights. Right-libertarianism involves liberty only in the sense

that once its prescribed definition of property rights is in place, it makes minimum interference with people who act within their prescribed property-rights regime. But I will argue that full property rights as currently understood, or as understood by right-libertarians, conflict with the most extensive equal liberty for all, and that the argument from liberty therefore fails. It is not a problem of an unjust end-state distribution of property, but a problem of how property is defined. Because strong property rights often conflict with liberty and are not derived from a voluntary agreement, right-libertarianism has no claim to be a liberty-based ethical theory. The goal of this thesis is to build up a theory of property rights that follows from and supports freedom for everyone—not for a few.

Although the argument from liberty is potentially the most appealing argument for right-libertarianism, it is not the only argument for it. The argument from efficiency is that a market economy is more productive and this provides a reason to choose an economy based on private property over any other economy. I will not address the argument from efficiency, because I believe that although it is to some extent true, it is incapable of justifying extreme inequality and destitution without reference to some other value.

Another argument for right-libertarianism is the argument from natural rights. That is, people are endowed with certain natural rights such as formal self-ownership and the right to appropriate property. Although my argument focuses on the argument from liberty, it applies also to the argument from natural rights. I will argue that right-libertarianism fails to provide equal rights in any meaningful sense. The rights that it gives to owners of property come at the expense of denying the very same rights to the propertyless. The system of rights it portrays naturally privileges one group at the expense of others, putting it in the same category as the natural right of kings or the natural right of slave owners.

D. A proposed solution

The thesis concludes that the greatest (or most important) equal freedom for all requires a property-rights regime with more limited property rights than the traditional understanding of full individual property rights: The payment of a tax (such as a wealth tax) for the purpose of compensation for the propertyless is not interference with property “rights” but is part of the purchase price of property. The justification of private property is the payment of taxes for distribution to those who have less. Under this theory, compensation must be sufficient to preserve the free status of propertyless individuals and to make it in their interest to support the greater shares of property held by others. This policy will increase the freedom as noninterference of the propertyless, and eliminate the problem of people whose status as a free individual is threatened by economic deprivation, without interfering with those who want to obtain large shares of property any more than a seller interferes with a buyer when she demands payment.

Much of this thesis is an argument for a “basic income guarantee” (BIG): a government-provided, unconditional assurance that everyone has a regular cash income large enough to meet their basic needs. The income is “unconditional” in the sense that it is not limited by the imposition of requirements that individuals perform (or show willingness to perform) some kind of work or service in exchange for it. The income is “regular” in the sense of it being paid daily, weekly, monthly, or often enough to ensure stability. There is an enormous literature on the basic income guarantee, and therefore it is not necessary to go into it in detail here.⁵

⁵ Atkinson (1995). *Public Economics in Action: The Basic Income/Flat Tax Proposal*. Oxford: Clarendon Press; Cunliffe, Erreygers and Van Trier (2003). "Basic Income: Pedigree and Problems." *Real Libertarianism Assessed*. New York: Palgrave MacMillan: 15-28; Garfinkel, Huang and Naidich (2005). "The Effects of a Basic Income Guarantee on Poverty and Income Distribution." *Redesigning Distribution: Basic Income and Stakeholder Grants as Cornerstones of a More Egalitarian Capitalism*. Ackerman, Alstott and Van Parijs, Eds. New York: Verso: 143-174; Lewis and Widerquist (2006). "An Efficiency Argument for the

The basic income guarantee has two principle forms, “basic income” and “negative income tax.” Basic income gives a small income to everyone, regardless of their private income. Negative income tax gives income only to those whose private incomes fall below a certain level. The important connection between the two is that they both unconditionally assure that no one’s income falls below some minimum level—both are BIG. Most of the recent literature on the topic (especially in political theory) focuses on basic income, and so I will sometimes focus on basic income as well, but the arguments presented here do not substantially deal with the issue of whether BIG should take one form or the other.

Part One argues for a basic income not less than enough to provide for each individual’s basic needs. Part Two argues for a basic income not less than enough to make it in the interest of individuals at the bottom of the distribution of property to accept the property rights of others. The thesis concludes that basic income should be set at the larger of the two levels.

E. Alternative solutions

Egalitarian and left-libertarian philosophers have made similar complaints about right-libertarian capitalism, but this thesis argues that their solutions often fail to pay adequate attention to the critically important issue of status freedom. Egalitarians have tended to focus on the unfairness of right-libertarian capitalism rather than on the Pressman and Lewis (2005). *The Ethics and Economics of the Basic Income Guarantee*. Aldershot, United Kingdom: Ashgate.

unfreedom it imposes on the propertyless. Many egalitarians have argued for mandatory participation in an economy that meets some standard of fairness. But this solution leaves individuals with the same unfreedom as the propertyless under right-libertarian capitalism—compelled to serve goals chosen by someone else at whatever terms they demand, whether or not she voluntarily agrees. Without the power to refuse participation, an individual has only as much control over the terms and goals she works under as those in control allow. An egalitarian project that leaves the propertyless in this state of unfreedom has left them to the mercy of the magnanimity of the powerful. The possibility that the powerful will be a democratic coalition does not relieve the propertyless of their powerless status.

Left-libertarian solutions might provide status freedom under some circumstances, but most left-libertarians have been relatively unconcerned with that issue. The main concern of many left-libertarians is the equalization of income from natural resources. Whether doing so will secure a sufficient amount of resources to meet the needs of the disadvantaged is an empirical question, but their primary concern is the equalization of resource income, not attaining any standard of need. The status-freedom-based argument in Part One implies that meeting a standard of need must be a primary concern of a free society. This concern takes precedence over a left-libertarian resource-tax/human-effort-tax dichotomy. The continuous-freedom-based argument in Part Two implies that the government has a great deal of price-setting power, so that there is no simple dichotomy between resource taxes and taxes on human effort.

2. The goal and plan of this work

This thesis examines the relationship between property and freedom in both the continuous and the status sense of the word. The status sense of freedom is the distinction between a free and unfree person. The continuous sense of freedom is the continuum of liberties a person has; each liberty a person has makes her freer, whether or not it reaches a cutoff point between their status as a free or an unfree person. Part One examines what kind of property-rights regime best secures each individual's status as a free person. Part Two examines what kind of property-rights regime secures the greatest freedom in the continuous sense. Part Three examines whether social duties can take precedence over a commitment to freedom proposed in the first two sections.

Chapter 2 argues that the most important freedom to protect is each individual's status as a free person, and that status freedom is best understood as effective control self-ownership (ECSO or ECSO freedom). That is, a free person has the effective power to make or refuse active cooperative arrangements with other willing people. This freedom requires that all people have the passive duty to stay out of each other's way to the extent necessary to respect their status as free people. A simplified version of this definition is freedom as the power to say no. ECSO freedom can be understood as basic autonomy, and it is motivated by the widely accepted premise that people, as moral agents, must not be subject to the control of others and that their interaction should be voluntary. The most important feature of this definition is its focus the *effective power* to control one's interactions.

Chapter 3 presents several arguments for making the protection of ECSO freedom a centrally important goal of government. First, healthy adults have the ability to secure it for themselves as long as no one interferes with their use of a sufficient amount of resources. The question, then, is not what gives an individual the right to it, but what gives others the right to take it away. Second, effective control self-ownership has an important inherent value because it is necessary for individuals to maintain personal integrity. Third, ECSO freedom has an important instrumental value in giving the individual the power to protect many of her other liberties and to protect herself from exploitation by others.

Chapter 4 discusses ECSO freedom in relation to other modern theories of freedom. It argues that Nozick's version of right-libertarian freedom⁶ applies equal freedom only after a property rights system is in place that greatly interferes with the core freedom of the propertyless. It compares Berlin's negative freedom⁷ to Raz's theory of status freedom as autonomy,⁸ arguing that ECSO freedom combines the most important parts of both conceptions of freedom. It considers Pettit's idea of nondomination as a form of status freedom,⁹ arguing that it is too narrow to fully capture the status a person needs to be free. Finally, the chapter discusses the role of freedom in the liberal and democratic egalitarian theories of social justice of John Rawls, Elizabeth Anderson, and Stuart White,¹⁰ concluding that egalitarianism without concern for ECSO freedom is incomplete.

Chapter 5 discusses the functionings a person needs to have ECSO freedom, arguing that an individual requires unconditional access to enough resources to secure her

⁶ Nozick *Anarchy, State, and Utopia*.

⁷ Berlin (1969). *Four Essays on Liberty*. Oxford: Oxford University Press.

⁸ Raz (1986). *The Morality of Freedom*. Oxford: Clarendon Press.

⁹ Pettit (1997). *Republicanism: A Theory of Freedom and Government*. Oxford: Clarendon Press.

¹⁰ Anderson (1999). "What is the Point of Equality?" *Ethics* 109 (2): 287-337; Rawls (1972). *A Theory of Justice*. Oxford: Oxford University Press; Rawls (2001). *Justice as Fairness: A Restatement*. Cambridge, MA: Harvard University Press; White (2003). *The Civic Minimum*. Oxford: Oxford University Press; White (2003). "Fair Reciprocity and Basic Income." *Real Libertarianism Assessed*. New York: Palgrave MacMillan: 136-160.

basic needs and desires. This argument implies that some amount of personal property is essential to ensure that everyone can maintain their status as a free person. Although it is not possible or necessary to isolate a precise cutoff point between enough and not enough, there is an important distinction between the two that can be identified. The chapter draws on theories of need by Nussbaum and Glover¹¹ and Doyle and Gough¹² for a theory of how much an individual needs. To be genuinely voluntary, agreements must be made against a background in which everyone has secure access to the property necessary to secure their ECSO freedom. Not everyone has this status today, and therefore interaction is not characterized by the agreements of free individuals.

Part Two considers the problem of property rights and continuous freedom. Chapter 6 frames the problems and shows how the establishment of one person's property right imposes duties on others. The rest of the chapters in this part of the thesis consider whether there is justification for the unilateral appropriation of property or whether the imposition of the duties that accompany property require consent or compensation.

Chapter 7 discusses and interprets the Lockean argument for the unilateral appropriation of property, which argues that the first person to mix their labor with land may appropriate it as a full (or nearly full) owner. The chapter considers some of the varied interpretations of Locke and attempts to distill the logically strongest argument for unilateral appropriation that can be derived from Locke's insights. It argues that the most powerful argument for unilateral appropriation of property is an extra-strong interpretation of the proviso that the appropriator must leave enough and as good for others. The extra-

strong proviso can only hold in a state of abundance, and the rest of Locke's theory is an attempt to extend unilateral appropriation to cases without abundance.

Chapter 8 assesses the Lockean argument for unilateral appropriation, asking whether it can be consistent with the greatest equal freedom for all. It finds that Lockean unilateral appropriation theory is incapable of extending property rights to a world in which natural resources are scarce without seriously reducing the freedom of the propertyless. None of the criteria the Lockean theory proposes to justify appropriation relieve the propertyless from the duties that other people's property rights impose on them or show that those duties are necessary to extend some liberty to all.

Chapter 9 addresses modern right-libertarian reformulations of unilateral appropriation theory put forward Nozick, Narveson, and others. It argues that these theories fail to establish that a right to unilateral appropriation follows from freedom as noninterference, or that it can be explained as a specific application of a general right that is extended to everyone. Therefore, society without "redistributive" taxation cannot be consistent with the most extensive equal freedom for all. Furthermore, theories justifying an unlimited right of appropriation are incapable of limiting government to democracy and are as consistent with monarchy as they are with so-called libertarian limited government. It concludes that resources are initially unowned and there is nothing an individual can do unilaterally that will make them owned.

Chapter 10 argues for a property-rights regime based on general agreement. The first-best solution—the establishment of property rights by unanimous agreement—cannot be expected to be attainable. The second-best solution—the establishment of property rights with minimum interference—is attainable. Society can approximate a general agreement by making property rights subject to a wide social agreement and by minimizing

the negative impact of that agreement on those who are not a party to it (including dissenters and future generations). The justification of private property rights requires the payment of taxes to compensate everyone else for the duties property ownership imposes on them. The compensation is paid in the form of an unconditional basic income. Essentially, the state takes a role as the ultimate landlord (or steward of natural resources) renting out property to people in proportion to their willingness to pay “redistributive”¹³ taxation; thereby making it in the interest of everyone else to support that property right. Therefore, taxes on property are not “interference with property rights,” but just as much a part of the purchase price of property as the payment to the previous owner. Such a policy is a significant change in property-rights regime, but the difference is not so much a difference in *to whom* property is assigned but in *how* property is defined.

Part Three of the thesis replies to two possible objections to the theory presented in Parts One and Two.

Chapter 11 considers a specific version of the argument for a social duty: Gijs van Donselaar’s attempt to ground the exploitation objection in the principles of “the abuse of rights” (receiving income from an asset one has no interest in working with) and “Donselaarian exploitation” (A exploits B if A is better off and B worse off than either of them would have been in the other’s absence).¹⁴ The chapter argues that these concepts do not imply (either separately or together) a solid case against unconditional transfers. Under other reasonable assumptions, unconditional transfers do not involve the abuse of rights or

¹³ Because taxation is part of the initial justification of property, the word “redistributive” is a bit of a misnomer, but I use it for lack of a better term.

¹⁴ Van Donselaar (1997). *The Benefit of Another's Pains: Parasitism, Scarcity, Basic Income*. Amsterdam: University of Amsterdam, Department of Philosophy; Van Donselaar (2003). "The Stake and Exploitation." *The Ethics of Stakeholding*. New York: Palgrave MacMillan: 94-113.

exploitation and van Donselaar's proposed solution of work requirements can actually cause the abuse and exploitation they were proposed to prevent.

Chapter 12 discusses whether a duty to contribute to a social product could override the grounding for a basic income proposed in the earlier chapters. It argues that a mandatory duty should only be imposed on one party by another when it is necessary (in an emergency), when it is applied equally, and when it makes minimum interference with those on whom it is imposed. Most plans for a mandatory work obligation do not meet that standard. It is possible that overpopulation could constitute an emergency making a mandatory work obligation necessary, but the chapter argues that if society is in an emergency that requires impinging on individuals' status as free people, whatever group imposes the duty also has a strong responsibility to find a way out of the emergency as soon as possible. Arguments for a permanent, mandatory work obligation necessarily assume a permanent emergency without an obligation to end the emergency.

Chapter 13 concludes that the freest society in terms of the maximal equal protection of the most important freedoms is secured by a system of private property based on a general agreement under which property is taxed to support a basic income at least large enough to secure ECSO freedom for all and larger if necessary to establish a general agreement for property rights in external assets.

Part One:

Freedom

Chapter 2: Effective Control Self-Ownership:

Freedom as the Power to Say No

This whole program is voluntary...The men don't have to...if they don't want to. But we need you to starve them to death if they don't.

-“Milo Minderbinder,” Joseph Heller, *Catch-22*¹⁵

If some person or some group can put you in the position in which you have no choice but to do their bidding, you are not free.

The word freedom is commonly used in two different ways: in a continuous sense and in a status sense. In the continuous sense, one can say the reduction in the speed-limit reduces Bob's freedom even though he is still a free person. In the status sense, one can say the release from prison gives Bob his freedom even though there are still things he is not free to do, such as exceeding the speed-limit. Both kinds of freedom are important, but the status sense of freedom has received relatively less attention in political philosophy literature, despite its having more normative importance.¹⁶ Freedom in the status sense is the distinction between the status of a free individual (“freedom”) and the lack of that status (“unfreedom”), or the difference between a person who controls her own life and a person who lacks that control, such as a prisoner, a slave, or a subject of a totalitarian state.

¹⁵ Heller (1996). *Catch-22*. New York: Simon & Schuster.

¹⁶ Status freedom has been a concern of Anderson "What is the Point of Equality?"; Pettit *Republicanism: A Theory of Freedom and Government*; Raz *The Morality of Freedom*; Skinner (1998). *Liberty Before Liberalism*. Cambridge: Cambridge University Press, but it has been largely absent from works as diverse as Nozick *Anarchy, State, and Utopia*; Rawls *A Theory of Justice*; Rawls *Justice as Fairness: A Restatement*; Rawls (2005). *Political Liberalism*. New York: Columbia University Press; Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*.

By a free person, I do not mean a person with absolute or complete freedom. Complete freedom means that the things a person can do are limited only by nature and by her abilities. By that definition only a person in a population of one, an omnipotent dictator, or a person with severe physical limitations on her abilities could be completely free. Therefore, complete freedom is not desirable in abstract or worth striving for in practice. But a person does not have to have complete freedom before we can call her a fully free person as opposed to a prisoner or a slave. I will argue is that some individuals' status freedom is threatened in modern industrial societies. I will also argue that protecting status freedom should be a central role of government, and that it is more important than protecting or maximizing freedom in the continuous sense.

This chapter discusses the definition of a free person that will be used throughout this dissertation: *Effective Control Self-Ownership (ECSO freedom) is the power to accept or to refuse active cooperation with other willing people*. This definition, elaborated in Part One, derives from two ideas: that freedom entails control of one's own life, and that freedom is a social concept. Being forced to stay home because of illness is not unfreedom, but being forced to stay home because of some else's violent threat is unfreedom. Putting those two aspects together, freedom is the ability to control one's own life while having only voluntary interactions with others. This status is not all there is to freedom, liberty,¹⁷ or social justice, but I argue that it is a critically important concern.

There are two kinds of social interaction. First, passive cooperation is the interaction needed just to keep out of each other's way (such as the designation of private spaces, public spaces, and rules for using public spaces). Second, active cooperation is the greater level of interaction needed to work together to achieve some goal. Mandatory rules

¹⁷ This thesis uses liberty and freedom synonymously.

for the first type of interaction are unavoidable. Part Two of this thesis argues that the best we can do is minimize the interference of such rules in individuals' lives. But as long as these rules are not one-sided and are truly designed only to keep everyone out of each other's way, they need not interfere with a person's control of her own life or her ability to pursue her own projects consistently with others pursuing theirs. These rules can be written in a way that does not threaten people's status as free individuals.

Forced interaction of the second type does threaten individual ECSO freedom. Although passively keeping out of each other's way is a form of cooperation, it is active cooperation that I mean when I discuss social or individual cooperation. It is critical for a free person to be able to refuse active cooperation. ECSO freedom is freedom from being subjected to an alien sense of value; it is violated when people are subjected against their will to terms or goals of social or individual cooperation that they oppose. An effective right of refusal is central to securing freedom from this kind of subjection, which is why, for short, I call it "freedom as the power to say no" or "freedom as independence." "Independence" is the control over enough resources to live a decent life on one's own without being forced by necessity to cooperate with anyone else. Rules that secure ECSO freedom for everyone will force individuals to refrain from using resources designated for others, but as long as it leaves individuals with enough resources to secure their independence, this kind of force does not threaten their ECSO freedom. In other words, a passive duty to respect the ECSO freedom of others, or not to do anything that interferes with other people's access to enough resources to secure their independence, does not conflict with an individual having the status of a free person.

Not everyone is capable of being independent, and in some material circumstances no one is capable of being independent, but I am putting aside those issues for now and

dealing with people who are capable of independence if they have access to sufficient resources. This assumption is very different from the starting point of many egalitarian philosophers,¹⁸ who tacitly or explicitly assume that all people are dependent on a system of social cooperation—apparently for *all* of their consumption—so that a person either contributes to the system of social cooperation or benefits at its expense. They ignore the possibility that a person or a group could simply remain outside of the system—neither contributing to it nor taking substantial benefit from it. Chapter 12 considers the possibility that people cannot be put outside a system of social cooperation, but for now I assume that it is possible—at least to a great extent—for individuals or groups of people to exist outside a system of social cooperation (producing most if not all of what they consume with access to sufficient resources). Ideally, people who could produce on their own enter social cooperation to increase what they are capable of producing and consuming. Many or most people today do not have access to the resources that they would need to live by their own efforts, because the legal system assigns ownership of those resources to others, forcing individuals to work for the system of social cooperation even if they would prefer not to. Part Two addresses the assignment of property rights to natural resources and to the things we make out of them; for now, it is only important to recognize that the major reason most individuals cannot living by their own efforts¹⁹ is because the legal system assigns ownership of resources to someone else.

This chapter makes three basic points:

1. A person is free if her interactions with others are both voluntary and unforced:

“Effective control self-ownership.”

¹⁸ See the discussions of Rawls, Anderson, White, and Pettit in Chapter 3.

¹⁹ Or in small groups.

2. Interaction is unforced when all parties are able to decline interaction: ECSO freedom entails the power to say no.
3. The power to say no requires an acceptable default alternative to cooperation; the power to refuse requires independence.

Stressing freedom as independence is not the same as stressing independence as an ideal. Social interaction is not bad. Personally, I think it is very good; it is something healthy people seek, and people who don't want it should seek a good therapist. I stress freedom as independence because *the potential benefit of social interaction is no excuse for one group, even a majority group, to impose its idea of desirable terms and goals of interaction on people who have no choice but to accept.*

1. The core of self-ownership

You and I are free to meet for a cup of coffee, to talk about any subject, or to pursue any form of cooperation we desire. If I make it impossible for you to reach me, you lack a liberty or a freedom, but you are still a free person. If I have the power (say, by physical intimidation) to force you to meet me or to cooperate with me to pursue goals chosen only by me, you are not a free person, at least not for the time I hold this power over you. The power to refuse other people's goals or terms is an essential component of being a free person.

If a third person has the power to force you and me not to meet, our freedom is also compromised. Both the freedom to interact voluntarily and the freedom to refuse

involuntary interactions are important, but there are two reasons to focus on the freedom to refuse. First, the freedom to interact is largely assured by widely acknowledged rights such as the right to free speech, association, and access to public spaces. To the extent that the freedom to interact has an economic component, it is that there are public spaces to facilitate interaction. But (this chapter and the following chapters argue) the power to say no requires a stronger economic component, some level of personal independence. Second, the freedom to interact is not very likely to produce just agreements without the freedom to refuse. Except in extreme circumstances, the benefits of cooperation are subjective, and only mutual, unforced agreement can make cooperation the right thing to do.

Consider two examples. First, when is it right for A and B to have sex? Certainly mutual unforced agreement is a prerequisite for this activity to be free from injustice. I am not talking here about a population crisis that might be used to justify a duty to procreate,²⁰ but the pure joy of the act. It is difficult to imagine any circumstances under which the benefit of A and B having sex are so great and so fairly distributed between A and B that B, or a democratic community, has the right to force A to have sex with B against her will.

Second, suppose A is an artisan who produces woodcarvings and sells them on market days. B is a potential consumer. The carvings have a subjective, aesthetic value. When is it right for A and B to exchange money for a woodcarving? Can any price be so fair and just that A must sell even if she does not want to? Can any price be so fair and just that B must buy even if she doesn't want to? In both of these two examples, the free, unforced agreement of both the parties encompasses the questions of whether interaction is desirable or just in either its terms or its goals.

²⁰ Even under a severe population crisis, I am skeptical that there could be any justification for forced sex.

The economy or the system of social cooperation is or should be a voluntary “cooperative venture for mutual benefit.”²¹ Suppose A, B, and C live in autarky, producing by their own efforts.²² They cooperate if and when it is mutually agreeable. Suppose it is possible for them to create a more complex economy such as capitalism, welfare capitalism, or market socialism. As long as it is a project for mutual gain, what does it mean for this interaction to be fair, right, or just either in its terms or in its goals, other than that it was freely chosen by free individuals? What does it mean for it to be beneficial for an individual except that she chooses it over the alternatives? Are there any circumstances under which one group can propose terms and goals for mutual cooperation so fair, right, or just that they can force any individuals to participate, even if they would rather be left outside? I will argue that in such cases, the case for obligatory participation is similar to an artisan saying the price is so fair that she may force the buyer to buy or A saying that sex is so desirable that B should be forced to participate.

There are many things that people can be forced to do or to refrain from doing that do not threaten their ability to choose who to interact with and what goals to pursue in those interactions. If, in order to meet for coffee, you and I must obey transportation laws, respect other people’s private spaces, and meet in a place that has been inspected for safety, we have been forced to do things and to refrain from doing things without the power to refuse. We have been denied certain liberties (hopefully for some good reason²³), but we have not been made unfree as long as the limits on our liberty do not threaten our ability to interact or to refuse interaction with other willing people. This is what I’m calling “effective control

²¹ Rawls *A Theory of Justice*, p. 4.

²² As in Nozick *Anarchy, State, and Utopia*, p. 184.

²³ Such as to protect other people’s freedom, to secure other freedoms of our own, or to achieve some other important goal that are worth a sacrifice of freedom.

self-ownership.” The addition of “control” narrows the well-known concept of self-ownership and “effective” broadens it.

Freedom is often equated with self-ownership, which does not imply that freedom means treating yourself like a commodity but that freedom means no one else can treat you like their commodity. That is, no one but you has the rights over you that an owner has over a piece of property. If others can buy and sell you, determine what you will do when and why, you are not free. According to Cohen:

[T]he thesis of self-ownership ... says that each person is the morally rightful owner of his own person and powers, and, *consequently*, that each is free (morally speaking) to use those powers as he wishes, provided that he does not deploy them aggressively against others.²⁴

Right-libertarians have taken self-ownership so far as to mean that freedom requires no taxation, because the right to receive income from a good is one of the entailments of ownership. Nozick for example argues that taxation is on par with forced labor.²⁵

Christman argues that to equate freedom with *all* the aspects of ownership over-defines freedom. He uses Honoré’s discussion of the incidents of ownership to divide the concept of self-ownership into its various incidents, each of which requires a *separate* justification. According to Honoré, full liberal ownership of property constitutes eleven incidents: the right to possess, the right to use, the right to manage, the right to the income the property generates, the right to capital, the right to security, transmissibility, the absence of term, the duty to prevent harm, liability to execution, residuary character.²⁶ According to

²⁴ Cohen (1995). *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge University Press, p. 67.

²⁵ Nozick *Anarchy, State, and Utopia*, pp. 169-172.

²⁶ Honoré (1987). *Making Law Bind*. Oxford: Oxford University Press, pp. 166-175. These incidents are discussed and explained in greater detail in Chapter 6.

Christman, the essence of ownership consists of six of these incidents (the rights to possess, use, manage, capital, transfer, and gain income from property), the others being derivative of the first six or necessary to maintaining a system of ownership. Of these essential components, four of them (the rights to use, possess, manage, and capital) are control rights. "The central idea of these rights is that the owner maintains primary say over what is to be done with the thing insofar as this affects only the owner."²⁷ The other two essential incidents of ownership (the rights to transfer, and gain income from property) are the right to gain additional benefit from property by trading it with others.

Christman argues that a defense of the broad concept of self-ownership based on the intuitive appeal of control self-ownership does not suffice to justify income self-ownership. Control self-ownership is an independent right that is not determined by what other people do, and can be justified by appeals to liberty, autonomy, and self-determination. Income rights, however, are distribution sensitive. The right to income is not the right to X dollars for a trade, but the right to bargain with others for some undetermined amount of income. These rights depend on the pattern of trade, the willingness of others to trade, and the rules under which trade takes place, and, "preventing me from reaping increased benefits from trade does not necessarily prevent me from controlling my life."²⁸ For example, Christman holds that the respect for individual self-control, which makes us reject a rule forcing a sighted person to donate one of her eyes to a blind person, does not also make us reject a rule preventing a sighted person from selling one of her eyes to the highest-bidding blind person.²⁹

²⁷ Christman (1991). "Self-Ownership, Equality, and the Structure of Property Rights." *Political Theory* 19 (1): 28-46, p. 29.

²⁸ Ibid , p. 39.

²⁹ Ibid , p. 40.

There is something about control self-ownership that makes it more central to human freedom than income self-ownership. Feinberg carries over a notion of freedom to the status sense of the word, “Calling individual self-direction freedom may be to emphasize the over-riding importance of one particular kind of desire or option, namely, to decide for oneself what one shall do.”³⁰ That is not to say that income self-ownership is trivial—only that control self-ownership is more important.

I use the term control self-ownership specifically for the control of interactions with other people, because freedom is best understood as a social relation, not a relationship between a person and nature. A person who is prevented by illness from leaving her bed is unable to do many things, but she is not unfree as people usually use the word. A person who is prevented by guards from leaving her house because she is under house arrest might be able to do more things than the bed-ridden person, but as people usually use the word, the prisoner is unfree and the disabled person is not.

The nominal right of control self-ownership is well established in the laws of most democracies. Military conscription is one substantial exception to it, but most other exceptions, such as jury duty or mandatory voting are arguably trivial. People do not generally face a legal authority that makes them the subject of someone else or orders them specifically to participate in some activity at the threat of imprisonment or other legal sanctions. However, effective power to exercise the nominal right of self-ownership is not well protected,³¹ and the nominal right of control self-ownership is not very valuable without the effective power to exercise it. To say that a person has no effective power to refuse something does not entail that she is under an imminent threat of death. Cohen argues, “When a person is forced to do something, he has no *reasonable* or *acceptable*

³⁰ Feinberg (1979). *Social Philosophy*. Englewood Cliffs, NJ: Prentice-Hall, p. 16.

³¹ Cohen *Self-Ownership, Freedom, and Equality*, p. 34.

alternative. He need not have no alternative at all”.³² White interprets Cohen’s understanding of force:

(A)n alternative is unacceptable if it is ‘thoroughly bad’ in an absolute sense; if, say, it would push the individual below the threshold of core well-being or deprive her of minimally decent opportunity for ethical agency.³³

If a person is faced with an alternative that is “thoroughly bad in an absolute sense” and this forces her to do something she would not otherwise do, her consent is not genuine, but tainted by duress. Her cooperation is forced.

Extreme economic deprivation could constitute an unreasonable or unacceptable alternative sufficient to make social cooperation involuntary. With this point in mind, Otsuka defines “robust self-ownership:”

(I)n addition to having the libertarian right itself, one also has rights over enough worldly resources to ensure that one will not be forced by necessity to come to the assistance of others in a manner involving the sacrifice of one’s life, limb, or labour.³⁴

Otsuka’s robust self-ownership includes all of the libertarian rights of self-ownership and the effective power to exercise those rights.

Freedom as “effective control self-ownership” is a combination of Christman’s narrowing with Otsuka’s broadening of self-ownership; ECSO freedom is the effective power to exercise the rights entailed by control self-ownership including the rights to use,

³² Cohen (1988). *History, Labor, and Freedom: Themes from Marx*. Oxford: Clarendon Press, p. 245, emphasis original.

³³ White *The Civic Minimum*, p. 46.

³⁴ Otsuka (2003). *Libertarianism without Inequality*. Oxford: Oxford University Press, p. 32.

possess, and manage oneself.³⁵ ECSO freedom is the power not to be forced by necessity or by anything else to come to the assistance of others. To have ECSO freedom is to have the ability to control one's cooperation with other willing people and, therefore, to control the direction of one's life (insofar as it involves social interaction) and to control the goals one will pursue alone or with others. But it does not include the ability to force unwanted cooperation onto others.

I use the term "core liberties" for the freedoms necessary to secure effective control self-ownership and "secondary liberties" for all other freedoms. A society that is meaningfully committed to the value of freedom must give priority to core liberties.

Nominal control self-ownership is a prerequisite for effective control self-ownership, but it does not ensure ECSO freedom, and it can be valueless without ECSO freedom. Suppose you visit Gilligan's Island. Mr. Howell shows you around, and says, "On the west side of the river, slavery is allowed. There is Mrs. Howell, and her slave Mary Ann, who does any work Mrs. Howell commands. She eats only what Mrs. Howell gives her. She sleeps in a cage at night. Mrs. Howell whips her if she disobeys, and if she is very disobedient, Mrs. Howell throws her into a hole until she is so hungry that she begs forgiveness. Mary Ann has no self-ownership. It's barbaric and we don't do that sort of thing on this side of the river. Now meet my servant Gilligan." You notice that Gilligan does any work Mr. Howell commands. He eats only what Mr. Howell gives him. He sleeps in a cage at night. Mr. Howell whips him if he disobeys, and if he is very disobedient, Mr.

³⁵ I am assuming that two persons both with the right to manage themselves can interact as they see fit, but not necessarily a right to legal enforcement of any contracts they might wish (such as one-sided contracts and selling oneself into slavery). See the discussion of self-alienation below. Effective Control self-ownership could entail some elements of the right to capital, however, such as the right to consume, destroy, or waste oneself, whatever that might mean.

Howell puts him in a hole until he is so hungry that he begs forgiveness. You ask, “In what way is Gilligan free?”

Mr. Howell replies, “He has full, nominal self-ownership. He merely lacks property. The hole is the only piece of public property on this side of the island. If he doesn’t like being in the hole, he must agree to my terms as property owner. All of our interactions are mutual agreements between people with full nominal self-ownership—and he’s completely free of taxation!”

Gilligan and Mary Ann’s situations are identical, which illustrates that nominal control self-ownership or even nominal full self-ownership has no value without at least some ECSO freedom. Mary Ann, the slave, has no legal right to refuse Mrs. Howell’s orders, and can be punished for doing so. Gilligan, the ostensibly free man, has the legal right to refuse Mr. Howell’s orders, but if he does, the laws of property in his society put him in a situation that is as thoroughly bad as Mary Ann’s situation. A society that protects nominal self-ownership without protecting ECSO freedom protects something of no value.

The humane treatment of slaves or effective slaves does not make them free persons. Suppose the island’s government passes a Fair Labor Standards Act prescribing humane treatment for Gilligan. The act prescribes how many hours per week people can work, how difficult or unpleasant the work may be, how much they must be fed, and so on. It also prescribes that Gilligan’s deprivation for refusing to cooperate must also be humane. Perhaps he cannot be put in a hole, but must be allowed to sleep by the side of a public street and that he may beg for food or eat from garbage cans. These laws improve his life, but these laws do not make him free. Freedom is about choice. Humane treatment is valuable, but it does not equal freedom. Gilligan’s service is still the result of force.

It is ineffective for Mr. Howell to defend his position by saying that any redistribution of property toward Gilligan will interfere with Mr. Howell's freedom. The establishment of Mr. Howell's property rights involves interference with Gilligan. Choosing assignment of property rights denying Gilligan's ECSO freedom not only gives the priority to Mr. Howell's secondary liberties over Gilligan's core liberties, but also privileges Mr. Howell at the expense of equal liberty.

It is equally ineffective to defend their actions by saying that these new laws ensure that wages are fair, and therefore, Gilligan is now morally obliged to serve. Freedom is about choice, and Gilligan has no choice. Mr. Howell's argument is the same as the buyer telling the artisan, "This wage is so fair that you must make a woodcarving for me, even if you don't want to," or the artisan saying, "This price is so fair that you must buy my woodcarving even if you don't want a woodcarving at this price." Free agreement is a constituent part of what makes cooperation fair or just or right or desirable.

A choice of masters does not make a servant into a free person. Suppose Mr. Howell clones himself several times over so that there are now ten Mr. Howells. Each one has property abutting the hole where Gilligan is allowed to be if he refuses to work. He can now choose to work for any one or any combination of the Howells, but he must work for one of them or go back to the hole. It just so happens that none of them are willing to treat him any better than the one Mr. Howell did in the original example. He cannot refuse; his choices are not meaningful; he is no less an effective slave than before. Because he has no acceptable alternative to the entire set of offers, his interaction with the others *as a whole* is forced even if he is not forced to accept any one of them. Even if competition increases the price of labor to the point at which he would accept the offer if he were free to refuse it, he is not free of the Howells. He must pursue their goals and their terms, *whether or not* those

terms and goals are acceptable to him. None of the Howells is personally the cause of Gilligan's situation, but his situation is the result of the interference of laws enforcing such broad property rights. The Howells might not be aware of Gilligan's predicament or its cause. Nevertheless, as a group, their domination of resources makes him unfree to refuse participation in their projects for their goals on their terms. If Gilligan has an income or direct control of a sufficient amount of resources to secure his independence, he is free and his choice to cooperate with others is genuinely unforced.

Of course, propertyless people in the industrialized world are not forced into holes, but they can be forced to live on the street, to beg for food, and to eat out of garbage cans. Although the life of a homeless person is not as bad as a slave tied to the whipping-post, it is in the range that is thoroughly bad in an absolute sense, and therefore, people who enter the labor market without property are not entering the labor market as free individuals. The choice of a propertyless person to accept employment is not a voluntary agreement of a free person. The wages and working conditions they accept and the goals they agree to pursue do not reflect the voluntary choices of free individuals.

2. No fine line between freedom and unfreedom

Although there is an important distinction between freedom and unfreedom, it is not possible to draw a fine line stating that a person with x number of liberties is fully free and a person with $(x - 1)$ liberties is unfree. There is a large grey area of restricted freedom in between the two. To insist on a fine line would employ the black and white fallacy. For

example, if you gradually add microscopic bits of black paint into a container of white paint, it gradually changes from white to off-white, light grey, grey, dark grey, light black, and finally a deep dark black. The human eye is incapable of perceiving the subtle change in shade created by any one microscopic addition of paint, and even with perfect perception, there is no nonarbitrary point where you can draw a line that shows exactly where white gives way to grey or grey to black. However, it is fallacious to argue: because there is no nonarbitrary line separating black from white, there is no important difference between black and white. The impossibility of drawing a nonarbitrary line separating shades of grey in no way implies that there is no important difference between black and white.

The same is true of the freedoms an individual requires to be a free person. For example, a person in prison serving a life sentence is unfree, and a person outside is free. But suppose Skipper could be sentenced to spend six days and 23 hours each week in prison for the rest of his life but to be released for one hour each week. Or Skipper could be sentenced to spend half the week in jail or half the week out, or one hour in jail and the rest of the week out of jail. These situations fall into the murkier area of restricted freedom. If Skipper is sentenced to spend one hour per week in prison, he is close to being a free person even though one of his core liberties is restricted.

One might be tempted think that there is a clear cutoff, at least at one end of that example, between a person who spends some time per year in jail and a person who spends no time in jail. If so, there is a grey area between severe unfreedom and restricted freedom, but a clear distinction between full freedom and restricted freedom. But even that distinction might not always be clear. Suppose Mary Ann lives in a country that requires her to spend 52 hours per year on jury duty (the same number of hours Skipper spends in

prison), and gives her no power to say no to that offer. For that time she does not control her life. But is she therefore an unfree person? She is not, as long as she believes that this restriction on her freedom is trivial. If black designates unfree and white free, there is a little touch of grey in her freedom, but it is very close to white.

Time is not the only important determinant of whether a liberty is core or secondary: whether and how much she objects to what she is asked to do is just as important. Suppose Ginger opposes the death penalty on moral grounds. Suppose the vast majority of people in her country believe that the death penalty is the morally correct way to punish criminals, and every citizen has a duty to spend one hour every five years performing the unpleasant but necessary job of executing criminals, and they enforce this rule with the death penalty. Most people think nothing of complying with this rule. The amount of time that Ginger is forced to put aside is trivial, but what she is asked to do during that time is not trivial to her, and therefore, her freedom is seriously restricted (even if it is a trivial restriction in the opinion of everyone else). The same would be true if laws forced her to spend a trivial amount of time performing a significant religious ritual, or anything else that she found objectionable beyond merely the lost time involved.

Not all kinds of freedoms affect a person's freedom in the status sense. Consider the prisoner again. Skipper is sentenced to spend all of his time in prison, but his sentence gives him access to a frivolous luxury, say video games or DVDs. That option makes him freer than without it, but it makes him no less a prisoner, and no more a free person. Even access to an infinite number of videogames (which gives him the freedom to do an infinite number of things he might want to do) would not make him a free person.

Similarly, suppose Mary Ann is a free person. An authority (sentencing her for a minor infraction) denies her access to some frivolous luxuries.³⁶ This action makes her less free, but it does not threaten her status as a free person as making her a part-time prisoner would. The continuum of freedoms is multidimensional and not all dimensions affect ECSO freedom. If black and white designate the status of freedom and unfreedom, some dimensions of the continuum of liberties are invisible. That does not mean that they are wholly unimportant, but they don't affect this distinction.

Remember that ECSO freedom is the power to refuse active cooperation in the projects of others, and it brings with it the responsibility to respect everyone else's ECSO freedom. It requires control over some minimum amount of worldly resources,³⁷ but ECSO freedom alone says nothing about anyone's claim to more than that amount of resources³⁸ or about tradeoffs between secondary liberties. ECSO freedom is not immunity to all involuntary interaction with others, or the power to say no to anything one might object to. Therefore, some prohibitions, such as a restriction on a person's ability to impose something on someone else, can reduce her freedom without reducing her core liberties or threatening her status as a free person.

For the most part, we will have to consider reductions of core liberties that do not make a person entirely unfree, but that do threaten her status as a free person and move her into the area of restricted freedom. If I am arguing that ECSO freedom requires an independent option that is not "thoroughly bad in an absolute sense," the question becomes: how bad does an alternative have to be before it becomes thoroughly bad? That question is the subject of Chapter 5. The same problem of drawing a fine distinction between black and

white exists when drawing a distinction between “acceptable or reasonable” and “thoroughly bad in an absolute sense.” There is an important difference between force and the absence of force, even though there is a large grey area of partial force in between them. If a person’s independent option is thoroughly bad, her social participation is forced, and she is unfree. If it is reasonable or acceptable, she has ECSO freedom. But there is a large grey area in between, where her freedom is restricted or threatened. The goal is not to find a nonarbitrary cutoff point (which is impossible) but to find an area in which an arbitrary cutoff point would lie safely in the light grey area away from any serious threat to (or restriction on) individuals’ ECSO freedom.

3. Moral Duty and Status Freedom

Although I am putting off a detailed discussion of active duties until Chapter 12, I will take a moment here to discuss whether an active moral duty restricts a person’s status as a free individual. By active duty, I mean a positive duty to participate in a project with someone else—a duty beyond merely respecting other people’s status as free individuals, staying out of their way, not initiating violence, etc. Without saying where moral duties come from and how they are justified, suppose that there is a moral duty and a person is ethically obliged to perform it whether or not she is willing to do so. For example, suppose a person has a moral obligation to save an infant from drowning. Forcing her to fulfill this duty restricts her status as a free person, even though it is for ethically justified reasons. For example, an infant begins to drown, and just then, by coincidence, Bob comes into existence as a fully formed adult. Bob is the only person who can save the infant. A

bystander, who is not physically able to save the child herself, and who has not the time or persuasive powers to explain the gravity of the situation to Bob, forces Bob at gunpoint to save the child. One second after he fulfills his obligation, by another coincidence, a tree falls on Bob and kills him. What role did freedom play in Bob's life? None: Bob's short life was morally valuable and well spent, but freedom played no part in it. He made no unforced choices; his life was entirely determined by some other moral value.

There are two ways to justify duties that restrict ECSO freedom. One is that a competing value (such as respect for life, fairness, or the obligation to help the needy) is more important than the restrictions that duty imposes on a person's status as free. Another is Kagan's argument that greater actual freedom might be achieved by holding people to some duties.³⁹ For example, suppose the jury system was the only thing capable of preventing the government from imposing arbitrary imprisonment. If so, the small restriction on persons' status freedom (a few days per year on jury duty) is necessary to prevent a larger restriction of persons' status freedom (arbitrary imprisonment). Military conscription, if justifiable, is justified on the grounds that this great sacrifice in individual freedom is necessary to support some other value of very great importance.⁴⁰ If conscription can be justified on these grounds, it is nevertheless a restriction on a person's core liberties. A soldier drafted on the day she reaches adulthood and ordered on a suicide mission is not a free person no matter how just the cause she dies for.

As long as mandatory duties are small in comparison to our freedoms, they put people only in the light grey area of barely restricted freedom, but they are restrictions on core freedoms. It may not be possible to have a society in which no one's core freedoms are restricted at all, but there is good reason to minimize restrictions on core freedoms.

³⁹ Kagan "The Argument From Liberty."

⁴⁰ The competing value could be securing freedom from an external threat.

4. Self alienation of ECSO freedom

A free person might want to alienate her status as a free person by, for example, selling herself into slavery. Chapter 10 discusses this issue in much more detail, but I will discuss it briefly here. It is one thing for a person to choose to do everything another person says, but that is not the alienation of ECSO freedom. It is merely the choice to exercise freedom for the benefit of another. To genuinely alienate freedom, a person must put herself in the situation in which she is no longer free to choose. That is, she must choose now to have someone else interfere with her ability to choose in the future, if she changes her mind. Some would argue that the refusal to enforce that contract is paternalistic. Mill appears to make an exception to his general prohibition against paternalism when he argues against selling oneself into slavery by saying, “It is not freedom to be allowed to alienate his freedom.”⁴¹ Gray defends Mill on this point, saying that Mill’s anti-paternalism applies only to coercive action, and no coercion is involved in the government’s refusal to enforce a slavery contract.⁴²

This argument is sound and seems to be what Mill had in mind when saying that such contracts “would be null and void,”⁴³ but we can go farther to say that the refusal to enforce slavery contracts has nothing to do with paternalism but with a consistent application of the protection of core freedom from interference. A slavery contract is not in the same category as a law against smoking designed to prevent a person from harming

⁴¹ Mill (1965). *The Essential Works of John Stuart Mill*. New York: Bantam Books, p. 348.

⁴² Gray (1983). *Mill on Liberty: A Defense*. London: Routledge & Kegan Paul, p. 93.

⁴³ Mill *The Essential Works of John Stuart Mill*, p. 348.

herself. The future harm from smoking is a natural effect of smoking. Contracts have no natural effects; they only authorize the use of force. When the government considers whether to use that force, the choice is not between freedom and paternalism but between two freedoms. The choice for the government is which freedom is more important to protect: the freedom to make a binding contract now, or the freedom to get out of that contract later. Which is the government's greater responsibility? The answer depends on the importance of the liberties in question, not the order in which the actions occur. If the government's greater responsibility is to protect people's status as free individuals, it has a duty not to use its power to coerce people to fulfill an agreement alienating that status.

Chapter 3:

The Importance of Effective Control Self-Ownership

I'm working, but I'm not working for you.

-Mac McCaughan⁴⁴

Near the end of the U.S. Civil War, General Sherman met with a group of freed slaves in Savannah, Georgia. He informed them of their status under the Emancipation Proclamation and asked what they needed to secure their freedom.

The group chose at its spokesman Garrison Frazier, a Baptist minister who had purchased the liberty of his wife and himself in 1856. Asked what he understood by slavery, Frazier responded that it meant one person's "receiving by irresistible power the work of another man, and not by his consent." Freedom he defined as "placing us where we could reap the fruit of our own labor, and take care of ourselves;" the best way to accomplish this was "to have land, and turn it and till it by our own labor."⁴⁵

General Sherman ordered the distribution of land seized from former slave owners in the area to many of the freed slaves. Some of the freed slaves were later given surplus army mules and rumors spread that all freed slaves would receive 40 acres and a mule. By the end of the year, the Federal Government had decided to recognize the prewar property rights of former slave owners, and it forcibly evicted the former slaves from the land

⁴⁴ McCaughan, Ballance and Garrison (1990). "Slack Motherfucker." *Superchunk*. Matador.

⁴⁵ Foner and Brown (2005). *Forever Free: The Story of Emancipation and Reconstruction*. New York: Knopf.

Sherman had granted them.⁴⁶ Many of them found they had no other choice but to work for their former masters, taking the least desirable jobs and the lowest pay. At least a few of the descendents of slaves continue to serve the descendents of slave owners today.

These former slaves knew that nominal self-ownership was not true freedom. A free person may not be free from toil, but she must be free from forced service for others. Frazier's definition of slavery, "receiving by irresistible power the work of another man, and not by his consent," is very much the absence of the power to say no—the absence of ECSO freedom as defined in the preceding chapter. Frazier's solution (free land) is not the same as the solution I propose in Chapter 5 and Chapter 10 (basic income), but both policies are aimed at securing very much the same power in different contexts. That is, both give workers the effective power to refuse to serve another without consent. It is not enough to have a choice of masters; free people must be free from forced service to a person or a class.

Although this chapter argues that forced employment makes a person unfree, it does not argue that employment makes a person unfree. A person is not unfree because she works for someone else; she is unfree if she is forced to work for someone else. In the same way, sex is not unfreedom, but forced sex is unfreedom. Sex is good. Forced sex is bad. Work is good. Forced work is bad. I consider two ways to elicit social cooperation—voluntarily or forcibly.⁴⁷ People can ask for voluntary cooperation by appealing to selfish interests or by appealing to benevolent feelings such a sense of duty or solidarity. Both of these two kinds of appeals respect effective control self-ownership.

⁴⁷ I do not examine socialization, manipulation, pressure, or anything else in between force and voluntary agreement.

The goal of this chapter is to argue why status freedom, understood as effective control self-ownership, is important. Why should people have it? Why should government protect or promote it? It begins by clearing up two preliminary issues. It clarifies how ECSO freedom can be understood as freedom from a specific kind of interference, and why the argument tends to focus on the freedom from forced participation in the labor market. With these issues clarified, it discusses the importance of ECSO freedom in protecting individuals' integrity and vulnerability both in market relations and nonmarket relations.

1. ECSO freedom as negative freedom

One might argue that ECSO freedom is a positive freedom. As valuable as it may be for an individual to have that status, it is also valuable for individuals to be free from the interference the government would have to apply to make one person provide that status for another. This section replies that ECSO freedom can be understood in terms of negative freedom: able-bodied people have ECSO freedom as long as they are sufficiently free from interference. An able-bodied adult in a hospitable environment is capable of securing all or most of her economic needs herself, if no one interferes with her ability to use the resources she needs to do it. Most of the propertyless don't lack the ability to secure their own needs; they lack the right.⁴⁸ Most of the homeless are perfectly capable of finding or building shelter, finding a place to urinate, collecting firewood, hunting, fishing, planting, and gathering, but there is no place they can do these things without being interfered with by others. The primary impediment to persons having ECSO freedom is the property rights of

⁴⁸ Waldron (1993). *Liberal Rights*. Cambridge: Cambridge University Press.

others. A property right is simply the legal right to interfere with anyone else who might want to use a particular asset.

In preventing individuals from securing their own independence, this system of property rights actively takes away their ECSO freedom. Propertylessness not only interferes with their ability to support themselves; it forces them to do whatever people with property require of them to attain the goods they need for survival. The justification of property rights is the subject of Part Two, but for now it is only enough to recognize that property rights interfere with the ECSO freedom of the propertyless. As far as a distinction between positive and negative liberty can be drawn, ECSO freedom is as negative as any.

For the most part, the argument against ECSO freedom-based noninterference is backward: the question is not whether members of society have a duty to provide ECSO freedom, but what gives them the right to take it away? The implied reverse argument is: most people are capable of securing their own ECSO freedom if no one interferes with their ability to use a sufficient amount of resources. ECSO freedom is an important status for people to have. Therefore, the government must not assign rights to natural resources in any way that interferes with ECSO freedom, if it is possible to avoid it. Chapter 5 and Chapter 10 argue that it is possible to create a property rights system that does not interfere with anyone's ECSO freedom. But support for the second premise is the subject of this chapter: why is ECSO freedom so important that it must be a primary consideration for property rights theory?

2. The power to say no to what?

ECSO freedom includes the power to refuse any unwanted form of active cooperation. For the most part, people in western democracies are free from active participation in others' projects except when they are effectively forced by propertylessness. A propertyless person can legally attempt to attain what she needs to survive by performing a service for someone who has property (work), by marrying or remaining married to someone willing to support them, by receiving gifts, by begging, by scavenging in garbage, and by meeting conditions imposed by a charity or a government agency. All of these, except scavenging and receiving gifts, are forms of active cooperation with others, and ECSO protects the power to refuse to do any of them. The primary focus of the argument here concerns forced labor market participation,⁴⁹ both because work is a significant part of people's lives and because it is what the propertyless are expected to do. However, work is not always the most significant thing that propertylessness can force a person to do. Marriage to the wrong person can be more onerous. The arguments for the importance of ECSO freedom apply just as much to the freedom from any other conditions that could be put between the propertyless and the means of survival, and the end of the chapter returns to the issue of nonmarket interaction.

A. The focus on work

One reason to focus on employment is that it has a central importance in most people's lives. Labor can take up nearly half of a person's waking hours for most of her

⁴⁹ Or any kind of forced labor, work, employment, or service, whether in a market or not.

adult years, and concern with it fills up much more time. If people are unfree to decide when, how, and whether to join the labor market, they are unfree over such an enormous portion of their lives that their freedom to control their interactions in their off-hours can seem insignificant by comparison.

Another important reason for focusing on employment is that political philosophers are more likely to find it acceptable to force the propertyless to work than to force them to do other things such as marry or perform religious rituals. Many authors have argued for a social responsibility to work⁵⁰ and that the refusal of work asserts nothing more important than the freedom to be lazy, which cannot be an important component of freedom or anything of concern to society. Van Parijs's argument for sharing employment rents equally between those who do and do not wish to accept employment is vulnerable to this kind of criticism.⁵¹ It implies that society should be neutral between people who do and do not have a taste for living off the efforts of others.⁵² It is more difficult to apply that criticism to the protection of ECSO freedom. The argument is presumably: *one would have to work to live by her own efforts; social cooperation makes possible greater returns to work; therefore, it is reasonable to require everyone to make a social contribution by working.* Frazier and his group of freedman did not agree, but I think one of the problems with this argument is an ambiguity in the concept of work.

⁵⁰ Anderson "What is the Point of Equality?"; Elster (1986). "Comment on Van der Veen and Van Parijs." *Theory and Society* 15 (5): pp. 709-721; Rawls (1974). "Reply to Alexander Musgrave." *Quarterly Journal of Economics* 88; Rawls *Justice as Fairness: A Restatement*; Van Donselaar *The Benefit of Another's Pains: Parasitism, Scarcity, Basic Income*; Van Donselaar "The Stake and Exploitation."; White (1997). "Liberal Equality, Exploitation, and the Case for an Unconditional Basic Income." *Political Studies* 45 (2): 312-326; White *The Civic Minimum*; White "Fair Reciprocity and Basic Income."

⁵¹ Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*, p. 108.

⁵² For criticism of basic income along these lines see Van Donselaar *The Benefit of Another's Pains: Parasitism, Scarcity, Basic Income*; Van Donselaar "The Stake and Exploitation."; White *The Civic Minimum*.

The words “work” and “labor” are used to mean many different things.⁵³ Five senses of the word work are important here—“toil,” “employment,” “service,” “time spent making money,” and “social contribution.” Toil is to put forth effort to achieve a goal, such as chopping wood to build a fire. A person can toil individually, cooperatively, or subordinately. One connotation of toil is that the activity is unpleasant, or that it is not as pleasant as other uses of time, or at least that it takes some discipline to learn to appreciate toil.

Employment or service means to put forth effort toward someone else’s goals in exchange for pay. This definition of employment includes self-employment; shop-keepers and independent contractors work for the goals of their customers just as much as employees work for the goals of employers, even if the self-employed have more control over the terms. Sometimes I substitute the word service for employment to emphasize the wider context in which I use the concept. However, I use service in the more narrow of its two common uses, defining it as, *to be in service to* or *to be a servant of*. This excludes the mother who serves a child or the volunteer worker who serve the homeless, because these people give to others without being under their command. They serve in a sense, but not in the one I mean—the sense in which a servant serves a master. Employment in the sense of service captures most but not all time spent making money. It excludes independent traders who buy and sell financial assets without following anyone else’s direction.⁵⁴

Social contribution can be understood either as a productive effort that improves the welfare of others or as participation in a recognized joint project. The difference between

⁵³ Arendt (2000). “Work, Labor, Action.” *The Portable Hannah Arendt*. Baehr, Ed. London: Penguin: 167-181 draws a distinction between work and labor, demonstrating that labor is more connected with necessity, the cycle of life, and transience. But there is a great deal of overlap in the way we use the two terms, and both are used for many different things.

⁵⁴ Independent trades do provide a service in the sense that they do something that others value, but unlike a self-employed contractor they are not in service in the sense of taking direction from someone else.

the two depends on what society recognizes as a contribution and what actually constitutes a contribution. White defines social cooperation as a decent productive contribution to the community,⁵⁵ amounting to a basic work expectation, proportional to talent.⁵⁶ In practical proposals, social contribution is usually defined in one of three ways: (1) time spent legally making money or looking for work, (2) the first, plus time spent caring for children and the infirmed, and (3) the second, plus time spent doing an approved list of volunteer activities.⁵⁷

Work is an ambiguous word in political philosophy, because it is often unclear whether the author means employment, service, toil, time spent making money, social contribution, all five, or some combination. The argument for a mandatory work obligation is much weaker if toil and employment are distinct: *one would have to toil (work) to live by her own efforts; social cooperation makes possible greater returns to employment than toil; therefore, it is reasonable to require everyone to make a social contribution through employment (work)*. The first work means individual toil and the second work means service. Toil and service are very different things.

Suppose there is a group of people all living on separate nearby islands. Each person is capable of providing for herself; anyone who puts in a sufficient day's work will have plenty to consume in that evening. Under these conditions, no one is free from toil, but everyone has ECSO freedom, and no redistribution is necessary to protect it. Suppose the archipelago government instituted a basic income program: each person who chooses to

⁵⁵ White *The Civic Minimum*, p. 91.

⁵⁶ Ibid, pp. 113-118. Although White argues that caregiving can count as part of a social contribution, he does not believe that it reduces the paid work expectation to zero in most cases.

⁵⁷ The apparent view of the U.S. welfare system since the "reform" of 1996 is an example of the first definition. The apparent view before 1996 was an example of the second definition, although time spent caregiving was considered to be much less of a contribution than making money. Atkinson (1996). "The Case for a Participation Income." *Political Quarterly* 67: 67-70 is essentially an example of the third definition, although he does not count all time spent making money as a social contribution.

toil contributes a share of her product to a social pot that is distributed equally to everyone so that anyone who chooses not to toil can have that option. This policy would promote only a right to laziness or a right to live off the efforts of others. It introduces a basic income where none is necessary to promote ECSO freedom. The allegation that freedom from work is freedom to be lazy seems to rest on the idea that freedom from labor market participation is analogous to freedom from toil in this example.

Although individuals do not need the freedom from toil to achieve ECSO freedom in this context, neither do they have a responsibility to accept employment or service. Suppose someone proposes that the islanders combine their effort for some joint project designed to make them all better off. The individuals can evaluate the project's goal and the fairness and desirability of its terms and they can accept or reject it for any reason. If this project is meant to make the participants better off than they could be toiling individually,⁵⁸ the reasons one person might reject participation are not necessarily anyone else's business.

The person who performs individual toil is limited only by nature; she chooses where, when, and how she will work, and what goals to pursue; she enjoys all of the benefits of the total product of the activity with no need to consider the relative size of her contribution and the contribution of the resources she uses. Employment or service does not have any of these conditions. An employee must negotiate or accept others' determination of where, when, how she works, what goals to pursue during work hours, and what share of benefits she will receive out of the total product of the activity, bringing up equity issues of how it should be divided. All of these conditions are things to which an individual might object without objecting to toil or asserting laziness. If a person has economic independence, she does not need to give reasons for refusing to contribute, but once there

⁵⁸ See Chapter 12 for a discussion of a joint product based on a duty to contribute.

are propertyless people whose only method of supporting themselves is through a mandatory joint project, it is arguable that the validity of a person's refusal depends on the moral standings of the reason behind her refusal.

B. Reasons to reject social cooperation

Consider several reasons an individual might be unwilling to participate in a joint project by accepting employment. This list is not meant to be exhaustive.

1. **An objection to the goal or some of the goals of the joint project or of a specific task:** One person might believe that the market system is wrong, because she believes (even if heavily regulated) that it is too materialistic and detrimental to human wellbeing. Another person might believe that society is too concerned with environmentalism or with solidarity and not concerned enough with the flourishing of the strong.
2. **An unrecognized or unrewarded contribution:** Some individuals do things that benefit the community but go unrewarded; others might simply believe they benefit the community. Arguably many people who refuse to accept employment benefit the community in other ways such as by caring for children or volunteering.
3. **Insufficient pay (under-recognized or under-rewarded contributions):** Some people might have access to jobs they would be willing to do if the pay or the recognition was reasonable to them, but do not find the jobs offered to them to have sufficient rewards. Anyone might think they are underpaid, but only some (probably

mostly those near the bottom of the income distribution) object so strongly that they would rather live off a social minimum than accept employment.

4. **Difficult or unpleasant working conditions:** Laborers might object that their contributory obligation requires them to perform relatively difficult work, while others are (for whatever reason) allowed to satisfy their contributory obligation with more pleasant possibilities.
5. **Unfulfilling opportunities:** People whose only job opportunities are relatively boring, low-status, or unfulfilling might decide to refuse unless they are offered something better.
6. **Insufficient opportunities and unemployment:** Some people might want to contribute in a way that is well rewarded by the community, but for whatever reason can't get that job. Some people might have lost their job or be unable to find the kind of job they are looking for. Some might lack the required ability, and some might simply lack recognition of their ability.
7. **Improving skills:** Some people would like to drop out of participation temporarily to improve their skills or to begin a project that will allow them to reenter with more desirable opportunities. Society might recognize some improvement of skill as a contribution, and so for this to be considered a refusal to cooperate the individual must be improving her skills in some unapproved or unrecognized manner.
8. **Objection to hierarchy:** Some people might be perfectly willing to perform the functions they are offered but might object to the hierarchical structure in which those jobs are placed. But of course, it is always possible that someone might object that the structure of society is not hierarchical enough.

9. **Objection to the place offered to her in a hierarchy:** Some people might not be opposed to hierarchy in general, but object to the low position in the hierarchy that their functions place them.
10. **Objection to the standard of fairness of the system (including the role of luck, discrimination, nepotism, social advantage, etc.):** Any system with different roles for people and imperfect ability to give everyone every opportunity they deserve will run into somebody with a legitimate complaint about bad luck. Discrimination and social disadvantage are not simply bad luck, but could inspire a similar unwillingness to participate. There might also be people who accept only unfairness in their favor, such as racists who are not willing to cooperate in any project that includes other races. Society might try to root out these things, but there may be irresolvable disagreement about what is fair.
11. **Objection to the required the level of effort:** A person might believe that the effort demanded of her is too large, or that no one else works hard enough, or that her extra efforts are not rewarded sufficiently.
12. **Grievance:** Someone might refuse social cooperation because she believes that she or a member of her family had been wrongly punished or wrongly deprived of property or privileges.
13. **Gaming the system:** Some individuals might believe they benefit from the system and might feel they, therefore, have a duty to contribute, but willingly take advantage of the system to get the benefits without fulfilling the duties.
14. **Weakness of will:** Some people might be much better off in the long run if they worked for society's rewards, but lack the self-discipline to do it.

15. **Mental disorder:** Some people might appear lazy, gaming, or weak-willed who actually suffer from depression or some other mental disorder that inhibits their ability to interact with others.

16. **Laziness:** Laziness is in the eye of the beholder. When does a legitimate objection to insufficient pay or any of the terms offered become simple laziness? Possibly the term “lazy” is too vague, and doesn’t add much to insufficient pay, weakness of will, gaming the system, and mental disorder.

These reasons to refuse fall into four broad categories: the goals of the project, the fairness of the system, the desirability of the terms, and the mental state of the objector. By “terms” I mean (relative and absolute) pay, position, and working conditions. However, none of the sixteen reasons fall neatly into any one of the three broad categories. For example, it is hard to tell whether an objection to terms (reason 10) is an objection to the fairness or to the desirability of those terms (reason 3). Bob decides the wage is too low; he might think it is unfairly low or legitimate but undesirable. Conversely, he could think the wage is unfair, but still be willing to accept it. Weakness of will and gaming the system might be overcome by more acceptable pay and working conditions or vice versa. Each of the reasons for refusal might be overcome by some level of pay. Even people with moral objections to the fairness or the goals of the system might be persuaded by some level of pay to participate notwithstanding their objections, at least if one accepts the postulate “everyone has a price.”

Most of these objections are potentially legitimate, ethically justifiable reasons to refuse social interaction under the right circumstances. Even gaming the system could be justified if the system was sufficiently unfair, but of course the goal here is to make the

system fair. But it is important to note that gaming the system cannot exist if a person's pre-trade starting point is legitimate. If a person has a legitimate claim to what she possesses without participating in a joint project and owes no obligation to it, the refusal to participate is not gaming the system.

Once a government authority or a property-owning class assumes the power to impose a work requirement, it completely takes control of the goals, the fairness, and the desirability out of the individual's hands. An individual without the power to refuse is subject to the terms imposed on him. What are the reasons to leave the power to refuse in individual hands?

3. ECSO freedom, integrity and just interaction

Much of the value in the concept of effective control self-ownership is in the notion that it captures what it means to be a free person; when people speak of a free society of free people, they are, or should be, talking about people with ECSO freedom. A free person must have the effective power to make and refuse voluntary agreements with others. Why does ECSO freedom capture the concept of the status of freedom? What makes freedom conceived this way so valuable?

This section makes several arguments for this point. First, it points to the value of unforced interaction. Second, it compares the model of social cooperation as a system of mutual obligation to the model of it as mutually advantageous trade, and shows that the trade model has certain benefits for the vulnerable. Third, it argues that in most cases the unforced agreement of participants is a constituent part of what makes social interaction

just or worthwhile. Fourth, it considers the argument for the priority of ethical integrity as a reason to support ECSO freedom. Fifth, it applies the ethical integrity argument to the goals of a joint project. Sixth, it applies the ethical integrity argument to the fairness of the joint project. Finally, it considers the counter argument that if so many lack ECSO freedom, and if ECSO freedom is so important, why don't more people feel unfree?

A. The self-evident value of voluntary interaction

One reason for stressing ECSO freedom is that the absence of force is inherently or self-evidently good: people with equal moral worth should be free to interact with each other on a voluntary basis. No one should force another to do something against his will. Perhaps in times of dire emergency or great need our concern for freedom might be overcome by some other important value, but not for our day-to-day economic interactions in an economy that devotes most of its effort to producing luxuries with a subject value. Most of what we do is only worth doing because we choose to do it, but we create a situation in which many people have no power to refuse. As a society, we usually don't tolerate overt force to promote some group's vision of desirable cooperation, except for self-defense against criminals or in cases of extreme emergency. People are happier and cooperate better if they cooperate voluntarily. Certainly, a society built on the forced participation of every individual is less free and less respectful of the worth of individuals than a society built on the voluntary cooperation of everyone. Most of this is not controversial; the important element is the recognition that denying a person any access to resources until she performs service the group that controls property is a very strong level of force.

Although it is reasonable to say that there is some benefit to ensuring that cooperation is voluntary, the self-evident appeal of voluntary interaction is not uncontroversial in the realm of social cooperation. One popular belief is that work is a duty that people will shirk if given an opportunity to refuse, to their own detriment and to the detriment of society as a whole, or that work is good for people, but people (or *some* people) are unable to see it. If people are incapable of knowing their own best interest, the desirability of freedom in any sense of the word is called into question—as is the desirability of democracy. It is strange to advocate freedom in all other areas but not for the decision of what conditions make it worthwhile to join a cooperative project that requires 40 hours of service per week for 40 or 50 years. But as long as the self-evident value of ECSO freedom is not uncontroversial, an appeal to its self-evident value is less than decisive.

B. The trade model versus the mutual obligation model of economic cooperation

Consider a more basic question: why is slavery wrong? Is the wrongness of slavery contingent on how humanely the slaves are treated? No, slavery is wrong because of what it is—forced labor. Slavery is wrong no matter what the master asks the slave to do, no matter whether the master allows the slave choices about which forced labor to perform, no matter whether the master treats the slave humanely, no matter how high the slave's living standard is in comparison to the master. Imagine that a country in North America has a work obligation but meets every other standard for fair distribution of that obligation, fair distribution of its benefits, and fair input into group decision making about what the

obligation should be. This fair society then goes to Africa, captures natives, brings them back to America, and makes them complete equals in their joint project. They have the same work obligation as every other American and the same share in the benefits of social cooperation; they have equal input into what the obligation will be and what goals the social project will pursue; and they have a much higher standard of living than they did in Africa. They can visit Africa during their vacation time and they can have visitors from Africa. The one thing that they are not allowed to do is to refuse their work obligation and return to Africa permanently, and that one thing is enough to make them slaves. They are unfree because they are not free of someone else's project.

The same unfreedom is experienced by the Americans themselves. They are born into society rather than being abducted, but with no access to resources until they have fulfilled a work obligation to a joint project, they are as unfree to refuse someone else's project as they would be if they were born somewhere else and forcibly brought in. A person who must choose between employment designated by others and destitution makes a coerced trade. Choices that come out of such circumstances are not free or voluntary or necessarily beneficial.

One could respond that there is a crucial difference between forcing a foreigner to work—even as an equal—and forcing someone born in this society to work; the moral force of the story of the fairly-treated slaves exists because the foreigner is not part of our circle of mutual obligation, but the native or the willing immigrant is. This argument comes from the view of economic interaction as mutual obligation rather than mutual voluntary exchange. These two views are different models of the reasons for economic cooperation, two different ways of asking the question: why should I work? Why do I go into my job every day? Under the trade model, I should work if and when my employer makes it worth

my while. The employer would not hire me unless it benefited her; I should not work unless it also benefits me. Under the mutual obligation model, I should work because I have an obligation to society, and people should pay me well because they have an obligation to me. I will not dismiss the idea that mutual obligations exist,⁵⁹ but I will argue that the mutual obligation model is a poor ideal for the whole of or even for most of society's economic interaction.

The trade model of cooperation succeeds because work serves wants. It is only worth working if work produces something that is good for you or for someone else. Work is only worth doing if it produces something *someone* wants. Suppose Gilligan is alone on an island; he may work as much or as little as he wants. He has no ethical obligations to do anything in particular. He may work on important things or on trivial things. How much time should he spend working and how much at leisure? As much as he wants. He should expend effort if, and only if, in his best judgment that expenditure of effort will make him best off in the long run. Similarly, if Gilligan is on an island with one million people who are *like-minded in every way*, their thought process is the same. They should do what, in their best judgment, makes them better off. They should expend effort only when it makes them better off. Some of those wants are trivial, some of them are important, but as long as they do what they all want to do, they ought to be allowed to do it. The trade model replicates this situation at the individual level. If it is good for society that individual A does x , and if they can find a way to make it in A's interest to do x , then everyone is better off. Only disagreement about the value of interaction can justify departure from voluntary interaction, but the trade model has advantages when objectives differ and force causes

⁵⁹ See Chapter 12.

problems of its own. There is some value in people with differing minds coming to agreement, rather than one party forcing the other to do things one way.

But is it the fact of agreement that makes the interaction worthwhile or is it the reasons for the agreement that make the interaction worthwhile? Certainly, you choose x because x is worthwhile for some reason; x is not merely worthwhile because you choose it. If so, doesn't agreement drop out of the equation? Arguably, the reason for interaction is to make people better off, not to obtain everyone's agreement. Agreement, so the argument goes, might have an instrumental value in ensuring that cooperation is fair and mutually beneficial, but certainly achieving fair and mutually beneficial cooperation is the essential ethical issue. One could argue that if society can determine the just principles for contribution and reward, it does not need to give individuals the power to refuse. To this I have several responses.

C. Agreement as a constituent part of just interaction

Many egalitarian philosophers downplay the role of agreement in justice, arguing that a fair or just obligation is determined by abstract principles largely independent of the literal agreement of the participants.⁶⁰ But often willing agreement in itself is a reason or the reason that makes interaction worthwhile or even just. It is not always true that the

⁶⁰ Agreement is present in some way in nearly every theory of justice, but Chapter 4 argues that literal agreement is under-emphasized in Anderson "What is the Point of Equality?"; Nozick *Anarchy, State, and Utopia*; Rawls *A Theory of Justice*; Rawls *Justice as Fairness: A Restatement*; Rawls *Political Liberalism*; White *The Civic Minimum*. Agreement is more important in Barry (1989). *A Treatise on Social Justice, Volume 2: Justice as Impartiality*. Oxford: Clarendon Press; Christman (1994). *The Myth of Property: Toward an Egalitarian Theory of Ownership*. New York: Oxford University Press; Cohen *Self-Ownership, Freedom, and Equality*; Gibbard (2000). "Natural Property Rights." *Left-Libertarianism and its Critics*. Basingstoke: Palgrave: 23-30; Otsuka *Libertarianism without Inequality*; Pettit *Republicanism: A Theory of Freedom and Government*; Raz *The Morality of Freedom*. Van Parijs argues for maximizing the least advantaged individuals' freedom to do whatever they might want to do, but the agreement of the least advantaged individuals has little or nothing to do with the motivation for the theory, Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*.

reasons for agreement make up the whole of what determines a good or just agreement. There are many types of interaction in which agreement is an essential criterion for that interaction to be just. Sex is one example. People choose to have sex with each other for reasons, but the fact that they choose to have sex is an essential component of what makes it worth doing. No amount of objective evidence for the mutual benefit of sex makes it right for a person, or a governmental authority, to force A to have sex with B against his will, or to mandate a list of sexual partners (B, C, D, etc.), even if A would rather not have sex. Marriage has a similar connotation. Trade can often have this element. Imagine two artisans, a woodcarver and sculptor. Imagine a sculptor wants you to buy his woodcarving. He knows the price covers his materials and a fair return on his labor. But you don't want a woodcarving at that price. Are you unjustly refusing to contribute to a joint project? No, you simply do not want it. The prices are not wrong, the deal is wrong. He needs to sell it to someone who wants it. To ensure that every good is bought by someone who wants it, we have to cede the power to refuse to consumers. The other side of the coin, is to ensure that every good is produced by someone who wants the job, we have to cede the power to refuse to workers as well.

When people play games together, fairness is the adherence to mutually agreed rules. The rules of pool vary from country to country and region to region. There is no objectively correct, or fair way to play pool; an unfair pool player breaks the rules agreed by the other players. It is not unfair or wrong for a person to refuse to play anything but German-rules pool in the United States, as long as she doesn't mislead or force anyone to play with her. One necessary condition for making the rules of pool just is that both players are willing to play by those rules. To ensure that the rules of interaction have this feature, we have to cede the power to refuse to individuals.

It is ridiculous to suppose that this element has no application to an ordinary worker's decision to participate in economic interaction. But without ECSO freedom, without the power to refuse, she is subject to someone else's conception of desirable employment both in its goals and its terms. The most important injustices throughout history have not been that the powerful took a disproportionate share of wealth, but that the powerful took away the freedom of others and forced them to serve the powerful on terms chosen by the powerful. Carole Pateman quotes G. D. H. Cole as recognizing this point in 1919, saying with (slight exaggeration) that "the wrong reply was usually given when people tried to answer the question of what was wrong with the capitalist organization of production, 'they would answer poverty [or inequality], when they ought to answer slavery.'"⁶¹

D. Integrity

One might respond that sometimes people's conceptions about the desirable terms and goals are wrong, and in those cases one might justify holding a person to a compulsory obligation. But this brings me to the importance of an individual's integrity as an ethical agent. According to Ronald Dworkin, life cannot be good just because the person thinks it is; she could be mistaken about what is good, but it cannot be in her own interest to lead a life she despises. Ethical integrity is achieved when a person lives life according to her own convictions.⁶²

Dworkin makes a distinction between experiential interests and critical interests. The first is the kind of interest we have in experiences for their own sake. There are many

⁶¹ Pateman (1988). *The Sexual Contract*. Cambridge: Polity; Cole (1919). *Self-Government in Industry*. London: G. Bell and Sons, p. 34.

⁶² Dworkin (2000). *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge, MA: Harvard University Press, pp. 266-270.

different experiences we might enjoy, but it is not necessarily a mistake to prefer one to another. The second is the deeper sort of interest we have about what makes life good that it would be a mistake not to value. For example, it would be a mistake to go through life without valuing friendship.⁶³ One could argue that participation in a social project is a critical interest; people need to care about and contribute to each other's welfare by sharing in social production. With good democratic institutions we can make our project fair and mutually beneficial enough that there are no great reasons to object, so that all objections are likely to reflect weakness of will or gaming the system. That is, people refuse to contribute because they are seeking the instantaneous pleasure of idleness; they seek an experience interest at the expense of their long-term critical interests.

I have argued for skepticism against the belief that in such a conflict the majority is necessarily right and the individual wrong, but suppose the majority actually is right. It is against the individual's critical interest to refuse participation. They have a weakness of will and regret awaits them if they are allowed to make that mistake.⁶⁴ Under these conditions, is there any reason to allow the individual to make this critical error? Integrity is one reason. We must consider another person's beliefs as data. By forcing them to go against their beliefs, we might be making them lead a life that is better in the abstract, but we are making them lead a life that for them is worse. As Dworkin puts it,

If we give priority to ethical integrity, we make the merger of life and conviction a parameter of ethical success, and we stipulate that a life that never achieves that kind of integrity cannot be critically better for someone to lead than a life that does.⁶⁵

⁶³ Dworkin (1993). *Life's Dominion*. New York: Vintage Books, pp. 201-202.

⁶⁴ *Ibid*, p. 223.

⁶⁵ Dworkin *Sovereign Virtue: The Theory and Practice of Equality*, p. 270.

A person might be making an error by choosing a certain life, and we might therefore want to persuade her to lead a better life, so that she can achieve ethical integrity at a higher level, but if we force her to lead what we believe to be a better life, we force her to lead a life that, for her, is worse.⁶⁶

The priority of ethical integrity, as I employ it, does not imply that we can do nothing to encourage people to make what we believe are better choices, but that we should do so with respect to their status as free individuals. We may encourage, persuade, and reward them for living a better life, but we cannot force them to lead a life that is not of their choosing. The protection of ECSO freedom does not in any way imply that people who refuse to take part in a joint project should share equally in its output, only that those who do not wish to contribute to the project cannot be left in such a thoroughly bad state that they are effectively forced to contribute. This leaves great room to encourage people to make the right choices without violating their integrity.

E. Integrity and the goals of the joint project

It is widely accepted that the government cannot force an individual to attend a church or tax her to support an organization promoting a particular conception of a good life. But if we refuse to support the voluntarily unemployed, we put them in the position in which they must serve the goals of whatever employer comes along. Work serves wants, and in a market economy an employer can hire others to work for any goal the employer chooses. The worker serves these goals, whatever they may be. After she earns some money, she can begin to pursue her own goals. Social interaction in the market allows

⁶⁶ Ibid. pp. 270-272.

people to pursue many different goals, but a work obligation forces the propertyless to pursue goals they may not approve of. To someone who is willing to further those goals for that price, this is not a heavy burden, but to someone who objects to the goals she's asked to promote and who would rather have property to work for her own goals, forced participation is a long, difficult sentence to fulfill.

To see the importance of this, imagine a society called Patriarchy in which the democratic ruling coalition enforces its belief that the good life requires a male breadwinner and female caregiver. It enforces that belief by forcing women into the position in which they must find and keep a husband or face financial destitution. This might not be hard to imagine. Men have important reasons to desire a wife, but they can go on unmarried without facing the thoroughly bad alternative. Suppose society tried to solve any abuses that follow from the dependence of women by regulating marriage. They create a form of unemployment insurance for unmarried women provided that women remained ready, willing, and able to marry as soon as a marriage partner became available. Would any such set of laws make a woman a free person? Isn't it obvious that even women who share this vision of the good life would be made unfree by such an extreme set of laws?

F. Integrity and the fairness of the joint project

Anything as pervasive and complex as an economic system incorporates values not only about the good but also about the right. The terms of interaction reflect beliefs about what it means to be fair to other participants. Rawls argues for pluralism from the belief that reasonable people will disagree about what it means to live a good life,⁶⁷ but he

⁶⁷ Rawls *Political Liberalism*, pp. 54-58.

believes that reasonable people can reach an overlapping consensus about what is reasonably fair and proposes several rules for fair distribution of the benefits of social cooperation. The overlapping consensus justifies the social regulations necessary to ensure fair labor standards while still holding every individual to a mandatory participation obligation.⁶⁸ Nozick pointedly and simply responds that to say Rawls's theory of justice is reasonable is "hardly a convincing reply to anyone to whom it doesn't seem reasonable."⁶⁹ Other authors have pointed out the asymmetry of Rawls's claim. If we can expect reasonable people to disagree about the content of a good life, should we not also expect reasonable people to disagree about fairness, rights, and justice?⁷⁰

The fairness of an economic system is something that reasonable people disagree about. Some people believe that a person who correctly guesses which number will come up on a roulette wheel should get a large cash prize, as long as she was willing to put her money where her mouth is. Other people believe this would be fair if the roulette wheel were not designed to give the house a small edge. Others believe gambling is wrong. Some people believe that if two people work together they should divide whatever they produce equally or according to their effort, average product, marginal product, virtue, or need. One popular belief is that it is fair for a person to keep whatever she can get by trading. Some people believe that the terms are just if and when both sides freely agree to them.

A system that protects ECSO freedom works within the value systems of its participants. It allows them to combine in any way they believe is fair, and if they do not find social cooperation fair it allows them, as much as possible, to live without supporting

⁶⁸ Rawls *A Theory of Justice*; Rawls *Justice as Fairness: A Restatement*, p. 257.

⁶⁹ Nozick *Anarchy, State, and Utopia*.

⁷⁰ Caney (1999). "Liberal Legitimacy, Reasonable Disagreement and Justice." *Pluralism and Liberal Neutrality*. Bellamy and Hollis, Eds. Ithaca: Frank Cass: 19-36; Plant (2001). *Politics, Theology and History*. Cambridge: Cambridge University Press.

the system of social cooperation. Without the power to refuse cooperation, an individual controls no aspects of cooperation. Others choose the goals, the terms, and the range of choices. The individual has as much choice as they allow her to have. Such a system can seek consensus through the political system, but the pressing political question is what to do in the absence of true consensus. A system that asks for voluntary cooperation offers its citizens the opportunity to share its values without forcing those values on them. A system that gives every citizen unconditional control over some amount of personal property allows each citizen a sphere of control around her own life and her own interactions. In this internal sphere of property her values prevail unless she chooses to compromise to combine hers with someone else. Hopefully, people will find ways to work together that are good for both, but by not allowing society to force its values on individuals, society forces itself to find a way to make sure that all cooperation is consistent with the values of the people involved in cooperation and to respect those who do not fit in.

One could reply that some of those individuals will simply have bad values. Some people have racist, sexist, or otherwise destructive values. Is it really so important to give people with such values the power to refuse cooperation with a non-racist, non-sexist system? Yet what feature of destructive value systems is most worthy of our objection? Isn't it the use of force? What could we object to more than that the forcible attempt to deny other people's status as freedom? One of the justifications for our system ought to be its avoidance of force. The best way to handle people with destructive value systems is not to force them to follow other values, but to keep them out of positions of power where they can force their values on others. If a person's bad values lead him to go out and murder, steal, and oppress others, he must be stopped. But if a person's bad values—no matter how hateful and destructive—lead him to stay home and tend his own garden, it is not necessary

to stop him. It is not necessarily the government's job to differentiate such a person from someone (such as a contemplative monk) who does the same thing for what we judge to be a good reason. We can try to encourage that person to adopt better values, but dragging him kicking and screaming into a cooperative project that he despises is not the best thing for him or for social justice. A society that protects everyone's ECSO freedom gives people the least possible power to impose their values on others, and hence the best protection against destructive values. This strategy might not make people with destructive value systems see the light and the value of a pluralistic society, but would make them much less dangerous should they get into a position of power.

G. Why don't more people feel unfree?

If everyone who is forced by propertylessness to seek employment is unfree, many people in modern society are unfree. Why don't more people feel unfree? It would appear to be evidence against my claim that ECSO freedom captures what it means to be a free person, if so many people can be unfree in those terms without feeling unfree. I offer two replies to that argument: the type of unfreedom described here does not press on everyone, and those on whom it does press may not voice their complaints in these terms.

The lack of ECSO freedom presses significantly only on those who have undesirable options that they would refuse if only they had the power, but many people have good jobs that free them from material deprivation and that they would do even if they had the power to refuse. People in this position do not often feel the need for the power to refuse. Employment does not make a person unfree, forced or involuntary employment

makes a person unfree. Cohen argues that being forced to do something does not necessarily entail doing it involuntarily.⁷¹ For example, when I walk down the street, I have no desire to break every window I pass. I freely and voluntarily refrain from breaking windows. I know that if I were to try to break every window I pass, someone would force me to stop, but being forced to refrain from something I don't want to do anyway doesn't bother me. It's barely noticeable. My compliance is both forced and voluntary. The unfreedom faced by people who currently have acceptable jobs is hard to envision: am I vulnerable to losing my job in an economic downturn? Has my limited economic power reduced my leverage to demand better terms? Would the power to refuse increase my options of how I can live my life? These are not pressing day-to-day concerns for people in this group.

If everyone in society were permanently in the position in which they had no desire to refuse the available options, a basic income guarantee could exist without anyone choosing to live off it, which would be a very desirable outcome. If such an outcome is possible, the power to say no is not essential for making everyone feel the benefits of ECSO freedom, but the protection of the power to say no would be at worst superfluous. There would be no strong reason not to do so, but there would still be important reasons to protect ECSO freedom under those conditions—to ensure that the conditions actually do hold and will continue to hold.

There are people who would refuse the options available if they had the power: the poor, the disadvantaged, dissenters who object to what they must do to comply with society's conditions; and those who do comply and still live in deprivation. I would speculate that although the lack of ECSO freedom presses heavily on this group, they are

⁷¹ Cohen *History, Labor, and Freedom: Themes from Marx*, Chapter 12.

likely to voice their complaint in other terms. Most of those who are hard pressed economically are too busy struggling to survive to think much about the issue of liberty or even to complain about their situation. People tend to accept the world around them. It's uncertain how often medieval serfs dwelt on their extreme lack of freedom rather than simply acquiescing to the inevitable, but their acquiescence did not make them free. Modern disadvantaged people have few personal targets to single out for complaint but merely an insensitive system that gives them the message that their position is their fault. When they do complain, some voice it in terms of freedom, but there are many other equally legitimate ways to voice a complaint about one's poverty.

People in desperate poverty might be thinking two steps ahead. ECSO freedom gives a person the power to refuse a bad offer, but the hope is not that it ends there, with a large number of bad offers on the table and a large number of people refusing them. But the power of ECSO freedom is to refuse offers unless and until an acceptable offer arrives. People are not necessarily thinking about how they would enjoy the freedom from a mandatory work obligation, but about the enjoyable terms of cooperation they could have if they could command them. Certainly all theories of a just economic system, from right-libertarianism to socialism, hope that they will be able to build a system that is sufficiently good that everyone will contribute willingly. The goal of a society that protects ECSO freedom is the same. The difference between a society that protects ECSO freedom and one that does not is where they put the burden if that goal is not achieved. If a system that does not endorse ECSO freedom (or some policy providing that level of individual power) is unable to achieve this goal, it forces the disadvantaged to contribute anyway. If a society that endorses ECSO is unable to achieve this goal, it allows the disadvantaged to refuse to contribute. For many of the disadvantaged, the thing they would most like to get out of such

power would be the ability to command better terms from the rest of society. This brings the discussion of ECSO freedom to its role in protecting the vulnerable.

5. ECSO freedom as protection against market vulnerability

Another motivation for ECSO freedom is that it has an important role in helping to ensure that cooperation is mutually beneficial, fair, and reasonable in the eyes of all participants. If people don't think the offers from others are good enough, for whatever reason, they can refuse them. The power to say no is not all there is to a just distribution of property, but section A argues that it is a powerful tool to protect the vulnerable in a market economy. Section B argues that, to some extent, other social safeguards, such as labor regulation, are deficient without it.

A. The Invisible Hand and economic independence

Adam Smith's invisible hand theorem demonstrated that under certain conditions voluntary exchange benefits everyone.⁷² This insight is the basis for what is now known as the first fundamental theorem of welfare economics.⁷³ As long as all parties involved know their own best interest, and as long as all trade is truly voluntary (perfect information and no fraud, theft, externalities, or extortion), neither side will engage in a trade that makes them worse off. Under those assumptions, even if traders seek their own benefit, voluntary

⁷² Smith (1976 [1776]). *The Wealth of Nations*. Oxford: Oxford University Press.

⁷³ Mas-Colell, Whinston and Green (1995). *Microeconomic Theory*. Oxford: Oxford University Press.

trade drives them, as if by an invisible hand, to benefit the other. Smith's theory goes on to argue that competitive trade will exploit all possibilities to benefit both parties relative to their starting points.⁷⁴ If all markets for all conceivable commodities are characterized by "perfect competition" the economy will reach an efficient equilibrium at which it is impossible to make one person better off without making another worse off.⁷⁵ That is, it exploits all opportunities for gains from trade. The conditions necessary for the theorem to hold fully are seldom if ever present, but to the extent that it works at all it provides a guide to how, why, and to what extent trade is beneficial.

Each party benefits in the sense that they are better off than they were with the initial distribution of property without trading, but not in the sense that they get some moral definition of a "fair share" or "what they deserve." If a trade begins with one party on the edge of starvation, the best the invisible hand can assure is that they are slightly better off than that—perhaps one step from the edge of starvation—but the invisible hand theorem does not assure how much better. Smith recognized that propertylessness and the need to get a job to survive could adversely affect workers' wages.⁷⁶ If people start with the ability to live by their own means, and the conditions of the invisible hand hold, trade ensures them something better than they could provide for themselves on their own. A "free" market without free workers—even under perfect competition—does not assure that they will finish better than they could have done on their own or that they will have decent wages, decent working conditions, decent housing, or a decent life. In Robert Goodin's

⁷⁴ Smith *The Wealth of Nations*.

⁷⁵ Mas-Colell, Whinston and Green *Microeconomic Theory*.

⁷⁶ Smith *The Wealth of Nations*, book I, chapter 8, paragraph 12.

terms, the basic safeguard against market vulnerability is, in short, invulnerability through self-reliance.⁷⁷

This is not to say that the power to say no is a perfect protection against market vulnerability. There could be a system in which an advantaged group left others with just enough to give them economic independence, but seized control of everything else. The only cooperative opportunities they offer the disadvantaged group are the worst forms of social participation in the sense of working conditions, pay, and hierarchical position. However, the power to refuse can be an important tool even in these circumstances. If the disadvantaged find the dominant group's project to be too unfair or not enough in their interests, they can refuse it.

B. Regulation as a substitute for independence

One might agree that the market as constituted does not produce fair or desirable wages but argue that securing the power of a worker to refuse bad offers is not necessary to securing a desirable outcome. Regulation and redistribution can take its place within the context of a work obligation. But this strategy can leave workers vulnerable both to market failure and government failure.

The invisible hand, which operates in favor of workers with the power to refuse to trade, can actually frustrate efforts to boost incomes of workers who lack that power. If redistributive policy employs lump sum grants, such as basic income, recipients benefit fully; that is, by the amount of the grant,⁷⁸ and it can give workers additional power to

⁷⁷ Goodin (1985). *Protecting the Vulnerable*. Chicago: University of Chicago Press, pp. 198, 189-204; Goodin (1988). *Reasons for Welfare*. Princeton, NJ: Princeton University Press, pp. 332-359; Goodin (1985). "Self-Reliance Versus the Welfare State." *Journal of Social Policy* 14: 25-47.

⁷⁸ Mirrlees (1976). "Optimal Tax Theory: A Synthesis." *Journal of Public Economics* 6: 327-358.

command higher wages in the private market.⁷⁹ However, if redistribution is conditional on work, it gives employers an incentive to reduce private sector wages, partially counteracting the effort to increase the welfare of the disadvantaged.⁸⁰

Regulation of wages, working hours, and conditions is de facto recognition of the unfreedom of workers to refuse exploitative working conditions. Once the regulations are in place the worker still lacks that critical power to refuse. The regulating authority can say that, in its opinion, there is no longer a need to refuse, but we need more than an opinion. How can a democratic society create a regulating authority capable of speaking for social justice rather than merely its own opinion? Even if fair wages could be determined without the workers' agreement, the power to say no can be used as a tool against government failure. That is, government does not have adequate concern for or ability to protect the welfare of the disadvantaged. To reach a desirable outcome without the consent of the participants, the regulating authority has to consider all of the 16 reasons a person might object to participation, decide which ones are legitimate and which aren't, and then find a way to eliminate all of the conditions that could give workers legitimate reasons to refuse. It is a difficult job. The potential for government error is great. Disadvantaged individuals have reasons to be wary of government programs bearing conditional benefits.⁸¹

To do so, the ruling coalition not only enforces compliance with a fair obligation, but it decides what is fair. The ruling coalition must determine what constitutes a legitimate contribution; they must decide for everyone whether activity x counts as a contribution or not. That issue is not only important for the person who might want to fulfill her obligation

212-231.

⁸¹ Funciello (1994). *The Tyranny of Kindness*. New York: Grove/Atlantic.

by doing x , but also for people who are forced to do y , who might ask, “Why must I drive this taxi to fulfill my obligation, when this other person gets to fulfill his obligation as a university professor?” When the fair solution is not possible, the ruling coalition determines how close they need to approximate it. The ruling coalition must answer all of these questions with the confidence that they are not merely stating the ruling coalition’s opinion about justice, but they are doing what is really just. Imagine the Professor, representing the intelligentsia, proposing such a system to Gilligan, representing the lower class:

PROFESSOR: Congratulations, you are no longer exploited! All jobs are good jobs! Your reasons for wanting to quit have all been eliminated.

GILLIGAN: You don’t tell me when I’m not exploited. I’ll tell you. You show me the jobs, and I’ll tell you when they are good enough.

PROFESSOR: We’re not interested in your individual opinion of justice; we’re interested in true justice. We’ve made that determination in terms of abstract, objective principles of social justice that have been endorsed by the democratic process. We’ve taken your welfare into account, and we’ve created a list of great job opportunities for you to choose from; therefore you must choose one of them.

GILLIGAN: If you’re so much on my side why do you want to force me work for you just as much as the bad guys did? If you really want to help me, why not let me make my own decisions?

Of course, government authority has to speak for justice in extreme cases such as criminal law, but limits on that power, and the separation of powers, are essential. Limits on

government power are usually achieved by the separation of powers and by designating some powers for individuals. If the power to refuse is not designated to individuals, no effective power is reserved for individuals on an individual level.⁸² The government can give them choices, but they must take the choices the government gives. Speaking for justice is an enormous moral and practical responsibility that the ruling coalition could avoid if they were willing to say, “Our system of social cooperation is as fair and mutually beneficial as we know how to make it, but it is up to you to decide whether it is fair and beneficial enough for you to participate.”

There is a belief among many egalitarians that the desire to base human interaction on voluntary agreement rather than mutual obligation is somehow conservative—something that primarily benefits the wealthy lord who wants to ignore a starving peasant. But throughout history, the effective power to refuse participation in someone else’s project has usually been what the oppressed—the Medieval serf, the Victorian proletarian, or the Soviet worker—lacked most. In a dispute about participation, a mandatory work obligation sides with the powerful by default. The power to refuse gives the dissenters the most effective and least destructive way to voice their discontent. Workers under a mandatory obligation who are unsuccessful in getting the ruling coalition to accept their complaint have the choice to live with it, beg, or rebel, but workers who are free can simply refuse. One lone dropout is one voice for a better deal. A large number of dropouts is a powerful statement that something about the system is not working for everyone and a powerful incentive for the government to find out how to make it in the interest of the dropouts to join up. If others don’t want to change, dissenters can use the resources at their disposal to

combine in ways that are not endorsed by the rest of society. The power to refuse won't necessarily obviate the need any labor market regulation, but gives workers much more control of their lives than they can enjoy without it.

6. The value of ECSO freedom outside the market

Although this chapter so far has focused on the labor market, the power to say no is also important for nonmarket interaction and as a safeguard for most other freedoms. For example, ECSO freedom can protect the religious freedom of a homeless person who may be forced to choose between going hungry and sitting through a religious speech at a soup kitchen. It can protect the freedom of speech of a person who is afraid of losing her job for making controversial remarks. Importantly, it can help fight problems related to dependency in marriage.

According to Carole Pateman, feminists have argued for centuries that mainstream political theory has treated personal interaction differently than public interaction, as if the family was a separate sphere where the rules of justice do not apply.⁸³ I have hopefully avoided that pitfall here, arguing that no contract can override a person's status as a free individual. Marriage, like employment, is supposed to be a mutually beneficial arrangement in which two people decide to cooperate toward goals that are good for both of them. We like to think of marriage as a perfectly cooperative arrangement in which people fully put their interests together, but also like employment, there are potential conflicts of interest within marriage. It involves toil, effort, sacrifice, and distribution of the benefits. If one

⁸³ Pateman (1979). *The Problem of Political Obligation*. New York: Wiley; Pateman *The Sexual Contract*; Pateman (1989). *The Disorder of Woman*. Cambridge: Polity.

partner is financially dependent on the other, the financially powerful partner can use that power to make marriage an unequal partnership.⁸⁴

People can escape propertylessness either by getting a job or by marrying someone who is willing and able to support them. As long as people are able to hold jobs, they are not any more dependent on marriage than employment. However, many couples still follow the convention in which men specialize in making money and women specialize in caring for children,⁸⁵ which can cause women to develop financial dependence on men. Divorce laws protect women to some extent but often not enough, and women are sometimes unable to hold their former husbands to their responsibilities.⁸⁶ Women who do leave often face both poverty and dependence on what can be a tyrannical conditional system of income support for single mothers.⁸⁷ Cases in which women suffered cruelty of husbands for years because of financial dependence are not unusual. This problem follows largely from an asymmetry in the two parties' ability to withdraw from the relationship;⁸⁸ women might want to be cruel to men, but men tend to have much more power to walk away than women,⁸⁹ especially women with children. We can imagine cases without asymmetry in the ability to withdraw (such as in marriage without the possibility of divorce) in which other asymmetrical powers (such as physical strength, control of property, or legal rights⁹⁰) causes one party to have power in the marriage. However, the problem here still involves the lack of the power to say no, even if that power is not the one that is asymmetrical. The protection of ECSO freedom, by providing women with the resources they need to maintain

⁸⁴ Okin (1989). *Justice, Gender, and the Family*. New York: Basic Books, Chapter 7.

⁸⁵ For a discussion of the reasons see Ibid.

⁸⁶ Ibid, Chapter 7.

⁸⁷ Funchiello *The Tyranny of Kindness*.

⁸⁸ Goodin *Protecting the Vulnerable*, p. 197.

⁸⁹ Okin *Justice, Gender, and the Family*.

⁹⁰ For a discussion of unequal legal rights within the family see Pateman *The Disorder of Woman*, especially Chapter 4.

their independence (in case they ever need it) would make them much more able to walk away from such a situation.

Anyone who is unfree to refuse is vulnerable to unfair or abusive treatment in market and nonmarket relationships. The protection of ECSO freedom helps individuals protect themselves from unfairness in many areas because it gives them the power to walk away from any unjust arrangement. This alone will not make the sexes equal, but it will create a baseline protection against the worst abuses.

7. Conclusion

Most of us are aware that economic destitution can lead people to do things that they would not normally do: to prostitute themselves, to sell their internal organs, to accept cruelty from a marriage partner or an employer, to beg, to eat out of a garbage can, to send their children to work in sweatshops, to sell themselves into servitude, and many other degrading things. We recognize that some people will do these things even if they are not forced by desperation, but we recognize that almost anyone will do some of these things if they are desperate enough. We can take from this observation that we need to treat the symptom by, for example, regulating labor markets and providing unemployment insurance, but treating the symptom is not enough, we need to treat the cause. We need to recognize that propertylessness is a state of unfreedom, and abuse and unfairness are some of its consequences. Propertylessness is not the only source of unfairness in the labor market, but it is not enough to try to be more humane while we intentionally use propertylessness as a work incentive.

Chapter 4: If You're an Egalitarian, Why Do You Want To Boss the Poor Around?

Take this job and shove it. I ain't workin' here no more.

-David Allen Coe⁹¹

Recent literature on freedom and social justice has paid insufficient attention to status freedom.⁹² This chapter critically reviews some of the recent literature on freedom and social justice to show that attention to status freedom as effective control self-ownership would make theories of freedom more plausible. Section 1 discusses Nozick's right-libertarian account of freedom. Section 2 compares Berlin's negative freedom to Raz's theory of status freedom as autonomy, arguing that ECSO freedom combines the most important parts of both conceptions of freedom. Section 3 considers Pettit's conception of republican nondomination as a theory of status freedom, arguing that it is too narrow to fully capture the status a person needs to be free. Section 4 discusses the role of freedom in contemporary egalitarian theories of John Rawls, Elizabeth Anderson, and Stuart White, concluding that egalitarianism without concern for status freedom is incomplete.

⁹¹ Coe (1978). "Take This Job and Shove it." *Family Album*. Bear Family.

⁹² Theorists who have focused almost entirely on freedom in the continuous sense include, Berlin *Four Essays on Liberty*; Nozick *Anarchy, State, and Utopia*; Rawls *A Theory of Justice*; Rawls *Justice as Fairness: A Restatement*; Rawls *Political Liberalism*; Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*. Notable exceptions include Anderson "What is the Point of Equality?"; Pettit *Republicanism: A Theory of Freedom and Government*; Raz *The Morality of Freedom*.

1. Right-libertarian freedom

Robert Nozick promotes liberty as formal (or nominal) self-ownership and entitlement rights with little concern for effective self-ownership of any kind. His ideal government recognizes property rights to appropriated external assets as a natural right, which exists prior to and/or regardless of government. The state should make the fewest laws formally restraining what individuals can do within that set of entitlement rights. He claims that the legitimate concern of social justice is not with the end-state distribution of outcomes, but with whether the actions by which the distribution came about were just, and uses this to argue that redistribution of holdings attained according to his principles of acquisition and transfer is impermissible.⁹³ Onora O'Neill criticizes Nozick for not deriving the right of appropriation soundly from the premise of individual liberty he purports to defend.⁹⁴ Chapter 9 includes detailed criticism of Nozick's theory of the appropriation of property. This section argues that his system of appropriation denies freedom to individuals, and therefore, he not only fails to derive the right of appropriation from individual liberty but he puts the right of appropriation *above* the individual freedom that his rhetoric celebrates.

The closest Nozick comes to considering the unfreedom of the propertyless is in his discussion of how one person's appropriation interferes with another person's liberty to use collective resources for subsistence. He concedes that appropriation interferes with this liberty, but defends appropriation without compensation, based on the end-state pattern of distribution after property is appropriated and traded. He argues that compensation is due

⁹³ Nozick *Anarchy, State, and Utopia*.

⁹⁴ O'Neill (1981). "Nozick's Entitlements." *Reading Nozick: Essays on Anarchy, State, and Utopia*. Paul, Ed. Oxford: Basil Blackwell: 305-322.

only to those to whom “the process of civilization was a *net loss*”.⁹⁵ He cites a number of benefits of the market economy⁹⁶ and asserts that they are enough so that no compensation is due⁹⁷. Thus, he tries to reduce issues of the freedom of the propertyless class to an empirical question of whether the standard of living of workers is increased by the market economy over what they could each produce individually with access to common property. Even on the surface, the assertion is not obviously true. Are we sure that all people in the entire global economy (even the homeless in New York and the sweatshop workers in Indonesia) lead happier, more fulfilling lives than all the remaining hunter-gathers in Borneo or Brazil? Are we sure that this assertion is true in all possible market economies? Did every Victorian industrial worker lead a better life than the virtually toil-free Polynesians of the same era?

Furthermore, the use of this proviso is an exception to his argument against end-state principles of justice.⁹⁸ He states that this theory does not rely on end-state principles,⁹⁹ but he asserts that the process of appropriation is just, specifically because it reaches a particular kind of end-state distribution. Therefore, his theory contains at least one significant end-state principle, and strangely so: if the proviso is satisfied and property rights are legitimate, no amount of redistributive taxation is allowed, but if the proviso is not completely satisfied, then no one’s property rights are legitimate and perhaps outright seizure of all property is warranted. Perhaps they would only be liable to transfers up to the point at which the proviso is fulfilled. Nozick does not delve into the question of what to do if property rights do not satisfy the proviso, and simply assumes that it is fulfilled. This is a

⁹⁸ Ibid, pp 150-173.

⁹⁹ Ibid, p. 157.

strange assumption in a nation in which homeless people die of exposure every winter because they are prevented from building shelters and lighting fires, which would be a violation of other people's property rights.

Nozick's attempt to downplay individuals' need for the resources necessary to secure ECSO freedom into an empirical question about end-state standards of living is an exception to a more central point of his essay. He states that individuals have rights that no one else may violate; neither individuals nor the state may use coercion to force some citizens to aid others or even for their own good.¹⁰⁰ I will show that Nozick's theory of appropriation sanctions the use of coercion to violate the right (which he admits exists) to use natural resources, forcing one person to aid another, and he attempts to justify it by saying that it is for their own good. Examine Nozickian appropriation in four steps:

STEP 1: State of nature (everyone has the liberty to take subsistence from the land).

STEP 2: Appropriation divides people into propertied and propertyless (only the property have the right to take subsistence from land).

STEP 3: Destitution forces the propertyless to perform services for the propertied (i.e. they seek employment).

STEP 4: The propertyless receive payment for their services (securing their subsistence and a higher standard of living than in Step 1).

In contradiction of all Nozick says about favoring process over end-state, he compares the desirability of the end-state in Step 4 to the desirability of the initial state in Step 1, declares it better for everyone and that the goodness of the outcome in Step 4

¹⁰⁰ Ibid, p. ix.

justifies the coercive process that brought society from Step 1 to Step 4. He ignores two incidents of coercion. In Step 2, property is appropriated but the propertyless have not yet taken jobs. Through coercion, the propertyless have lost the liberty to use natural resources to provide their subsistence. In Step 3, the propertyless perform services for the propertied because they have no other means of survival. This action is the reverse of the appealing idea of rectification for the liberties lost in Step 2: The propertied have just taken something away from the propertyless. Therefore, one would expect the direction of obligation to run from the propertied to the propertyless rather than vice versa. Instead, the legal system forces the propertyless to provide services for the propertied—for one overriding reason—because they are legally prohibited from attaining subsistence by any other means.

This process is the same as one typically decried by all right-libertarians. For example:

STEP 1: Bob has a dollar.

STEP 2: Government takes the dollar to build an opera house.

STEP 3: Bob buys a ticket to the opera.

STEP 4: Bob enjoys opera and is happier than he was at the start.

From the entitlement theory of justice, the desirability of the end-state distribution in Step 4 relative to Step 1 is no justification at all for the coercive steps that were required to get there. There is clearly an inconsistent application of coercion in Nozick's theory of entitlement. If the assertion that Bob's enjoyment of opera is not a justification for taking away his liberty to spend a dollar as he wishes so that the government can use that dollar to

provide him with an opera, the assertion that industrial workers have a higher standard of living than people in a state of nature is not a justification for taking away the liberties they have in the state of nature.

The relevant question is not about standards of living but freedom. If a trader goes to a continent where people live in a state of nature, captures a person, brings her to America, and makes her into a servant, no after-work, post-trade, end-state standard of living will make the servant a free person, or make her service a free choice, or justify the trader's actions. The effect on the servant's status as a forced laborer is no different if she is born in America and traders appropriate all the resources that she might use to build an independent life free from servitude. People with access to a sufficient amount of resources have ECSO freedom. They might not be free from work as toil, but they are free from work as labor in the sense of accepting a subordinate position to employers¹⁰¹ who control access to property. Human beings ought to be free; no end-state principle, no pattern of distribution, no post-trade standard of living can justify taking their ECSO freedom away. Slaves with luxuries are still slaves even if they have more luxuries than when they were free. With the possible exception of strong duties,¹⁰² such as the duty to save a drowning infant, the only thing that can justify one person being a servant to another is that she freely chooses to do so as an independent, free person.

Nozick is right to criticize end-state principles, but to do so he must subject his principle of appropriation to the same standard. He must look *the pre-trade starting point of workers* in terms of ECSO freedom (their position in Step 2), not to their place in the end-state distribution in terms of standard of living (their position in Step 4). At Step 2,

¹⁰¹ Or to banks, to landlords, to consumer-clients, or even to a prescribed position in a socialist or egalitarian system.

¹⁰² See Chapter 12.

after the appropriator has taken resources and before necessity has forced the propertyless to become servants of the people who control property, the propertyless are clearly worse off. They have lost something and gained nothing. Furthermore, they have lost something essential to their status as free individuals—independent access to the resources needed for survival. As low as the standard of living of a person in a state of nature might be (Step 1), the pre-trade starting point of a propertyless industrial worker is lower (Step 2). Before trade, the propertyless have no legal means to survive. They must subordinate themselves to whoever controls access to resources.¹⁰³ Under the morally relevant comparison (Step 1 to Step 2), there is no question that unilateral appropriation harms the propertyless, and the workers' position in step 2 adversely affects what they are able to attain in steps 3 and 4. If appropriators are to take property without denying others' ECSO freedom, the appropriators are obliged to pay compensation sufficient to return them to that status. Any defender of liberty worthy of the name cannot put individuals in the position where they have no choice but to subordinate themselves to others.

2. Self-mastery *versus* negative freedom?

¹⁰³ Here I am including begging and eating the garbage of the propertied as forms of subordination.

Isaiah Berlin and John Gray conceive of freedom as “negative freedom” or noninterference rather than any notion of self-realization, self-mastery, or “positive freedom.”¹⁰⁴

You lack political liberty or freedom only if you are prevented from attaining a goal by human beings. Mere incapacity to attain a goal is not lack of political freedom. ... By being free in this sense I mean not being interfered with by others. The wider the area of non-interference the wider my freedom.¹⁰⁵

By contrast, “The ‘positive’ sense of the word ‘liberty’ derives from the wish on the part of the individual to be his own master.” In Gray’s words,

In the positive view ... freedom consists not in choice but in obedience to rational will. Whereas choice presupposes genuine rivalry among conflicting goods, rational will points to one and only one course of action, one form of life, for the individual.¹⁰⁶

People who hold the positive view, according to Berlin, can be led to manipulate the definition to make freedom mean whatever they wish.

It is one thing to say that I may be coerced for my own good... It is another to say that if it is my good, then I am not being coerced, for I have willed it, whether I know this or not, and am free (or ‘truly’ free).¹⁰⁷

Berlin argues from the standpoint of value pluralism, in which there are many different competing values in life that cannot be judged against one ultimate unifying value. The

¹⁰⁴ Berlin *Four Essays on Liberty*.

¹⁰⁵ Ibid, p. 122-123.

¹⁰⁶ Gray (1984). *Hayek on Liberty*. Oxford: Basil Blackwell, p. 21.

¹⁰⁷ Berlin *Four Essays on Liberty*, p. 134.

value of human life comes from the capacity to make choices between these competing values. If our ends did not conflict, “the necessity and agony of choice would disappear, and with it the central importance of the freedom to choose.”¹⁰⁸ Self-mastery, in this sense, may be a value, but it is not freedom.

Berlin is right that the submission of one individual to another individual’s (or a group’s) notion of self-mastery can be dangerous to the choice that is essential to freedom, but he would be wrong to throw out every aspect of autonomy or status freedom in favor of a conception of freedom purely as continuous, negative freedom. The most important point I have tried to make in Part One of this thesis is that the most important goal in securing freedom is not to ensure the *widest* area of noninterference, but the *most important* area of noninterference. The goal of maximizing the number of liberties a person has without any theory of which liberties are most important does not maximize freedom in a meaningful sense. I have proposed the theory of ECSO freedom as a guide for determining the core liberties that are most important to protect.

Recognition of the need to give priority to core liberties, I believe, makes freedom a more central human value than Berlin recognizes. Berlin argues that political liberty is not what people who are “half-naked, illiterate, underfed, and diseased” need most. He argues that we should be willing to trade off freedom for a better life for the destitute, but the tradeoff between freedom and equality should be understood to involve a net loss of liberty.¹⁰⁹ Berlin is wrong because he does not recognize the extent to which half-naked, illiterate, underfed, and diseased people are in that condition because they lack freedoms in the negative sense. If the government grants me or my group the exclusive right to use a piece of land as a football pitch, they grant us this freedom from interference by allowing us

¹⁰⁸ Ibid, p. 168.

¹⁰⁹ Ibid, pp. 124-126.

to interfere with anyone who might want to use that piece of land to clothe, feed, educate, and cure themselves. People might not be able to secure all of their needs on their own, but it is a simple fact that there are many people in the world today who are much more poorly fed and much less healthy than they would be if the government reduced its interference with their desire to make use of natural resources.

Destitution and propertylessness are not caused by a choice between equality and negative freedom but by a choice between negative freedom for one group and negative freedom for another group—between core liberties of the people the law makes propertyless and secondary liberties of people the law designates as owners. Governments have structured property rights so that privileged people have more than enough access to resources to make luxuries by interfering with the access to the means of survival for others. If society wants to create an economic system in which people are free to use the earth for something other than meeting basic needs without interfering with the ECSO freedom of others, it must find a way to do so either without interfering with people's ability to use the resources with which they could meet their own needs, or by compensating them sufficiently to secure their needs. A focus on negative freedom without a focus on the core liberties needed to secure people's status freedom obscures the centrally important lack of negative freedom experienced by the destitute.

This argument is not meant to show that we should allow one person to force another person to provide her basic needs for her. Cohen rightly points that society interferes with someone if it prevents her from taking a sweater from a store without paying for it,¹¹⁰ but that interference is necessary to protect the core liberty of the person who made the sweater, and it is not a core liberty that an able-bodied, potential sweater-owner can

¹¹⁰ Cohen *Self-Ownership, Freedom, and Equality*, p. 58.

force someone else make her a sweater. Poverty can be a threat to ECSO freedom when laws of property interfere with individuals' ability to clothe themselves, not when laws interfere with individuals' demand for others to clothe them. If ECSO freedom provides a reason for an able-bodied person to demand that others provide for her needs, it must be in compensation for those others interfering with her ability to provide for her needs and wants herself.

Barry's criticism of Van Parijs's "real freedom" is similar to my criticism of focusing on negative freedom without a theory of which negative freedoms are most important. "Real freedom" is a conception of freedom in the continuous sense, the freedom "to do whatever one might want to do."¹¹¹ Barry argues that real freedom is incommensurable between two opportunity sets unless one has all the opportunities of the other and more. Many important choices do not fit that criterion, and Van Parijs's principle that society should maximize the real freedom of the least advantaged gives no guidance on how to choose between two such sets.¹¹² For example, imagine a prisoner who is sentenced to jail, but is granted the right to have any material object that will fit into his cell delivered to him. Compare his freedom to someone who is out of jail but far less access to luxuries. Arguably, the prisoner has the opportunity to do more things that he might want to do, but it is hard to argue that he is freer in the most important sense or that has more of the status of a free person.

If we need a theory of which negative freedoms are most important to protect, we need an idea of what things are most important to do. Using McCallum's formulation that

¹¹¹ Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*, p. 23.

¹¹² Barry (2003). "Real Freedom and Basic Income." *Real Libertarianism Assessed*. New York: Palgrave MacMillan: 53-94.

freedom is always *of* something or someone, *from* something, *to* do something,¹¹³ we need some theory of what are most important “freedoms *to*” before we can generate a theory of “freedom *from*” that is more valuable than the mere numerical minimizing of the number of constraints. This must return to some notion of positive freedom. Joseph Raz conceives of status freedom as autonomy, which he defines essentially as self-mastery, but not in the sense of obedience to rational will that Berlin feared. According to Raz, “The autonomous person is (part) author of his own life.”¹¹⁴ He or she pursues self-chosen goals and relationships, as opposed to making coerced choices or drifting through life without exercising the capacity to make choices. Raz’s autonomy is consistent with Berlin’s value pluralism, as a person fashions their own destiny through successive decisions. The theory of autonomy stresses not only the need to make one’s own choices, but also to make meaningful, well-informed choices. Autonomy, as conceived by Raz, is not merely the absence of heteronomy (being ruled by others) but also some degree of self-mastery.¹¹⁵

Autonomy is opposed to a life of coerced choices. It contrasts with a life of no choices, or of drifting through life without ever exercising one’s capacity to choose. Evidently the autonomous life calls for a certain degree of self-awareness.¹¹⁶

The part of autonomy involving the absence of rule by others is not only consistent with freedom as individual choice but essential to it, and this is equivalent to effective control self-ownership. Raz’s autonomy is “full autonomy” and ECSO freedom can be thought of as “non-heteronomy” or, more simply, “basic autonomy.” It is in this sense in

which the label “ECSO freedom” coincides with its phonetic pronunciation “exo-freedom”—external freedom. A fully autonomous person has both internal freedom (a mind capable of making meaningful choices) and external freedom (non-heteronomy or the absence of rule by others). A person with ECSO freedom may not have the maximum level of functioning, but at least she has external freedom. ECSO freedom, I believe, is a prerequisite for full autonomy.

Berlin’s concern about the dangers of paternalism and totalitarianism imply that there ought to be limits on the state’s ability to promote Razian full autonomy. It would be dangerous if the state directed individual actions because individuals were not properly exercising their capacity to choose. This is one reason why the state’s primary focus should be on protecting ECSO freedom. It doesn’t mean that the state can do nothing to promote greater self-direction, simply that such promotion should not involve coercing adult individuals for their own good. It would not rule out noncoercive methods such as education that promote greater powers of self-direction without threatening ECSO freedom.

3. Non-domination

Republicans such as Pettit, Raventos and Casassas, and Skinner promote a form of status freedom that requires independence, and so it must have some similarity to ECSO freedom.¹¹⁷ Raventos and Casassas use Pettit’s non-domination as an instrumental justification for the level of independence that is probably strong enough to secure ECSO

¹¹⁷ Pettit *Republicanism: A Theory of Freedom and Government*; Raventos and Casassas (2002). "Republicanism and Basic Income: The Articulation of the Public Sphere from Repolitization of the Private Sphere." *Ninth International Congress of the Basic Income Guarantee Network*. Geneva; Skinner *Liberty Before Liberalism*.

freedom. However, this section argues that non-domination itself is too narrow to support the conclusion that that level of independence is necessary. Non-domination is narrower than ECSO freedom and too narrow to capture some of the important aspects of status freedom.

Pettit defines republican freedom as “non-domination,” meaning freedom from the potential of someone else to interfere in an arbitrary way. Skinner defines republican freedom as “libertas” (which he traces back as far as Livy): the ability “to stand upright by means of one’s own strength without depending on the will of anyone else.”¹¹⁸ Pettit’s focus on arbitrary interference makes his definition narrower than Skinner’s. Pettit offers a very clear explanation in the appendix to Chapter Two of his book, *Republicanism*:

All conceptions of power, roughly speaking, make different choices at the choice points—the points marked by ‘OR’—in the following schema.

1. Power is possessed by an agent (person/group/agency) OR by a system
2. so far as that entity exercises OR is able (actually or virtually) to exercise
3. intentional OR non-intentional influence,
4. negative OR positive,
5. in advancing any kind of result whatever OR, more specifically, in helping to construct certain forms of agency OR shape the choices of certain groups.¹¹⁹

Then he defines dominating power—the power that free people are not subject to—in terms of those five statements.

Power of this general kind exists when there is:

1. an agent, person, or corporate group
2. that is able (or actually able) to exercise
3. intentional influence
4. of a negative, damaging kind

¹¹⁸ Skinner *Liberty Before Liberalism*, p. 43.

¹¹⁹ Pettit *Republicanism: A Theory of Freedom and Government*, pp. 78-79.

5. in helping to shape what some other person or persons do.¹²⁰

In other words, one person is dominated by another (and therefore unfree) when another person or organized body is able to assert intentional influence (or arbitrary interference) that shapes another person's range of choices in a negative way. For example, an employer dominates her employees if she has the power to fire them if they engage in political activities in their off hours. It doesn't matter whether she ever exercises that power; as long as she has it, the workers are unfree. Pettit dwells primarily on the difference between freedom as non-domination and freedom as noninterference at the second choice point (which concerns potential not merely actual interference), but the differences between non-domination and ECSO freedom appear at the first and third choice points.

Because domination requires agent-centered, intentional influence, someone can enjoy freedom as nondomination and yet lack effective control over her own destiny. According to Pettit, "(N)on-domination is itself a form of power. It represents a control that a person enjoys in relation to their own destiny."¹²¹ Non-domination may be a power *in relation* to their own destiny, but it does not ensure the power to have *control over* their own destiny. Actual power over their own destiny requires that people are also free from unintentional and systematic factors that could potentially have an enormous effect on them. Effective control self-ownership defines people who control their interactions as free. People who cannot control their interactions are not necessarily unfree in terms of domination unless their lack of control involves the intentional influence of some agent. If I lack the ability to control my interactions why does it matter whether my position results from intentional, agent-centered actions rather than unintentional or systemic actions?

¹²⁰ Ibid, pp. 78-79.

¹²¹ Ibid, p. 69.

The actions of other people (acting within a system) can effectively exert force on an individual without anyone intending to use force over that individual. It is conceivable that people could completely lack control over their own destiny purely because of unintentional systemic factors. By ignoring systemic unfreedom, non-domination misses some of the most important sources of unfreedom in the world today.

For example, Waldron's describes the homeless as being unfree in some of the most basic ways, without a place to sleep, eat, urinate, and without any place to exercise civil liberties.¹²² They have to sleep on the street, eat what they can find in a garbage can, urinate in the gutter and so forth. They must accept the given rules of participation in an economic system if they want to avoid this life, and that is enough to say that they are unfree in terms of ECSO freedom. But it is not enough to say that they are unfree in the sense of domination. One must go a step further to find out whether their desperate situation either follows from or makes them vulnerable to the intentional, arbitrary influence of some particular agent. Waldron also argues convincingly that no one intentionally put the homeless in their position; homelessness is an unintentional side-effect of the property-rights regime.¹²³ A policeman might have arbitrary power over a homeless person. A soup kitchen might be able to force her to listen to a sermon, but is this what makes the homeless unfree? A homeless person might be able to simply walk away from any particular agent who tries to establish dominating power over them, but they are still unfree to control their life in relation to the property system.

The foundation of Marx's theory of exploitation is that material deprivation (or propertylessness) can force an entire class of people to seek employment from another class

¹²² Waldron "Homelessness and the Issue of Freedom."

¹²³ Ibid.

of people.¹²⁴ Systemic factors force employers to pay wages just enough to reproduce labor and to extract whatever value they can from the workforce. No one firm can arbitrarily choose the wage rate, nor can it hire all the unemployed. The central problems of that situation are systemic and unintentional not agent-centered and intentional. Marx discussed a situation in which systemic unemployment gave particular firms dominating power over their employees. But, again, is that the only factor that makes the situation wrong, or is it wrong simply because workers are compelled to serve a system whether or not their services are under the dominating power of any particular agent within that system? The latter is enough to make a person unfree in terms of ECSO freedom but not in terms of freedom as nondomination.

Many low-income workers in the United States today are indifferent to their employers. There are so many low-wage employers offering the very same conditions that no one firm has much discretionary power over the workers. Employers are compelled by impersonal market forces to pay the market wage for a given amount of effort. Workers are compelled by market forces to accept one offer from one firm or face homelessness. Workers could face a lifetime at the bottom of a social hierarchy and at the edge of material deprivation and no one person or agent intentionally put them in this situation. This is not arbitrary, intentional domination, but it is unfreedom. This is the unfreedom that effective control self-ownership captures and freedom as nondomination ignores.

When I look around, I do not see (personal, intentional, agency-oriented) domination as the central problem. Low-wage jobs in the United States today are often

characterized by high turnover and very little control over or concern for the lives of employees. There are some villains, but for the most part there are normal, often good people interacting in a dysfunctional system that gives people at the bottom very little control over their own life without necessarily giving dominating power over them to any particular agent. If this situation can exist it shows that Pettit's republican conception of freedom is too narrow to capture what it means to be a free person.

4. Freedom in your off hours: recent egalitarian theories of justice

Recently, many egalitarians have been very concerned with increasing the living standards of people at the bottom but less concerned with securing the conditions that would ensure ECSO freedom or any similar status for the people at the bottom. This section examines three egalitarian theorists, Elizabeth Anderson, Stuart White, and John Rawls,¹²⁵ who offer participation in the democratic process as a means for individuals to affect the terms of their employment but not the individual power to say no. I am using these three authors as spokespeople for the idea that society can force individuals to participate in a joint project as long as the project is just. All three have stated that they believe in an enforceable contributory obligation. The three are not completely clear how they would enforce the obligation, but they indicate that people who refuse to participate in the joint

¹²⁵ Anderson "What is the Point of Equality?"; Rawls *A Theory of Justice*; Rawls "Reply to Alexander Musgrave."; Rawls (1988). "The Priority of Right and Ideas of the Good." *Philosophy and Public Affairs* 17 (4): 251-276; Rawls (1993). *Political Liberalism*. New York: Columbia University Press; Rawls *Justice as Fairness: A Restatement*; White "Liberal Equality, Exploitation, and the Case for an Unconditional Basic Income."; White *The Civic Minimum*; White "Fair Reciprocity and Basic Income."

project would not have access to property or public funds.¹²⁶ I take this to mean that dissenters would be homeless. Access to food and shelter would always be available but only if the claimed met the conditions imposed by the government. If this is a misinterpretation, I apologize, and ask the authors to specify the method of enforcement. The authors probably believe that access to goods through participation would be so generous that few people would actually be homeless. My objections are aimed at forced participation not at the method of enforcement. Force could also be applied by jailing people who refused to participate.¹²⁷

There are two obvious arguments for an egalitarian work obligation. First, the redistributive measures and choices of occupation in the system guarantee freedom in the most important sense, making the freedom to object to a work obligation unnecessary. Second, the refusal of participation unjustly imposes costs on those who do participate. This section addresses only the first of these arguments, comparing the view of freedom within a contributory obligation scheme to ECSO freedom, which entails the power to reject active participation in any joint project. Chapter 12 addresses the second of these arguments. It assumes that such an argument must be premised on the belief that people are interdependent. Although people might be interdependent to some extent, people are not interdependent for all of their needs, and so a concern for ECSO freedom implies that society has the responsibility to allow people to live outside of the joint project at least to the greatest extent possible. The arguments of the authors I am discussing here seem to imply that the government imposing the conditions has no responsibility to allow people to

live outside of the joint project to any extent at all—all people have a fulltime obligation to participate.

Essentially, these authors offer workers freedom in their off hours, after they have fulfilled society's obligations. This section shows how each of these theories fails to preserve ECSO freedom. It argues that this failure is problematic both because voluntary participation is one of the constituent parts that make a social project just, and because the need to secure voluntary participation is important to protecting the vulnerable and the disadvantaged, including those who dissent from social agreement.

A. Elizabeth Anderson

Anderson's "democratic equality" includes a conception of status freedom, linked very closely with equality and defined as "freedom from oppression."¹²⁸

Equals are not dominated by others; they do not live at the mercy of others' wills. This means that they govern their lives by their own wills, which is freedom. ... Once all citizens enjoy a decent set of freedoms, sufficient for functioning as an equal in society, income inequalities beyond that point do not seem so troubling in themselves.¹²⁹

Anderson specifically sides with Waldron's assessment of homelessness as a threat to freedom, "Homelessness—that is, having only public dwelling—is a condition of profound unfreedom."¹³⁰ But, I will show, she fails to fully operationalize people's ability to "govern their own lives by their own wills."

¹²⁸ Anderson "What is the Point of Equality?" , pp. 288-289.

¹²⁹ Ibid , p. 315 and 326.

¹³⁰ Ibid , p. 318.

Anderson states emphatically that all people should have access to the functionings they need to secure freedom from oppression:

Under democratic equality, citizens refrain from making intrusive, moralizing judgments about how people ought to have used the opportunities open to them or about how capable they were of exercising personal responsibility. It need not make such judgments, because it does not condition citizen's enjoyment of their capabilities on whether they use them responsibly. The sole exception to this principle concerns criminal conduct.¹³¹

Actually, she has a second exception. Although she says that everyone will have *access* to these functionings, she allows that some people could "choose" to function at a lower level.¹³² She bases her justification for redistribution on mutual obligation, and therefore, she is willing to make redistribution conditional on fulfillment of a work obligation. She considers those who do not fulfill this socially imposed obligation to be "choosing" to function at a lower level. Some forms of nonmarket contributions (such as care work) fulfill the obligation in her system, and she believes that she can somehow separate those whose nonmarket contribution is good enough from those whose contribution is not good enough to count as fulfilling the requirement without making "intrusive, moralizing judgments." Similarly, those who cannot work are not held to any such obligation, and she believes that she can somehow separate those who can and should be expected to work from those who cannot without making "intrusive, moralizing judgments."

Although the intrusive, moralizing judgment of the modern political theorists she criticizes may not involve these distinctions, most, if not all, of the intrusive, moralizing judgments made by modern welfare states involve separating those who should or should

not be held to a work requirement. Anderson can't have it both ways; there is no way to separate the sheep from the goats without moralizing. Her system inherently employs intrusive, moralizing judgments, and she needs to take on the difficult job of defending why she thinks intrusive, moralizing judgments are a good idea in the circumstances where she uses them but not a good idea in the circumstances in which the authors she criticizes use them.

Anderson's inconsistency on moralizing judgments is not the central problem with "democratic equality." The deeper problem is that it makes freedom conditional. Anderson goes to far as to say,

Only the commission of a crime can justify taking away a person's basic liberties and status as an equal in civil society. Even convicted criminals, however, retain their status as equal human beings, and so are still entitled to basic human functionings such as adequate nutrition, shelter, and medical care.¹³³

Yet, she is willing to deny these functionings (or many of them) to those who refuse to work, even though her own words imply it is a worse punishment than imprisonment. Anderson's characterization of the homelessness under democratic egalitarianism as a mere "choice" ignores the issue of whether using homelessness (or some other form of deprivation) to force workers to participate against their will makes them unfree in the sense of ECSO freedom or freedom from oppression.

Anderson offers two protections to ensure that the work obligation will not be oppressive: it must be determined democratically, and it has to give weight to the concerns of the disadvantaged. Who will appoint the judges to determine when society reaches that standard? It would have to be the same ruling coalition that makes the policy. The weak

¹³³ Ibid , p. 327.

and the vulnerable are at the mercy of the majority without any independent control over the terms they will work under and the goals they will pursue. She apparently believes that as long as the range of options is democratically approved, it will be fair enough that no one could reasonably object even to the worst options on the list. She has more faith in the democratic process than I do. Under democratic egalitarianism the options available to the disadvantaged will be as good, fair, and reasonable as the majority want them to be with no assurance that those options will be as good, fair, and reasonable as the people who actually have to take those options think they should be. Having one vote out of millions on the list of activities you are allowed to perform and the rewards you will receive has some value, but it is not the freedom to “govern their own lives by their own wills.” Her proposal does not live up to the ideal she expresses. Forced labor is unfreedom, no matter who applies the force (a feudal aristocracy, a capitalist aristocracy, a socialist dictatorship, or a democratic egalitarian governing coalition with the best intentions in mind).

B. Stuart White

Stuart White proposes “justice as fair reciprocity” in which:

(i) Citizens are properly possessed of various social rights: (ii) these rights are instrumental to an ultimate goal that is radically egalitarian: and (iii) where these rights work to secure citizens a sufficiently generous share of the social product, and sufficiently good opportunities for productive contribution, citizens have definite, potentially enforceable obligations to make a productive contribution to the community in return.¹³⁴

¹³⁴ White *The Civic Minimum*, p. 17.

White describes a society of reciprocal obligations. Society is obliged to find a way to eliminate “the proletarian condition,” meaning that workers are as free as everyone else and share sufficiently in the social product.¹³⁵ Once society meets this condition, all people are obliged to work together for a joint project. Society, in turn, is obliged to ensure that everyone has a good choice of fulfilling, well-paid occupations.¹³⁶ White’s definition of the proletarian condition does not include what I would consider to be its essence: that workers have *nothing to sell but their labor*,¹³⁷ which I interpret to mean that they have *no choice but to sell their labor*. Under that interpretation, White’s plan fails to eliminate the proletarian condition, because (although workers are promised better wages and working conditions) they are explicitly held to the obligation to sell their labor. Perhaps, White interprets the phrase to mean, *nothing else to sell along with their labor*. To White, it is acceptable to put workers in the position in which they *must* sell their labor but only as long as they receive returns to social capital as part of their returns to labor.

Freedom is not the central motivation behind justice as fair reciprocity, but it seems to be the constraint behind the requirement that society gives individuals a wide choice of challenging work. But, as in Anderson, this strategy means that the work has only as much choice over the terms and goals of her work as the ruling coalition allows. I am not convinced that this is sufficient freedom. Take an example from *the Sound of Music*. Suppose the newly united German-speaking state asks Mr. von Trapp to perform his obligation to social cooperation by being the captain of a warship. Mr. von Trapp feels the need to flee the country to avoid it. Certainly, he was made unfree. But could the Nazis have freed him by saying. “OK, you don’t want to be the captain of a ship, would you like

¹³⁵ In detail, elimination of the proletarian condition is five conditions, non-immiseration, market security, work as challenge, minimized class differences, and non-discrimination. Ibid, p. 87-90.

¹³⁶ Ibid, Chapter 4.

¹³⁷ Marx (1887). *Capital, Volume One*. Moscow: Progress Publishers, Chapter 26.

to be first mate? Second mate? Seaman? Cook? Infantry commander? Armaments supplier? Person who cleans the toilets at headquarters? ...” Is there a number of choices of occupations, such that, once the Nazis offer him that number, he becomes free even though he is obliged to contribute to the Nazi project? If these options are personally unfulfilling to Mr. von Trapp, does it matter whether there is wide social agreement in greater Germany that these occupations are fulfilling, worthwhile, and well paid? Does it matter whether by working he receives a large, generous share of the social product including returns to capital? If Mr. von Trapp objects to the goal of the joint project, no amount of choices—no matter how equal they are, how willingly others accept them, or how many people believe they are reasonable—will make him free.

White could respond that society has no right to force an individual to participate in an *unjust* social project. Suppose, I had told the story the opposite way; the main character was a Nazi living in an Allied country who objected to the anti-Nazi project of his society. His story would have lacked much of its moral force, but the effect on his freedom would be the same. The question is, what made Mr. von Trapp unfree? Was it the force the Nazis exerted on Mr. von Trapp or the wrongness of the Nazi project? Wrongness is a constituent part of injustice, but choice and the absence of force are the constituent parts of freedom. If forced participation in the Nazi project makes Mr. von Trapp unfree, forced participation in the Allies’ anti-Nazi project makes the Nazi or the pacifist unfree. Freedom in turn affects justice. Respect for people’s status as free individuals is part of what makes a social project just. One of the things that made Nazism so horribly unjust is that it forced its way of life and death onto so many other people in violation of their status as free individuals.

In the Reformation era, both Catholic and Protestant nations commonly persecuted members of the opposing group. Each objected to the other’s persecution not on the

grounds of freedom of religion (a concept that few endorsed at the time), but on the grounds that the state was persecuting the wrong religion. One can endorse a mandatory obligation despite its effect on individual freedom, but one should recognize its effect on freedom. Egalitarians such as Anderson and White could respond that ask for a contribution to a “thin” ideology, not to a strictly ideological state in the sense of a theocratic, Fascist, or even anti-Fascist state during wartime. It is true that some ideologies are thinner than others, but a lifetime, fulltime obligation to participate in an economy that produces far more luxuries than necessities is certainly not the thinnest possible ideology.¹³⁸ A society that protects individuals from making a forced contribution certainly must be closer to the first-best ideal of a free society, and it certainly must better protect the vulnerable against the tyranny of the majority.

C. John Rawls

Rawls puts forth a theory in which the voluntary agreement of all participants is the central justification for social cooperation. He claims only to discuss the distribution of the benefits of social cooperation; “There is an identity in interests, since social cooperation makes possible a better life for all than any would have if each were to try to live solely by his own efforts,”¹³⁹ and this benefit is determined by people’s own preference. But literal agreement of the participants plays no part in the actual operation of the project, only in the hypothetical original position. Rawls asks a democratic ruling coalition to imagine an original position in which people choose the basic structure without knowledge of their position in it. He invites people in the original position to turn down any agreement that is

not personally in their interest. In theory, the foundation of a just interaction is the same as it is here, voluntary agreement. But in practice, he does not ask the ruling democratic coalition to create rules that approximate an original position by making it necessary to achieve agreement from everyone who participates; it is enough if the ruling coalition imagines what that agreement would be.

He proposes a principle of fairness, which states that those who voluntarily accept the benefits of social cooperation have a corresponding obligation to contribute to it, but he does not provide another option for those who do not voluntarily accept the benefits of social cooperation. Willing participation—which is so central to Rawls’s theory—plays no part in his political institutions. He connects his two principles to equal opportunity and equal treatment,¹⁴⁰ but not to control over the decision to participate. No matter how strongly an individual or a minority might believe they would not have agreed to that in the original position, they may have no access to resources except by performing the obligations prescribed by the ruling coalition. He does not propose a system by which those who do not voluntarily accept the benefits of social cooperation have access to the resources they need to live outside of it. “Those who surf all day off Malibu must find a way to support themselves and would not be entitled to public funds.”¹⁴¹ How are they supposed to “find a way” when the system of social cooperation has monopolized all resources? He offers no answer.

The effective forced participation in Rawls conflicts with his claim that, “Extorted promises are void. ... Unjust social arrangements are themselves a kind of extortion, even violence, and consent to them does not bind.”¹⁴² The only way I can interpret this without

¹⁴⁰ Ibid. pp. 60-64.

¹⁴¹ Rawls "The Priority of Right and Ideas of the Good." , p. 257.

¹⁴² Rawls *A Theory of Justice*, p. 343.

being a direct contradiction would be to imagine that his objection is not to extorted promises per se but only to unjust extorted promises. Even then, why is the majority's imagination of a hypothetical agreement necessarily more reliable than an actual agreement that brings the disadvantaged willingly on board? If one argues from the standpoint of moral truth, he can say that the refusal to participate is unjust or that the justice of a cooperative project has nothing to do with whether some or all of the participants agree to the project. But Rawls¹⁴³ specifically claims not to assert a moral truth, and to take the justification of social cooperation from the fact that people want it.

D. Basic income as a practical approximation of the original position

Rawls and Nozick are unlikely allies on the inconsistent treatment of agreement. Both supposedly believe that agreement is central to just interaction but neither of them create an institutional structure in which propertyless individuals have any real opportunity to make or refuse agreements.¹⁴⁴ They justify their systems of social cooperation on the grounds that it makes everyone better off (in terms of their own preferences) than they would be producing by their own efforts, but neither allows individuals to choose between social cooperation and living by their own efforts or living at the equivalent level. In both theories, propertylessness effectively forces individuals to serve the interests of the group that controls property. Nozick believes that a right-libertarian capitalist economy with extreme inequality simply turns out to be better for everyone than a state of nature; Rawls (like many other egalitarians) believes that a regulated, market economy can be made to

¹⁴³ Ibid; Rawls *Justice as Fairness: A Restatement*.

¹⁴⁴ Nozick *Anarchy, State, and Utopia*; Rawls *A Theory of Justice*; Rawls "The Priority of Right and Ideas of the Good."; Rawls *Justice as Fairness: A Restatement*.

turn out better for everyone. Although Nozick claims that no one is under any obligation to anyone else, he believes that society today is sufficiently in the interests of the propertyless that we can put them in the position in which they are effectively forced to serve.

A basic income, large enough to assure the independence for ECSO freedom, can be considered a way to approximate the original position in practice. It does not have the anonymity of Rawls's hypothetical original position, but it does have two important features that forced participation lacks: it ensures that any joint project is genuinely endorsed by and genuinely in the interest of everyone who participates—as they see it themselves. Everyone receives a basic income so that no matter what happens they will be no worse off than they could be with the opportunity to live by their own efforts. The lack of anonymity is certainly not a problem for Nozick, and should not necessarily be a problem for Rawls either. The anonymity in Rawls was for the creation of the basic structure, not for each individual's actions within it, and the justification for centralized coordination of the distribution of income was that it was merely the division of the benefits of a joint project. If we want to be sure that the latter condition holds, we need to leave people the opportunity to live outside of the social system at a level at least as high as they could achieve by their own efforts with their own access to resources. This strategy might be more true to the spirit of mutual cooperation that motivates Rawls's structure than the duty to contribute that he proposes.¹⁴⁵

Rawls even seems to endorse the idea at one point:

The first principle covering the equal basic rights and liberties may easily be preceded by a lexically prior principle requiring that citizens' basic needs be met, at least insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise those rights and liberties. Certainly any such principle must be

¹⁴⁵ Rawls "The Priority of Right and Ideas of the Good." , p. 257.

assumed in applying the first principle. But I do not pursue these and other matters here.¹⁴⁶

I will not speculate how he resolves the apparent contradiction of this lexically prior principle with his statement, “Those who surf all day off Malibu must find a way to support themselves and would not be entitled to public funds.”¹⁴⁷

D. Egalitarianism and dissent

Rawls, Anderson, and White seem to believe that the power to say no is too much freedom for the disadvantaged to have. What is it about the poor that these egalitarians are so afraid of? Perhaps, they are afraid that the poor will still be so lazy that they won't accept just terms if given the option to refuse. Why are these egalitarians so sure that it is because the poor are lazy and not because everyone else made them a bad offer? Shouldn't an egalitarian's first concern be that the powerful do not take advantage of the poor and not the reverse? How can mandatory-participation egalitarianism be the next step in social justice? Society today is not ready to meet the standard of justice that could compel participation, and few if any societies in history have.

Rawls, Anderson, and White could respond that they are discussing first-best or ideal theory, but that argument is insufficient. In a first-best situation, we are capable of reaching an agreement in which everyone believes the social project is worthy of their participation. In the second-best situation, the ruling coalition is capable of determining what is just; individuals are not, and therefore, the ruling coalition may dominate resources

¹⁴⁶ Rawls *Political Liberalism*, p. 7.

¹⁴⁷ Rawls "The Priority of Right and Ideas of the Good." , p. 257.

in such a way as to force dissenters to participate against their will. In the third-best situation, the ruling coalition is or can be wrong about justice, and therefore, individuals should have the effective power to refuse to be a part of any joint project. In the fourth-best situation, the ruling coalition is wrong, and it forces individuals to participate. Most societies in human history have been in that fourth-best situation, and for most of that time the ruling coalition did not think of itself as unjust. The most important thing the disadvantaged need is not for the ruling coalition to think harder about what terms they force the disadvantaged to accept; the disadvantaged need to be free from forced participation. They need freedom from propertylessness.

The ruling coalition is inherently a coalition of the powerful. Although not necessarily representative of the most advantaged individuals, it cannot be composed of the least advantaged. If a coalition of the least talented or skilled individuals became the ruling coalition, they would cease to be the least advantaged. It is easy for a powerful coalition to imagine a range of opportunities and working conditions that the lower classes ought to find acceptable, and to imagine that they give them due respect. But selfishness, a lack of understanding, or a lack of empathy could make their choices less than reasonable. Attempted magnanimity does not give the lower class the freedom the power of refusal would. This is not to say that that second best situation can never arise, but by aiming for second best, these egalitarians may well hit fourth best.

Recent egalitarian literature has had great concern with cultivating feelings of solidarity from the middle and upper end of the income distribution for those receiving redistribution. And the method for cultivating solidarity is usually to make the poor jump through hoops, fulfilling some obligation, before they get access to the means of existence. But do they ask the question: what kind of feelings of solidarity will that cultivate on the

part of those at the bottom? Those who work at the least rewarding jobs, who feel they deserve better, and who only accept those jobs because their other option is destitution: will they—should they—feel solidarity with the rest of society? Are their feelings of solidarity as important as everyone else's?

5. Egalitarianism and obligation

Most egalitarian theory makes mutual obligation rather than mutual consent the centerpiece of human interaction or at least of economic interaction. Certainly mutual obligations exist, but mutual consent must be the far greater part of human interaction in a free society. There may be times when A can go to B, saying “this infant is drowning, you must help save it whether you want to or not.” But the greater part of human interaction is driven by wants, as in the case of the artisan and the buyer in the marketplace. It makes no sense for the artisan to say, “the price of my woodcarvings is so fair that you must buy one of them even if you don't want a woodcarving,” or for the buyer to say, “the price I am offering is so fair that you must make me a woodcarving to my specifications even if you don't want to.” If one party can monopolize all the resources so that others can survive only by obedience, the party can determine the price, the terms, and the goals of their interaction without need for any genuine agreement by other individuals. The most convincing reason for A, B, and C to participate in a joint project must be that A, B, and C agree to participate. Conditional access to the means of survival (without the power to say no) establishes that A and B can force C to participate in their joint project, and that A and B have no

responsibility even to try to make resources available for C to remain outside of their project to any extent at all.

Is there really any way in which society can ethically divide unowned natural resources such that one person has no access to resources at all? Anyone who advocates conditional access to all resources must believe the answer to that question is yes. The failure to satisfy the obligation to serve the ruling coalition's joint project is sufficient ground to make them destitute. If egalitarianism is defined as the ideology most favorable to the least advantaged, I do not see how a system that divides resources in a way that forces destitution on anyone can claim to be truly egalitarian.

Chapter 5: Forty Acres and a Mule? The Resources Necessary to Secure Effective Control Self-Ownership

The earlier chapters have argued that voluntary interaction or voluntary trade requires that all the effected parties have the status of free persons, and that status freedom should be understood as effective control self-ownership (ECSO freedom): the effective power to make and refuse voluntary agreements with other people. To have this effective power, an individual must have some reasonable or acceptable alternative to social cooperation. This chapter asks, what does a person need to have that status, and what form should it take? In Martha Nussbaum's terms,¹⁴⁸ what level of functioning constitutes an alternative that is not thoroughly bad in an absolute sense? Should an individual have access to raw resources, in-kind finished goods, or cash to attain that functioning?

Section 1 discusses theories of human need by Nussbaum and Len Doyle and Ian Gough to determine the amount of goods a person needs to be independent. Section 2 argues that for the purposes of ECSO freedom, the focus must be on pre-trade rather than post-trade functioning. Section 3 considers what form access to the resources needed to secure human needs should take—cash, kind, or raw resources. Section 4 argues that an unconditional basic income is needed to ensure effective control self-ownership in a modern, industrial economy.

¹⁴⁸ Nussbaum (1995). "Human Capabilities, Female Human Beings." *Women, Culture and Development: A study in Human Capabilities*. Nussbaum and Glover, Eds. Oxford: Clarendon Press: 61-104.

1. Theories of human need

To determine the level of independence a person needs to maintain the status of effective control self-ownership, I examine the theories of human need proposed by Martha Nussbaum¹⁴⁹ and by Doyal and Gough.¹⁵⁰ Although the two theories take different approaches, they have a great deal of overlap.¹⁵¹

Doyal and Gough derive specific needs from two broad, basic needs—physical survival and personal autonomy—that exist in any culture but must be satisfied in different ways in different cultures and environments.¹⁵² They define “personal autonomy” as the mental capacity to make choices, the understanding of the available choices, political freedom, and the opportunity for freedom of agency.¹⁵³ Their basic needs are:

Physical survival	→	nutritional food and clean water protective housing safe physical and work environments control over reproduction appropriate health care
Autonomy	→	secure childhood significant primary relationships physical and economic security appropriate education safe birth control and child-bearing ¹⁵⁴

¹⁴⁹ Ibid.

¹⁵⁰ Doyal and Gough *A Theory of Human Need*.

¹⁵¹ Gough (2003). *Lists and Thresholds: Comparing the Doyal-Gough Theory of Human Need with Nussbaum's Capabilities Approach*. Bath, UK: WeD Working Paper 01. ESRC Research Group on Wellbeing in Developing Countries.

¹⁵² Some authors might dispute that any value such as autonomy can exist in all cultures, but I will not address that issue. For a debate on cultural relativism see Barry (2001). *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Polity Press; Young (1990). *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press.

¹⁵³ Nussbaum "Human Capabilities, Female Human Beings.", p. 53.

¹⁵⁴ Doyal and Gough *A Theory of Human Need*, pp. 155-159.

Nussbaum proposes a list of ten basic human functional capabilities:

1. Being able to live to the end of a complete human life, as far as is possible; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. Being able to have good health; to be adequately nourished; to have adequate shelter; having opportunities for sexual satisfaction; being able to move from place to place.
3. Being able to avoid unnecessary and nonbeneficial pain and to have pleasurable experiences.
4. Being able to use the five senses; being able to imagine, to think, and to reason.
5. Being able to have attachments to things and person outside ourselves; to love those who love and care for us, to grieve at their absence, in general, to love, grieve, to feel longing and gratitude.
6. Being able to form a conception of the good and to engage in critical reflection about the planning of one's own life.
7. Being able to live for and with others, to recognize and show concern for other human beings to engage in various forms familial and social interaction.
8. Being able to live with concern for and in relation to animal, plants, and the world of nature.
9. Being able to laugh, to play, to enjoy recreational activities.
10. Being able to live one's own life and nobody else's; being able to live one's own life in one's very own surroundings and context.¹⁵⁵

Gough notes that the two lists are nearly identical. Although Nussbaum's list focuses on functions and Doyal and Gough's lists focuses on a set of basic instrumental goods, securing Doyal and Gough's list of goods would secure nearly all of Nussbaum's functionings. According to Gough, every item on either list has some equivalent on the other except for play and concern for nature, which appear only on Nussbaum's list.¹⁵⁶ A life without the ability to play or to enjoy nature is arguably thoroughly bad, and so these functional capabilities deserve concern, but focusing on either one of the two lists would not significantly change the argument. Both lists are comprehensive enough that it is fair to

¹⁵⁵ Condensed from Nussbaum "Human Capabilities, Female Human Beings.", pp. 83-86.

¹⁵⁶ Gough *Lists and Thresholds: Comparing the Doyal-Gough Theory of Human Need with Nussbaum's Capabilities Approach*, pp. 12-14.

say that a person who has these capabilities has a life that is not “thoroughly bad in an absolute sense.”

Doyal and Gough’s list does not include every good that is instrumental in securing these functionings. But the goods that satisfy these needs vary so much with circumstances that it would be impossible to list them all in any conclusive way. The type of housing needed by a South American farmer is very different than that needed by an Alaskan miner. The type of education needed by Amazonian tribal natives is very different from that needed by New York citizens, but they both fulfill the same goal of providing for the autonomy and survival of individuals in each society.

For my purposes, it is helpful to group these capabilities into three broad categories. This is not a new theory of need, but simply a categorization of the needs listed in these two theories.

1. **Access to the goods or resources necessary to secure life and health:** nutritional food, clean water, protective housing, safe physical and work environments, appropriate clothing, a healthy environment, and appropriate health care (Nussbaum’s 1, 2, 3, and 8; Doyal and Gough’s physical survival and physical and economic security¹⁵⁷).
2. **Access to noneconomic interaction with other willing people:** the need to form meaningful relationships with others; requires civil rights, and access to transportation, communication, and public spaces (Nussbaum’s 5, 7 and the sexual and transportation portions of 2; Doyal and Gough’s significant primary relationships¹⁵⁸).

¹⁵⁷ Doyal and Gough *A Theory of Human Need*; Nussbaum "Human Capabilities, Female Human Beings."

¹⁵⁸ Doyal and Gough *A Theory of Human Need*; Nussbaum "Human Capabilities, Female Human Beings."

3. **General access to resources:** being able to use the five senses; being able to imagine, to think, and to reason, being able to form a conception of the good and to engage in critical reflection about the planning of one's own life, being able to laugh, to play, to enjoy recreational activities, being able to live one's own life and nobody else's; being able to live one's own life in one's very own surroundings and context (Nussbaum's 4, 6, 9, 10, and related to Doyal and Gough's autonomy and security and significant primary relationships¹⁵⁹).

The first of these categories is the need for the goods (or the resources with which to produce the goods) that secure survival and health. Many, if not all of these goods, can be produced better in cooperation with other people than on one's own, but human cooperation is instrumental to securing the goods to satisfy this category of need.

The intrinsic need to interact with other people is captured by the second category. Some goods (such as transportation, communication, and public spaces) are instrumental to forming personal relationships just as cooperative relationships can be instrumental to producing goods, and in many cases a relationship can have both inherent and instrumental value at the same time, but it is important to understand the difference between the two motivations for human interaction. The first category of need can be fulfilled by access to goods or resources, but the second category of need primarily requires access to other people. The government cannot guarantee personal interaction with individuals. It can guarantee the goods necessary to facilitate personal interaction and the civil rights people need to interact with other willing people, but it cannot guarantee that others will be willing

¹⁵⁹ Doyal and Gough *A Theory of Human Need*; Nussbaum "Human Capabilities, Female Human Beings."

to interact. Therefore, the government can directly secure the first category of need, but it can only secure access to the second category.

Importantly, neither Nussbaum nor Doyal and Gough limit needs to the purely physical needs of category 1, and such a limit would certainly be inadequate for the purpose of defining an acceptable independent option. Physical survival does not encompass human need. Prisoners have their physical needs met, but there are intentionally denied interaction with others and control to form their own lives as they choose. Prison is designed to be a thoroughly bad alternative to breaking laws. An alternative that provides just enough resources to meet one's physical needs, but makes it impossible or extremely difficult to form relationships with others, to think, to imagine, to plan a conception of the good life, or to live a life of one's choosing in one's own surroundings is thoroughly bad in an absolute sense—although it is not as immediately distressing as one that denies physical needs. But this fact introduces a difficulty into the attempt to calculate a cutoff point.

The third category can be summed up by a person's need for access to resources to use in achieving her conception of the good life. This category of need encompasses anything a person might need to do with goods and resources other than secure her physical survival and maintain relationships with other people. This category is an elastic clause because it is much harder to determine how much is enough in this category. The more resources a person has, the greater her ability to direct them toward her conception of the good life, but I don't see a way to say exactly how much is enough to plan a conception of the good life. However, the difficulty of determining a cutoff point does not make the problem insoluble.

The problem is made easier by using currency as a measure, which is made possible by Sen's division of "functional capabilities" into "functionings" and "capabilities."

Functionings are parts of the state of a person, particularly the various things that she manages to do or be in leading a life. Capabilities are the alternative combinations of functionings from which a person can choose.¹⁶⁰ As long as the people in question are competent adults (or have competent guardians), it is not necessary to focus on their functionings but on their capabilities, making the use of a money-measure possible:

As long as minimal capabilities can be achieved by enhancing income level (given the other personal and social characteristics on which capabilities depend), it will be possible (for the specified personal and social characteristics) to identify the minimally adequate income for reaching the minimally acceptable capability levels. Once this correspondence is established it would not really matter whether poverty is defined in terms of a failure of basic capability or as a failure to have the *corresponding* minimally adequate income.¹⁶¹

Sen is careful to warn that money is at best a rough measure of capability, and it leaves out some critical aspects of the issue.¹⁶² Income will not necessarily reveal the lack of capability experienced by a disabled person or the lack of freedom experienced by disadvantaged groups.

Access to the first category of need can be measured fairly well in money. Access to the second can be assured by civil rights and by freedom to interact with others, along with the ability to reach and interact with others, which requires some goods such as transportation, communication, and public spaces. The third category of need is difficult to measure in money, even if it can be largely secured by money. However, once a competent adult assures her family's physical survival, she can direct any additional resources to achieving these functional capabilities. Therefore, an income that is safely beyond serious

¹⁶⁰ Sen (1993). "Capability and Well-Being." *The Quality of Life*. Oxford: Clarendon Press: 30-53, 32.

¹⁶¹ Ibid, 41-42, emphasis and parentheses original.

¹⁶² Sen (1992). *Inequality Reexamined*. Cambridge, MA: Harvard University Press, pp. 28-30.

pressure on physical needs (of nutritional food, clean water, protective housing, safe physical environment, control over reproduction, transportation, and appropriate health care) gives her at least some ability to reflect, play, and live her own life.

Sharif estimates the level of income that satisfies basic needs by examining the work behavior of families in less developed countries. He finds a point of distress at which reductions in wages cause entire families including children to forego physical rest so that they can increase their hours of work to maintain consumption as wages fall. Total income, at the point where this behavior begins, “can be considered to provide an estimate of their subsistence—the lowest income free of distress.”¹⁶³ As difficult as it is to determine an exact cutoff point, it is possible to say that a person who is constantly struggling to keep her family fed, sheltered, and safe does not have her needs met, and a person who has enough so that they are clearly not struggling for these needs has the ability to direct the surplus toward planning their conception of the good life.

Physical needs can provide a rough guide to required level of income. We know that people in distressed situations meet their most pressing physical needs first, and that once the distress passes, resources become available for higher, more long-term needs. Therefore, as income is safely beyond the point at which physical needs are pressing, we can be sure that people have at least some ability to think, imagine, and plan their conceptions of the good life.

However, the money measured to secure safety from immediate distress is not everything. People might not be desperate to obtain some kind of housing and food, but the quality could be so low that it fails to meet their needs. How can we be sure that the available goods are of adequate quality? For this problem, we would have to keep an eye on

¹⁶³ Sharif (2003). *Work Behavior of the World's Poor: Theory, Evidence and Policy*. Aldershot: Ashgate, p. 76.

statistical measures. If a significant number of the poor have food and shelter but suffer from malnutrition, accidents, the cold, infant mortality, epidemics, etc., their needs are not adequately secured.

2. Conditional capability

A society with full employment in which everyone who accepts a job reaches this level of functioning can say that every individual has the capability of meeting her needs, but it is not necessarily a society that secures everyone's freedom in the sense of effective control self-ownership. Remember that ECSO freedom requires that each person has independent access to the resources necessary to secure the necessary level of functioning at the *outset* of active participation with others without fulfilling conditions imposed by others. If the arguments in the preceding chapters are correct, although a person who has the opportunity to earn income by fulfilling some conditions is capable of having that level of functioning, that person is neither free of the conditions nor free to negotiate the conditions in a meaningful sense. Therefore, an economy of free individuals participating in voluntary cooperation requires that everyone has a minimum level of *pre-trade* property, enough that each of them has the capability to secure independence.

3. Unconditional capability in cash, kind, or raw resources

How should society ensure that all of its members reach the functionings necessarily to secure ECSO freedom? I have argued that basic income could secure the independence necessary for ECSO freedom, but independence could also be secured by in-kind provision of goods or even by access to raw resources. Much of the discussion about how ECSO freedom should be secured has to do with what individuals' claims to property rights are, which will be discussed in Part Two. However, it is worth considering whether cash is essential to secure ECSO freedom or whether it can be secured by other means. I will argue that while ECSO freedom could be secured by either in-kind goods or raw resources, there is reason to believe that cash redistribution would be the most reliable means of securing ECSO freedom in a modern, industrial economy.

A. In kind

It is generally agreed by economists that cash transfers are Pareto superior to in-kind benefits, and therefore at least potentially better for both the payer and the recipient. Pareto superiority does not imply that they should always be preferred to in-kind benefits, if for example some important value is at stake.¹⁶⁴ At least some of the goods on the list need to be provided in kind, such as childhood education and public spaces. Most nations provide healthcare in kind, perhaps because of market failure.¹⁶⁵ However, most of the goods necessary to secure life and general access to resources are difficult to supply in kind.

¹⁶⁴ Thurow (1974). "Cash Versus In-Kind Transfers." *The American Economic Review* 64 (2): 190-195.

¹⁶⁵ There is evidence of market failure in the health care industry, Hurley (2000). "An overview of the normative economics of the health sector." *Handbook of Health Economics*. Culyer and Newhouse, Eds. Oxford: Elsevier. 1: 55-118; Pauly (1986). "Taxation, Health Insurance, and Market Failure in the Medical Economy." *Journal of Economic Literature* 24 (2): 629-675., but there is also a widespread belief that medical care should be provide outside the market because of their importance, Bergmann (2004). "A Swedish-Style Welfare State or Basic Income: Which Should Have Priority?" *Politics and Society* 32 (1): 107-118; Thurow (1976). "Government Expenditures: Cash or In-Kind Aid?" *Philosophy and Public Affairs* 5 (4): 361-381.

Living one's own life is personal; it is different for everyone. The individual might decide to make do with slightly worse housing for slightly better food or slightly worse of both to use resources to achieve some other centrally important goal. A rigid system of in-kind benefits would keep individuals from making those decisions, and reduce their ability to control their lives.

In-kind benefits, rather than cash benefits, could have the effect of segregating or stigmatizing recipients. There are ways to reduce the stigma associated with in-kind benefits, such as universal in-kind provision. No one feels stigmatized for using the National Health Service in Great Britain, but people have felt stigmatized for wearing National Health glasses. No one feels stigmatized for sending their children to public schools in wealthy American suburbs, but people have felt stigmatized for sending their children to public schools in American cities. It would be difficult to provide universal public housing of a type that many well-off people would want to use. It would seem possible to provide universal basic foodstuffs that most people would want and that would therefore not be stigmatizing. But it would hardly seem worth the effort to provide free food for everyone just to avoid stigmatizing the poor, when the same effect could be achieved by providing cash benefits.

In-kind benefits could conceivably secure the power to say no as specified. But in-kind benefits would leave individuals less free to control their lives and to decide how best to achieve their capability than cash benefits. If the goal of redistribution is to allow individuals to remain outside the system of social cooperation, but not to punish them, the possibility of stigma provides a reason in favor of basic income over in-kind transfers.

B. In raw resources

I have argued for a responsibility to stay out of each other's way sufficiently so that all can maintain their ECSO freedom by their own efforts. I have not demonstrated any duty on the part of others, individuals or collectively, to produce the goods to secure the ECSO freedom of people who do not wish to be a part of the dominant social project. The most literal interpretation of the responsibility to stay out of each other's way is to allow dissenters access to raw resources.

In some cases, access to resources may be exactly what dissenters want. Colin Ward argues for an anarchist society with the right to squat in unused buildings; to self-build housing on available land; to produce food on allotments; and even to provide for some of their own healthcare, education, and daycare through mutual aid groups.¹⁶⁶ James Robertson argues that self-organized and self-controlled "ownwork" will become increasingly important as many occupations become technologically outmoded.¹⁶⁷

From the point of view of the taxpayer, the presumed advantage of giving raw resources is that it would be cheaper, but this may not be the case. It would seem to be much easier to leave dissenters alone to make what they can out of resources than to provide something for them. But modern capitalism is both very hungry for resources and very good at turning resources into consumption products. It is far cheaper for a capitalist society to give its dissenters enough cash to buy the goods they want to live their own lifestyle than it would be to give them the resources they need to produce those goods themselves, and this fact is capable of transforming a claim to resources into a claim to cash

¹⁶⁶ Crouch and Ward (1994). *The Allotment: Its Landscape and Culture*. Nottingham: Mushroom; Hardy and Ward (1984). *Arcadia for All: The Legacy of a Makeshift Landscape*. London: Mansell; Ward (1973). *Anarchy in action*. London: Allen and Unwin; White (2006). "A Relevant Anarchism? The Social Philosophy of Colin Ward." *Manuscript*. Jesus College, Oxford.

¹⁶⁷ Robertson (1985). *Future Work*. Aldershot, UK: Gower.

that can be used to buy services. Homesteads might have been the best way to secure ECSO freedom in the 1860s when the United States was resource rich and industrially poor, but it is less likely to be the case today. The United States gave up the Homestead Act decades ago because it ran out of land to give away, not because people were no longer interested in land. New York City could hardly grant land and materials to the 40,000 people who seek beds at its homeless shelters every night so that they could forage for firewood, build their own cabins, fish in the trout stream that once ran near what is now Fifth Avenue. To grant one homeless New Yorker enough Manhattan real estate to become a subsistence farmer would be to make her a multimillionaire. That amount of property would go a long way to supporting the income of nearly every homeless person in New York.

The land-demanding anarchists might have a complaint against this justification of basic income. They may well want the larger amount of land rather than the smaller amount of basic income. Arguably, if society provides just enough income so that an individual can attain their basic needs by purchasing the cheapest products, it makes only one lifestyle possible. However, recall that basic needs are not limited to physical needs, and one category of needs on the list above is general access to resources. A basic income providing just enough money to purchase the cheapest food, clothing, and housing with nothing left over to pursue goals is not enough to secure ECSO freedom. If people have a basic income, safely above the bare minimum they need to survive, they might not have enough to buy all the land they would want, but they would have the flexibility to put what they have toward alternative lifestyles and to combine it with other similarly situated people.

Another problem with the provision of raw resources rather than cash is that it has the potential to be both punitive and stigmatizing. For example, the ruling coalition says, “We can’t force you to work for us, but we can humiliate you and force you to struggle to

survive as a subsistence farmer in this remote spot.” There are many ways to produce for oneself. Garrison might want to be a subsistence farmer. Colin and friends might want to establish a cooperative. You might want to raise goats by the oasis in Winnemucca. Philippe might want to gather coconuts on a Hawaiian beach after surfing all day. The responsibility to stay out of each other’s way does not imply that members of society’s most popular joint project have the right to choose where and how dissenters may support themselves. It would be difficult to give people raw resources and give them great flexibility about how and where to use them without allowing them to turn the resources into cash. But then, why not skip that step and start with cash? However, it might be possible to make resource grants at least somewhat flexible with the provision of some kind of resource voucher.

Resource grants could be punitive if they involve separating the receiver from society. Forcing people to leave their home community in order to say no to a joint project can have the effect of denying them access to the second category of need (access to noneconomic interaction with other willing people). It is one thing if all the other individuals decide independently that they are not willing to have noneconomic interaction with someone who doesn’t cooperate in a joint economics project, but quite another for the government to interfere with people’s desire to interact.

Another problem with the attempt to secure ECSO freedom by the provision of raw resources is that it could require a long-term or even a lifetime commitment. I have argued above that one party cannot ask another to make a binding commitment to alienate her ECSO freedom. It is important not only that people have the possibility to reject social participation once in their life, but that people who choose participation retain their status as free individuals. Much of the economic distress that threatens people’s independence in

modern societies comes temporarily or at least unexpectedly during economic downturns. Such a worker would need access at least to a temporary basic income, but this argument doesn't necessarily preclude moving to a raw resource policy for longer-term objectors.

4. Conclusion

This chapter has argued that basic income can provide the economic independence necessary to for effective control self-ownership in a modern industrial society. The level can be determined by the amount needed to safely secure housing, food, clothing, medical care, and education. But it has not argued definitively that the preservation of ECSO freedom necessarily requires that all redistribution be in cash. It is at least possible that some of the goal could be accomplished by provision in kind or even in raw resources, although these methods risk being punitive or stigmatizing. The strongest arguments for in-cash basic income over raw resources are that it is cheaper and that it protects workers who attempt to participate in the joint project. The argument that individuals have a claim to basic income in cash relies on the property theory presented in Part Two.

Part Two:
Property

Chapter 6: The Problem of Property

Seven stranded castaways live on an uncharted desert isle. Wealthy Mr. Howell asks working-class Gilligan to dig a hole for a barbecue pit. In doing so, Gilligan digs up a locked treasure chest. Before opening the chest, the two begin to dispute its ownership. Both apparently base their claims on Lockean unilateral appropriation: Gilligan mixed his labor with the chest (by cutting into the turf) and Mr. Howell mixed his servant's labor with the chest (by asking Gilligan to cut into the turf). They ask the wise Professor to act as judge in their dispute. He rules that the chest belongs equally to all seven of the castaways, none of whom has special claim to the island's resources. Strong Skipper flings a rope over a high tree branch and hoists up the chest. Before he could drop it, greedy Mr. Howell, working within the legally ascribed egalitarian property-rights regime but not wanting to miss his chance to be the sole owner of the contents of the treasure chest, offers the other six castaways a large sum of money for the exclusive right to it. They decline; he raises his offer, and keeps raising it until all six of the other castaways agree to respect his ownership of the chest. Skipper drops the chest. It breaks open, revealing only worthless cannonballs, of which Mr. Howell is now the undisputed owner.

-Elroy Schwartz (summarized)¹⁶⁸

Part One of this thesis examines the relationship between property and status freedom, asking what property-rights regime protects status freedom for all. It argues that some unconditional access to property is necessary to secure status freedom, understood as effective control self-ownership, and that basic income can help deliver that security. It argues that the most important freedoms for society to protect are the core liberties associated with ECSO freedom. Accomplishing that goal is a constraint on the objective

¹⁶⁸ Schwartz and Crawford (1965). "Plant You Now, Dig You Later." *Gilligan's Island*. Dobkin, CBS Television. This example is actually rather advanced, incorporating uncertainty and a prior distribution of wealth. Uncertainty complicates the issues I wish to discuss, but it does not change my conclusions, and so I will set it aside entirely. It is interesting, however, that the participants choose to make their decisions under uncertainty when they could easily have resolved the uncertainty first and distributed the property second. By a prior distribution of wealth, I mean that Mr. Howell is wealthy before the assignment of a property right to this external asset, whereas people usually talk about an initial assignment of property rights and subsequent trade. It would be easy to write the prior distribution of wealth out of the story: Mr. Howell possesses greater talent, skill, or willingness to work than anyone else. Instead of bidding for the treasure chest in cash, he offers a contract to provide services for everyone else.

discussed in this part of the thesis, but only to a small extent, because the two theories point mostly in the same direction.

Part Two now examines the relationship between property and continuous freedom, asking what property-rights regime delivers the most extensive equal liberty (understood as continuous freedom from interference). The goal is to determine the property-rights regime that delivers the maximal freedom consistent with equal freedom for all. This is not an argument for a natural right to property. The rights it argues for are derived from the goal of maximizing equal freedom.¹⁶⁹ Throughout this part of the thesis, the word freedom, use without the qualifier ECSO, should be understood in the sense of continuous negative freedom.

This part of the thesis argues over the course of several chapters, concluding in Chapter 10, that the property-rights regime that delivers the maximal equal freedom requires a general agreement. Under this regime, a person obtains title to an unowned natural resource (or a product of past generations) by paying her contemporaries sufficiently so that it is in their interest to agree to respect her property right. In other words, people can obtain an approximation of a property right in unowned external assets by making it in each other's interest to treat their holdings as property. Call it "as-if property." Chapter 10 connects this justification for private property with a basic income.

This theory of the relationship between property and liberty runs counter to the argument from liberty for right-libertarianism.¹⁷⁰ As I will use it here, the argument from liberty is, property rights established unilaterally over natural resources without

¹⁶⁹ One could say that such an argument relies on natural right—the right to maximal equal freedom.

¹⁷⁰ I take the phrase, "argument from liberty," from Kagan "The Argument From Liberty," but I use it differently. Shelly Kagan defines libertarianism as the doctrine that no one should be allowed to interfere with a person's rights except to stop them from violating someone else's rights (p. 18). Kagan argues that allowing exceptions to rights might deliver greater freedom from interference than the libertarian rule (p. 37). The discussion in this thesis puts exceptions aside: even assuming the "argument from liberty" for *some* system of rights, are strong property rights consistent with the most extensive equal freedom?

compensation for, or consent of, the propertyless deliver the maximal equal freedom for all. Many critics have conceded the argument from liberty to right-libertarianism. Thomas Scanlon, for example, states that Nozick¹⁷¹ adheres “as closely as possible to the idea that ... all valid obligations derive from consent.”¹⁷² Scanlon makes this remark despite recognizing that heritable property rights disadvantage the poor of subsequent generations without their consent.¹⁷³ Isaiah Berlin argues that no matter how morally right or desirable redistribution from the propertied to the propertyless may be, it entails an absolute loss of liberty.¹⁷⁴

The next several chapters address the argument from liberty for strong unilateral property rights. It concludes that such rights cannot be established consistently with the greatest equal freedom from noninterference, because the freedoms they confer on property owners come at the expense of decreasing the freedom of the propertyless. This argument is aimed both at right-libertarian property rights and any system of property rights in which the taxation of property is said to be an interference with property rights at the expense of liberty. This chapter clarifies the issue of property and the right-libertarian justification for it. Chapter 7 explains Lockean unilateral appropriation theory. Chapter 8 criticizes the case for strong property rights from Lockean appropriation theory. Chapter 9 criticizes modern right-libertarian reformulations of unilateral appropriation theory. These chapters conclude that none of these arguments establish unilateral property rights consistently with equal freedom or equal rights, clearing the way for Chapter 10 to discuss property rights by general agreement.

1. Assets, property, and ownership

A discussion of property rights has to begin with an understanding of what is being owned. I use the economists' definition of a "good" as anything a person values. It does not have to be something that has market value; it can be anything that people believe is desirable in some way. Goods do not have to be physical objects. Software, time, a beautiful sky, a day at the races, a night at the opera, friendship, the right to free speech, and any form of property rights are all goods. Goods can be categorized in many different ways, three of which are relevant to the discussion here.

"Internal assets" are the goods that make up part of a person's self, such as body parts, abilities, talents, thoughts, memories, and emotions. The concept of ECSO freedom proposed in Part One implies that an individual should have effective control over her internal assets. "External assets" are all goods that are not a part of a person's self, including land and minerals, the things present or past generations make out of them, social position, and knowledge left by previous generations.¹⁷⁵ Goods can also be divided into "natural resources" and "finished products." Natural resources are all the products of nature whether embedded in other goods or not. These include land, water, minerals, and plant life. Finished products are goods that have been altered in the production process and are now in their final form, such as machine tools. A third way to categorize goods is between "resources," and "consumption goods." Resources are goods that are used to produce other

¹⁷⁵ Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*. Van Parijs argues that positions (such as jobs) in an imperfect market can also be considered assets. The argument that jobs can be assets is not relevant to the argument here.

goods. They include natural resources such as land but also finished products such as machine tools. Consumption goods are goods that are used directly by the consumer to fulfill her needs or wants but not to produce anything else for exchange with others. Consumption goods include many finished products, such as cars and paintings, but they can also include raw natural resources that are enjoyed directly by consumers such as a nature park or a sunset.

The word “property” is often used in two different ways. The first simply refers to any good that is owned. The second definition of property refers only to a subset of the first definition of property: specifically, the ownership of external assets capable of generating income. Someone who does not have enough wealth to devote any of it to investment is often called propertyless, but by this we don’t mean that he owns no clothing. I use property in both ways, but I think the meaning in each case is clear from context. I also use the term “property rights” when it is important to distinguish between a piece of property and the right to that property.

“Ownership” is a set of “incidents” (rights and duties) that a person can have over an asset. Anthony Honoré provides an excellent analysis of ownership, focusing on “the liberal concept of full individual ownership.” He defines full ownership as, “the greatest possible interest in a thing which a mature system of law recognizes.”¹⁷⁶ According to Honoré, full liberal ownership constitutes the following eleven incidents:

1. The right to possess,
2. The right to use,
3. The right to manage (i.e. the right to decide how it is used and by whom),
4. The right to the income the property generates,

¹⁷⁶ Honoré *Making Law Bind*, p. 161-162.

5. The right to capital (i.e. the right to transfer property to others or to consume, destroy, or waste it),
6. The right to security (i.e. the right to refuse involuntary transfers),
7. Transmissibility (the right to transfer it to heirs),
8. The absence of term (that ownership does not come to an end at specified future date unless voluntarily transferred by the owner or her successors),
9. The duty to prevent harm (i.e. the duty not to manage one's property in a way that potentially harms another person or another person's property),
10. Liability to execution (i.e. that property may be seized by creditors, and *possibly* that it may be taxed or appropriated by the state),
11. Residuary character (i.e. eventually other interests in the property would become extinct to the benefit to the owner).¹⁷⁷

According to Honoré, different systems may extend ownership to more or fewer things, but they tend to define ownership similarly.¹⁷⁸ Nearly every society that recognizes ownership of external assets recognizes these eleven incidents as full ownership, but these incidents do not constitute absolute ownership, which he does not attempt to define. Many weaker forms of ownership also exist in most societies, including easements, short-term leases, partnerships, and use rights. I use the term “strong property rights” for any property rights without the duty to attain the consent of (or provide compensation for) the propertyless, even though such rights could be somewhat weaker than Honoré's full liberal ownership. Honoré is unwilling to say whether taxation of property is a standard incident of full individual ownership even though taxation is as common as property.¹⁷⁹ He does not discuss why full liberal ownership is such a common institution or whether it is justifiable.

Vallentyne, Steiner, and Otsuka make an observation that could help explain why full ownership is so common. They use a similar but streamlined list of rights without including a list of duties,¹⁸⁰ and claim that ownership so defined is, “the *logically* strongest

¹⁷⁷ Ibid, condensed and paraphrased from pp. 166-175.

¹⁷⁸ Ibid, p. 163.

¹⁷⁹ Ibid, p. 175.

¹⁸⁰ Vallentyne, Steiner and Otsuka (2005). "Why Left-Libertarianism is Not Incoherent, Indeterminate, or Irrelevant." *Philosophy and Public Affairs* 33 (2): 201-215. These authors define five rights of ownership:

set of ownership rights over a thing that a person can have compatibly with others having such rights over everything else.”¹⁸¹ It is understandable that the strongest set of property rights would be a common institution, but the authors are aware that strong property rights are not the only possible way, or necessarily the most desirable way to define ownership.

The strongest set of property rights compatible with *someone* having such rights over everything else is not necessarily the same as the strongest set of property rights compatible with *everyone* having the most extensive equal freedom. For example, sovereign dictatorship is the most extensive right over a territory one person can have compatible with someone having such rights over all other territory, but it is clearly inconsistent with everyone having the most extensive equal freedom. Is full liberal ownership of external assets (without compensation for, or consent of, the propertyless) consistent with equal freedom for all?

Too often, property rights advocates have treated full ownership as if it is a fact of nature, unquestioningly accepting that property rights naturally must include all eleven of Honoré’s incidents of full ownership plus the freedom from taxation, but such an argument is incomplete without a justification for why property must constitute full liberal ownership. Perhaps, property rights advocates tacitly assume that the strongest property rights for owners compatible with such rights for other owners is equivalent to the strongest rights for people compatible with similar rights for other people or that full liberal ownership is simply a fact of nature and freedom means the most extensive freedom possible within that unchallengeable institution. Neither assumption can go unquestioned in a search for the greatest equal freedom for all people.

Property can be effectively unowned or held by an individual, by a group, or by a nation. Property rights held by any of these parties can consist in any or all of these eleven incidents in any combination. For example, a confiscatory inheritance tax, as Hillel Steiner advocates, would eliminate transmissibility without eliminating the absence of term.¹⁸² Property could be held by individuals in long-term leases that eventually reverted to the state, giving the government the absence of term and the residuary character but giving the lease-holder all other incidents. Laws that regulate how a property can be used give some of the right to manage to the state rather than the owner. Property can be taxed to benefit the propertyless, which can be considered an increase in its liability to execution and the duty to prevent harm or a reduction of the right to the income the property generates. A successful defense of property has to explain which of these incidents property must have and why. This effort is lacking in much property-rights literature.

2. Rights to property and right-libertarianism

¹⁸² Steiner *An Essay on Rights*. Steiner would not interfere with someone who wanted to give their goods away before death.

No government follows the principles advocated by right-libertarian theorists,¹⁸³ but I address their arguments because they defend the familiar institution of full liberal ownership as an important right in a free society. Slightly weaker views of ownership are probably more common, such as the belief that strong property rights or nearly full ownership should require a duty to aid the poor,¹⁸⁴ or the belief that full ownership is consistent with freedom but other aspects of justice, such as equality, trump the freedom expressed in property rights.¹⁸⁵ This thesis argues that full individual property rights without the consent of, or compensation for, the propertyless are inconsistent with property and so it proposes no conflict between equality and freedom. I will argue in Chapter 8 that a duty of property owners to aid the poor is not sufficient to make full individual ownership consistent with the greatest equal freedom. Therefore, I focus on the right-libertarian argument for full individual ownership with the understanding that my arguments apply as well to weaker forms of property than those advocated by right-libertarians.

For the purposes here, I define right-libertarianism as an ethical theory of property rights¹⁸⁶ to external assets that can be characterized by the following statements:

1. Property rights are natural, moral rights that exist independently of government through unilateral appropriation.

¹⁸³ Such as Friedman (1962). *Capitalism and Freedom*. Chicago: University of Chicago Press; Friedman and Friedman (1980). *Free to Choose*. New York: Harcourt Brace Jovanovich; Hayek (1944). *The Road to Serfdom*. London: Routledge; Hayek (1960). *The Constitution of Liberty*. Chicago: University of Chicago Press; Murray (1997). *What it Means to be a Libertarian*. New York: Broadway Books; Narveson (1988). *The Libertarian Idea*. Philadelphia: Temple University Press; Nozick *Anarchy, State, and Utopia*; Rand (1994). *Capitalism: The Unknown Ideal*. New York: Penguin; Von Mises (1927). *Liberalism in the Classical Tradition*. Irvington, NY: The Foundation for Economic Education

¹⁸⁴ This is one interpretation of Locke's property theory Locke (1960 [1690]). *Two Treatises of Government*. Cambridge: Cambridge University Press.

¹⁸⁵ Such as Berlin *Four Essays on Liberty*.

¹⁸⁶ This thesis does not concern the parts of right- or left-libertarian theory that do not pertain to property in external assets.

2. Property rights should constitute and do constitute full individual ownership as defined by Honoré.¹⁸⁷
3. Taxes and government regulations on property constitute government interference with individual property rights.
4. Government is ethically bound to limit its interference with property rights to the minimum necessary to secure and protect the rights of property ownership and formal self-ownership.
5. The argument from liberty: a government that behaves in accordance with propositions 1-4 creates the most extensive liberty compatible with equal liberty for all (liberty understood in the continuous negative sense).

The difference between the existing legal recognition of property rights and libertarianism is largely in point 4. The argument in this thesis is aimed at points 1, 2, and 3, and so it is aimed as much at the current legal system of property rights as it is at right-libertarianism. It does not conclude that all private property is inconsistent with equal freedom but it concludes that some forms of taxation and regulation of property are necessary to secure the greatest equal freedom for all. If that argument is successful, a coherent defense of full liberal ownership has to defend strong property rights *at the expense* of the most extensive equal freedom for all. There are non-liberty-based arguments for right-libertarianism, but I will argue that strong property rights are inconsistent with any consistent set of equal rights and are best understood as legal privileges.

¹⁸⁷ Honoré *Making Law Bind*.

3. Special rights, legal privileges, and full individual ownership of property

There is an important distinction between general-rights arguments for property and special-rights arguments for property.¹⁸⁸ A general right is a right that everyone has, such as the right to free speech. A special right is a right that arises in a particular situation. For example, if Ginger promises to pay Skipper \$100 a week, Skipper attains a special right that Gilligan does not possess. A further distinction can be made between special legal rights that do and do not constitute legal privileges. In the case above, Gilligan's right status does not change. He had a duty to respect someone else's right to property in that \$100 before the transfer, and he continues to have the same duty (although her relative wealth may have changed). By contrast, legal privileges provide special rights for one person by reducing the rights of or imposing duties on another without her consent or a similar right. For example, King A appoints subject B the feudal lord of peasant C, giving C the obligation to perform ten hours per week of service for B. Legal privileges as such are inconsistent with equal freedom for all.

There are two kinds of cases in which a person can hold a special right without holding a legal privilege. First, a special right that necessarily follows from general rights extended to all is not a privilege. For example, the general right to liberty arguably implies the special right to a fair trial for those accused of a crime. People whose general right to liberty is not under threat by accusation of a crime do not need a trial. Similarly, Skipper's special right to collect a debt from Ginger follows from the general right of people to lend

¹⁸⁸ Waldron (1988). *The Right to Private Property*. Oxford: Clarendon Press, pp. 116-117.

things to each other. Second, special rights are not legal privileges if they somehow increase the freedom of those who are underprivileged by them. For example, the most important and extensive freedoms of the least capable are probably best protected when only those who are capable of performing the duties of police officers are allowed the privilege of being police officers. This can be true even if those who are not capable would prefer to be police officers, but the general rights that police officers protect for others must be great enough to justify whatever special rights they hold for themselves.

Marriage is a special right that is not a legal privilege. Suppose Skipper and Ginger get married. Skipper obtains special legal rights that Gilligan does not have, and he takes away Gilligan's opportunity to wed Ginger, but the rule, *everyone has the right to have or refuse a marriage contract with another willing person*, is necessary to create the maximum freedom from interference with an individual's marriage decision compatible with equal freedom for all. Skipper's special right to wed Ginger follows from that general right applied to everyone. Out-competing someone in marriage or the market does not interfere with their rights-status even if it makes them worse off than they would have otherwise been.¹⁸⁹ Any rule designed to give Gilligan greater opportunity to marry the person of his choice (assuming it is Ginger) would come at the expense of Ginger's opportunity to marry the person of her choice, which is a more central and more important general right. Therefore, marriage is a special right that not everyone will be able to assume even if they want to, but it is not a privilege as long as everyone has the same legal right to obtain it, and it does not interfere (in an absolute sense) with people who cannot find a willing partner. Although Gilligan is worse off in the sense that Ginger is no longer willing to make an agreement with him that she otherwise might have, his rights status does not

¹⁸⁹ Cohen *Self-Ownership, Freedom, and Equality*, pp. 227-228.

change. He has a duty to respect the effective control self-ownership (and other rights) of Skipper and Ginger whether or not they wed each other. Skipper's invitation is only one of an infinite number of reasons why Ginger might have decided not to accept Gilligan's offer. If we accept her prerogative to make that decision, Skipper's influence over that decision is none of Gilligan's business.

Does full individual ownership of external assets similarly maximize equal liberty? It is easy to show that the trade of existing property rights is not a legal privilege, but the same cannot be said for the establishment and definition of property rights. Consider a rule such as *everyone has the right to trade external assets (in which they have legitimate title) with other willing people*. As in the example of the loan above, the exchange of existing property rights does not affect the rights status of other parties in an absolute sense. A naïve justification of property would stop here. People acquire property through trade; trade is not a legal privilege. Therefore, interference with property interferes with freedom. But the argument does not hold. Trade is not the *source* of property.

Justification of the exchange of property, once defined, does not justify property itself or explain why property must be defined as full individual ownership rather than some smaller bundle of rights. Trade merely exchanges titles, and it cannot occur until government has already recognized (or established) the title to property.¹⁹⁰ The issues of how assets became property and what rights owners have over assets are more important to the propertyless than the exchange of property. Many complaints about the power of owners are misdirected at the market for trading the titles that the legal system has created.

¹⁹⁰ Ibid, 72. Cohen in turn refers to Marx (1978). *Capital, Vol. III*. Middlesex: Harmondsworth, p. 911; and Spencer *Social Statics*, p. 115. Similar observations have been made by Rousseau (1984). *A Discourse in Inequality*. New York: Penguin Classics, p. 109; Paine (1797). *Agrarian Justice*. Philadelphia: R. Folwell, for Benjamin Franklin Bache; and many others.

To examine whether property rights are special rights or legal privileges, it is necessary to examine the source of those rights, which in most property theory is unilateral appropriation. That is, one person takes unowned natural resources and makes them private property without the consent of anyone else. Does a right of unilateral appropriation, such as *everyone has the right to appropriate property, if she can find unowned property to appropriate*, create the most extensive freedom compatible with equal freedom for all? Is it a special right or a legal privilege? Suppose, instead of interacting with a person named Ginger, Skipper appropriates a piece of property on Ginger Avenue. Unlike the exchanges, this unilateral action interferes with Gilligan, who now can make no use of the Ginger Avenue property without Skipper's permission. Gilligan may neither appropriate the property individually nor use it without assuming ownership, as he was free to do when it was unowned. The crucial difference between the person named Ginger and the property on Ginger Avenue is that the property has no will of its own to be interfered with. The only relevant parties are Skipper and Gilligan. Skipper's appropriation increases his freedom to act and interferes with Gilligan's freedom to act by imposing duties on Gilligan that did not exist before.

Rights and duties to a particular resource are equal when it is unowned and unequal when it is owned, making it difficult to reconcile with the greatest equal freedom for all. But that reconciliation is not necessarily impossible. If *everyone* had the opportunity to appropriate property, and uses of appropriated property were more important than the uses of unowned or collectively held property, appropriation would be a special right that follows from a general right. However, if resources are scarce (i.e. if there are fewer available than everyone would like to appropriate), it is impossible to extend full ownership rights to appropriated property *and* give everyone the same right to appropriate property.

There can be no general right to appropriate scarce resources. Some people have no opportunity to appropriate property, not because they are unable to do so, but because all the property has been appropriated and is protected by legal force. Government interference, in the form of establishing and protecting special rights to property, is the reason the propertyless are excluded from making any use of external assets. The duties imposed on others by appropriation make property a very different sort of special right than a marriage contract or the right of a free trial. Waldron argues that the imposition of potentially onerous duties without consent makes appropriation inconsistent with nearly any other duty people are expected to accept.¹⁹¹ Unless the appropriation of property does something for the propertyless, ownership is a legal privilege and not a right.

If the appropriated property is defended by the state without the consent of the propertyless, a principle that has nothing to do with voluntary exchange between individuals comes between an individual and access to natural resources. Cohen calls this a “banal truth.” That is, “if the state prevents me from doing something that I want to do, then it places a restriction on my freedom,”¹⁹² but the banal truth must nevertheless be stated because so many right-libertarians ignore it.¹⁹³ Waldron¹⁹⁴ quotes Kant as recognizing this fact, “When I declare (by word or deed), ‘I will that an external thing shall be mine,’ I thereby declare it obligatory for everyone else to refrain from using the object of my will. This is an obligation that no one would have apart from this juridical act of mine.”¹⁹⁵ Wenar describes it especially well:

¹⁹¹ Waldron *The Right to Private Property*, pp. 270-171.

¹⁹² Cohen *Self-Ownership, Freedom, and Equality*, p. 55.

¹⁹³ It is not a new observation. For example, Rousseau *A Discourse in Inequality*.

¹⁹⁴ Waldron *The Right to Private Property*, p. 266.

¹⁹⁵ Kant (1965). *The Metaphysical Elements of Justice*. Indianapolis: Bobbs Merrill, p. 64.

Before [original] acquisition, each inhabitant of the state of nature may use, consume, damage or destroy anything, just as she likes. After acquisition, every person but the acquirer has a duty not to disturb the acquired thing without the acquirer's permission. The acquirer in exercising her acquisitive right imposes a duty on each non-acquirer with respect to the acquired thing, and without any non-acquirer's consent. By the exercise of the acquisitive right, the acquirer unilaterally imposes duties on everyone else. Moreover, the acquirer typically imposes these duties intending only her own advantage, and since they are strong duties, they may be burdensome to those who bear them.¹⁹⁶

Alan Ryan argues, based on similar reasoning, that if we adopt extensive property rights, "it is because we treasure some freedoms more than others" not because property rights are unambiguously associated with greater freedom.¹⁹⁷ The argument in the coming chapters goes further: full or strong ownership rights do not merely promote one type of freedom for everyone at the expense of type of freedom for everyone; they promote the freedom of some at the expense of reducing the very same freedoms for others. That is, they promote privilege at the expense of maximal equal freedom for all. If this argument against strong property rights is to be successful it must overcome the Lockean and right-libertarian arguments that property owners have done something (following from equal freedom) that justifies their claim to property. The following three chapters examine Lockean and right-libertarian justifications for unilateral appropriation and full ownership.

¹⁹⁶ Wenar (1998). "Original Acquisition of Private Property." *Mind* 107 (428): 799-820, p. 806.

¹⁹⁷ Ryan (1981). "Yours, Mine, and Ours: Property Rights and Individual Liberty." *Reading Nozick: Essays on Anarchy, State, and Utopia*. Paul, Ed. Oxford: Basil Blackwell: 323-343, p. 340. According to Ryan, McCloskey (1965). "A Critique of the Ideals of Liberty." *Mind* 74 and Sidgwick (1966). *The Methods of Ethics*. New York: Dover Publications make similar arguments.

Chapter 7: Lockean Theories of the Unilateral Appropriation of Property

Volumes have been written interpreting just what John Locke was trying to say in Chapter Five of *The Second Treatise on Government*.¹⁹⁸ Good scholars have interpreted him in strikingly dissimilar ways. C. B. Macpherson sees Locke as an advocate of property rights that are strong enough to justify class-based capitalism with a powerless proletariat.¹⁹⁹ Alan Ryan and Jeremy Waldron see Locke as arguing for unilateral appropriation of somewhat limited ownership rights.²⁰⁰ Gopal Sreenivasan believes that Locke intended to justify unilateral appropriation of greatly limited property rights in an egalitarian setting.²⁰¹ James Tully argues that Locke advocated contingent property rights that are no more than what a civil society chooses to grant.²⁰²

Most of the responsibility for these widely divergent interpretations belongs to Locke himself. Although some interpretations are more reasonable than others, Locke's property theory is so vague, even cryptic, that contradictory interpretations are plausible. Perhaps he had political reasons to be less than clear.²⁰³ Perhaps he had only a general idea

¹⁹⁸ Locke *Two Treatises of Government*, except where indicated citations of this work refer to the *Second Treatise*, here after abbreviated STOG with section numbers designated by "§."

¹⁹⁹ Macpherson (1962). *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford: Clarendon Press.

²⁰⁰ Ryan (1984). *Property and Political Theory*. Oxford: Basil Blackwell; Waldron *The Right to Private Property*, 137-252.

²⁰¹ Sreenivasan (1995). *The Limits of Lockean Rights in Property*. New York: Oxford University Press.

²⁰² Tully (1980). *A Discourse on Property: John Locke and His Adversaries*. Cambridge: Cambridge University Press.

²⁰³ Metha (1992). *The Anxiety of Freedom: Imagination and Individuality in Locke's Political Thought*. Ithica: Cornell University Press.

of what he wanted to say about property, and did not fully think through his argument or its apparent contradictions. In any case, he was not unambiguous. It might be impossible to write a property theory that is simultaneously clear, consistent, coherent, and exactly what Locke intended, but there is something in Locke's property theory that is worth understanding. Although few modern scholars attempt to employ his theory as a whole, it is the basis of much of modern property theory.

This chapter interprets Locke, but its most important goal is not interpretation but extraction—to find the most compelling argument for private property that can be extracted from his insights. Which formulations of unilateral appropriation theory are the most logically sound and worth addressing? This is what Sreenivasan calls Lockean (meaning Locke-based) property theory as opposed to Locke's property theory (meaning Locke's own intentions).²⁰⁴ Alan Simmons argues that Lockean theory has something valuable to offer:

[T]hose who innocently work to discover, make, or usefully employ some unowned good ought to be allowed to keep it (if in so doing they harm no others)... It is the strength of this intuition that keeps alive the interest in Locke's labor theory of property acquisition... However badly he defends his views, we might say, surely Locke is on to something.²⁰⁵

Is he?

This chapter considers Locke's project and many of the divergent interpretations that have been made of it. It examines the rules he lays down for the appropriation of property in the state of nature, focusing on three possible provisos regarding charity, waste, and particularly sufficiency. The discussion then turns to property in civil society and the wide disagreement about whether and under what conditions Locke meant for appropriated

²⁰⁴ Sreenivasan *The Limits of Lockean Rights in Property*.

²⁰⁵ Simmons (1992). *The Lockean Theory of Rights*. Princeton: Princeton University Press, p. 223.

property to be carried over from the state of nature. The final section provides an overview and begins the job of extraction. It suggests an outline covering most of the possible interpretations of Locke's appropriation theory, and shows how various versions of appropriation can be understood as specifications of that general outline. It suggests one specification as the strongest case for the unilaterally appropriated property that can be extracted from Locke's chapter.

1. Locke's project

Locke begins with the premise that all natural resources belong to humanity in common,²⁰⁶ but he finishes with a theory in which all of the Earth, except what is left common by compact, is appropriated into private exclusive domains without the permission of the propertyless. Whatever Locke intended by saying that natural resources “belong to Mankind in common,” it was something much less than full liberal ownership; if a common claim to land means collective ownership, appropriation without permission is prohibited outright. Instead, he might have meant that all people have equal right to take subsistence from the land; that everyone has the equal right to use the land to meet their needs and wants;²⁰⁷ or that land was simply unowned and up for grabs—a “negative community”—which is very much the same as saying there are no collective claims to resources.²⁰⁸ It is difficult to argue for unilateral appropriation without effectively reducing any common claim out of existence, but even from that starting point, a good argument for how unowned

²⁰⁶ STOG, § 25 - § 27.

²⁰⁷ Tully *A Discourse on Property: John Locke and His Adversaries*, pp. 59-64.

²⁰⁸ Simmons *The Lockean Theory of Rights*, p. 238.

resources become owned is necessary. A successful argument for unilateral appropriation will have to answer three questions effectively: do collective rights to natural resources exist and why are they limited? How does something unowned become owned? What rights of ownership does appropriation entail? Locke makes an attempt to answer each question, but he is less than clear on each. He has not one but two theories to justify appropriation of property—one for a state of nature with abundant resources, and one for monetary economy with scarce resources. These theories can be considered as separate or complementary theories.

2. Appropriation in the state of nature

Locke characterizes the state of nature as one without money or trade but with abundant natural resources. In that state, land (or any external asset) becomes the property of the first person to mix her labor with it, whether or not she has anyone else's consent.²⁰⁹ However, Waldron argues that Locke believes appropriated resources become the property not of the individual who performs the work but of her family, future members of which have a right of inheritance.²¹⁰

Locke gives four reasons why the first laborer is entitled to unilateral appropriation. First, self-ownership entails that a person owns her labor, which implies ownership of any unowned thing she mixes her labor with.²¹¹ Second, labor improves resources and accounts

²⁰⁹ STOG, § 27-31. Locke actually only mentions a man's right to appropriate property, but I ignore the gender-specific aspects of the theory. I use female pronouns to stand for both sexes.

²¹⁰ Waldron *The Right to Private Property*, p. 161-162.

²¹¹ STOG, § 27-28.

for most of the value of property.²¹² Third, appropriators are entitled to something like an unconditional right to produce their own subsistence.²¹³ Fourth, improving resources effectively makes more resources available for others.²¹⁴

The right of unconditional access to the means of subsistence is illustrated by what Sreenivasan calls the “paradox of plenty.”²¹⁵ Locke argues, “If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him.”²¹⁶ It is paradoxical in the sense that God²¹⁷ gave land to mankind in common so that it would sustain them, but strict common ownership could itself preclude individuals’ access to sustenance. The implied argument is that appropriators have an unconditional right to take unowned resources to satisfy their needs, and Locke extends it to their wants as well.²¹⁸ Waldron argues that an unconditional right to subsistence can be fulfilled without conferring exclusive ownership rights to appropriators, and so it does not provide an argument for appropriation.²¹⁹ Sreenivasan replies that this statement is not meant as the justification of unilateral appropriation but as a demonstration of its feasibility, by reducing the need for unanimous consent to the absurdity of starvation amid plenty of available common resources.²²⁰

3. The provisos

²¹² STOG, § 28.

²¹³ STOG, § 28-29.

²¹⁴ STOG, § 37.

²¹⁵ Sreenivasan *The Limits of Lockean Rights in Property*.

²¹⁶ STOG, § 28.

²¹⁷ The theological aspects of Locke’s theory are not essential to its validity, and I leave them aside.

²¹⁸ STOG, § 31.

²¹⁹ Waldron *The Right to Private Property*, p. 168-174.

²²⁰ Sreenivasan *The Limits of Lockean Rights in Property*, pp. 28-29.

Locke's appropriation is valid providing the appropriator meets certain conditions. These provisos seem to establish limits to the extent of a family's property rights. But Locke clearly believed that, as long as these limitations are met, inequality can exist without an upper limit to the size of a family's or an individual's holdings.

A. The no-waste proviso

An appropriator must not waste her property or take more than she can use.²²¹ In the state of nature, this proviso is extremely significant because it limits the size of holdings to the amount a person can work by herself, ensuring great equality of wealth in that state. But it does not limit the maximum wealth in a monetary economy where a person can hold an unlimited amount of money without wasting any useful assets, because, unlike real assets, money can be stored costlessly.²²² The no-waste proviso only becomes relevant when people hold wealth in idle, nonfinancial assets, such as fallow land.

Locke places a great deal of emphasis on this proviso, but it is hard to understand why he believed it was so important. The most obvious motivation is that, if people waste what they take, there might not be enough to go around, but that argument would make the no-waste proviso an instrument to maintain the enough-and-as-good proviso (below). But this does not seem to be Locke's intention; he ascribes independent value to the no-waste proviso, and seems to place more importance on it than the enough-and-as-good proviso. He speculates that if everyone took only what they could use there would be more than

²²¹ STOG, § 31.

²²² STOG, § 50. One might argue that Locke's statement about the costless storage of money is not true if the economy has a Keynesian demand problem, but even then the no-waste proviso doesn't place a limit on any person's wealth as long as they invest what they do not consume.

enough resources on Earth for everyone in his day,²²³ but he implies that such a situation would not be preferable to the monetary economy.

In a monetary economy, owners have an incentive not to waste their capital, because working investments return money to the proprietor. Locke probably believed this incentive was sufficient for actual regulation of property to enforce the no-waste proviso to be unnecessary. There is something to the complaint that a rich person might own huge tracts of idle land and refuse to employ starving people to work it, but arguably that complaint is entirely captured by the following two provisos. Most modern authors do not consider the no-waste proviso an important part of Locke's theory.

B. The subsistence or charity proviso

According to Locke, everyone is entitled to access to some means of maintaining subsistence, which might require unconditional charity for those who are unable to work for their subsistence,²²⁴ but the able-bodied have a duty to work to produce their subsistence.²²⁵ This subsistence proviso might justify taxation to provide income support, medical care, and full employment policies. However, Locke may have believed they would be unnecessary in a healthy economy, in which business provides enough jobs for the able-bodied and voluntary charity provides enough support for the infirm.²²⁶ Although the subsistence proviso is important, it could be interpreted almost synonymously with the weak version of the enough-and-as-good proviso. If it has separate value, it is that under some circumstances, such as disability, the weak version of the enough-and-as-good

²²³ STOG, § 36.

²²⁴ STOG, § 25.

²²⁵ STOG, § 35; and Locke (1993). "Draft of a Representation Containing a Scheme of Methods for the Employment of the Poor." *John Locke: Political Writings*. Harmondsworth: Penguin Books: 446-461, p. 452.

²²⁶ Waldron *The Right to Private Property*, p. 161.

proviso might not assure subsistence for everyone. Under other circumstances, such as bountiful nature and able individuals, the enough-and-as-good proviso implies more than the subsistence proviso. Therefore, the propertyless are somewhat better protected with both provisos in effect. But if we make the simplifying assumption that everyone could provide for themselves, given enough resources, we can focus only on the following proviso.

C. The enough-and-as-good proviso

Locke states that appropriation is valid, “at least where there is enough, and as good left in common for others,”²²⁷ elaborating, “for he that leaves as much as another can make use of, does as good as take nothing at all.”²²⁸ Waldron and Macpherson call this “the sufficiency limitation,”²²⁹ and Nozick calls it “the Lockean proviso.”²³⁰ It has attracted far more attention than the other provisos, possibly because it seems to have the most far-reaching implications, possibly because it seems necessary to the establishment of any right of appropriation, and possibly because it is so difficult to tell what these words are supposed to mean.

The difficulty of interpretation begins with Locke’s placement of the words “at least.” As written, it seems that either the words “at least” mean nothing, or the entire proviso means nothing. Suppose he had written:

²²⁷ STOG, § 27.

²²⁸ STOG, § 33.

²²⁹ Waldron *The Right to Private Property*, p. 210); Macpherson *The Political Theory of Possessive Individualism: Hobbes to Locke*, p. 211.

²³⁰ Nozick *Anarchy, State, and Utopia*, pp. 178-182.

- Appropriation is valid where there is *at least* enough and as good left in common for others.

If so, it would have been clear that the statement was intended as a limit on appropriation—the proviso would be meant as a necessary condition for appropriation. But instead he wrote:

- Appropriation is valid “*at least* where there is enough and as good left in common for others.”²³¹

By saying this, he can be interpreted as implying that there are other unspecified cases in which a person can appropriate even though there is not enough and as good left for others. If so, the statement does not function as a proviso. It would be a sufficient, but not necessary, condition, placing no limit on appropriation.

Waldron argues that “the” proviso was not intended as a proviso at all, but that it is an effect of the no-waste proviso in the state of nature.²³² Sreenivasan and Nozick believe instead that “the” Lockean proviso is the most important and perhaps the only significant limitation on appropriation.²³³ Either interpretation is difficult. Why would Locke mention this proviso at all (and mention it several times) if he did not intend it as a constraint? But why would he include the phrase “at least” if it did not mean that appropriation was also valid in other unlisted circumstances?

²³¹ STOG, § 27, emphasis added.

²³² Waldron *The Right to Private Property*, pp. 210-211; and Waldron (1979). “Enough and as Good Left for Others.” *Philosophical Quarterly* 29 (117): 319-328, p. 322.

²³³ Sreenivasan *The Limits of Lockean Rights in Property*, pp. 40; Nozick *Anarchy, State, and Utopia*.

Tully (rather charitably) interprets Locke to mean that unilateral appropriation is valid only when the proviso holds (in the state of nature), but an entirely new set of rules for property become relevant when resources become scarce.²³⁴ Perhaps Locke did not know whether appropriation would be valid under other circumstances and believed it would require more thought. However, the elaboration “does as good as take nothing at all” implies that the proviso is very serious, and if the phrase “at least” is carefully placed, it means that when goods are not scarce the appropriator is required either to do something else to assure that the proviso is fulfilled²³⁵ or to obtain consent.²³⁶

Even Waldron admits that most authors have interpreted Locke to mean the enough-and-as-good clause as a proviso,²³⁷ and perhaps one reason so many people have taken it as a proviso is that the theory of appropriation seems so weak without it. The theory would imply that a person can take as much as she wants with no regard as to whether doing so injures others. If Locke didn't intend it, perhaps he ought to have intended it. A theory of property is stronger with it, and I will follow the authors who have focused on it as “the” proviso. The following section discusses its implications.

4. Fulfilling the proviso

There are three questions about how the proviso should be fulfilled. First, must it be fulfilled in kind or in other goods? Second, should its fulfillment be measured in terms of standard of living or independent functioning? Third, how strong must the proviso be?

²³⁴ Tully *A Discourse on Property: John Locke and His Adversaries*, pp. 164-165.

²³⁵ Sreenivasan *The Limits of Lockean Rights in Property*, pp. 40.

²³⁶ Tully *A Discourse on Property: John Locke and His Adversaries*.

²³⁷ Waldron "Enough and as Good Left for Others." , p. 319.

A. Must the proviso be fulfilled in resources or is compensation acceptable?

It is unclear whether “enough and as good” should be left in the same kind of resources taken by the appropriator or whether it is good enough to replace the appropriated natural resources with something else of equal worth. Nozick demonstrates that if the first is intended, the proviso prohibits appropriation of heritable or transferable property rights to any resource that will eventually become scarce. Even if enough-and-as-good was left when the first appropriation was taken, once there is no more to take, everyone’s property is invalidated, because every appropriation contributed to the dissipation of the resource.²³⁸

However, it is possible to take possession of a scarce resource and do as good as take nothing at all, if the appropriator replaces the resource with something that has equal or greater value than the appropriated resource. Suppose, Mr. Howell takes the Island’s only diamond, but builds a lodge to replace it. If everyone else prefers the lodge to the diamond, he has done as good as take nothing at all. He could do the same by replacing appropriated items with cash he obtained by trading. As long as production creates value there is a great possibility to fulfill the proviso by replacement. This may not be what Locke intended, but it does seem like the logical extension of the proviso, and it has been suggested by many Locke-inspired writers.²³⁹

It is possible to fulfill the proviso with an unconditional cash payment, as some left-libertarians have argued since Thomas Paine.²⁴⁰ But in other writings, Locke argued that the

²³⁸ Nozick *Anarchy, State, and Utopia*, pp. 175-176.

²³⁹ Otsuka *Libertarianism without Inequality*; Paine *Agrarian Justice*; Sreenivasan *The Limits of Lockean Rights in Property*.

²⁴⁰ Paine *Agrarian Justice*.

able-bodied poor should be given opportunities to labor instead of unconditional charity,²⁴¹ which again could make the proviso unnecessary in a sufficiently healthy economy. However, it is questionable whether job-linked compensation can be consistent with equal freedom for all when proletarians must alienate their labor to the propertied class to survive and members of the propertied class have no like obligation to alienate their labor.²⁴²

B. Should the fulfillment of the proviso be measured in terms of standard-of-living or in independent functioning?

Simmons argues that non-appropriators must be left in a condition of nondependence, which, similar to ECSO freedom, requires the ability make a living without being dependent on anyone else.²⁴³ He considers this a moderate level of the proviso—as opposed to the strong and weak versions discussed in the next section. But this argument has more to do with the relevant currency for the proviso than its level. The most important thing that resources can give a person is not a living standard (as Nozick sees it) but independence. Workers with access to high standards of living but who are dependent on their employers could meet a strong version of the proviso in terms of standard of living without meeting even a weak version of the proviso in terms of their status as free individuals.²⁴⁴ If the proviso has to be given in terms of independent functions, the question of level does not go away. It could be set at a level to provide enough to secure ECSO freedom and/or nondependence, enough to make individuals as well off as they would be in

²⁴¹ Locke "Draft of a Representation Containing a Scheme of Methods for the Employment of the Poor.", p. 452.

²⁴² See Chapter 8 for further discussion of this issue.

²⁴³ Simmons *The Lockean Theory of Rights*.

²⁴⁴ See discussion in Chapter 4.

a state of nature, enough to compensate individuals for accepting the duties imposed by appropriation, etc.

Tully and Sreenivasan argue that Locke saw the proviso as ensuring that the able-bodied have direct access to the means of production so that they do not become dependent proletarians,²⁴⁵ but Waldron finds this interpretation implausible. Citing Macpherson,²⁴⁶ Waldron states that it was clear and well documented that Locke took the existence and legitimacy of dependent wage-labor for granted.²⁴⁷ Locke makes statements in *The First Treatise* that one person must not be in a position of dependence on another for his survival. But these statements are made in the context of *one* employer,²⁴⁸ and it is hard to argue that Locke was greatly concerned with independent functioning. Locke probably thought competition within a class of employers was sufficient to ensure that workers are free even without any level of independence from property owners as a class. Whether Locke believed that or not, Milton Friedman argues it explicitly.²⁴⁹

C. How strong should the proviso be?

The two most commonly discussed levels for the proviso are what Nozick calls the weak and strong versions.²⁵⁰ I suggest a third, extra-strong version.

Nozick interprets the inclusion of the words “in common” in the phrase, “enough, and as good left in common for others” to justify the weak version: one can appropriate resources as long as everyone else is still as well off as they would be if no one had

²⁴⁵ Sreenivasan *The Limits of Lockean Rights in Property*; Tully *A Discourse on Property: John Locke and His Adversaries*.

²⁴⁶ Macpherson *The Political Theory of Possessive Individualism: Hobbes to Locke*, p. 216f.

²⁴⁷ Waldron *The Right to Private Property*, p. 225.

²⁴⁸ Locke *Two Treatises of Government, First Treatise*, § 41-42.

²⁴⁹ Friedman *Capitalism and Freedom*, pp. 14-15. See discussion in Chapter 5.

²⁵⁰ Nozick *Anarchy, State, and Utopia*, pp. 174-182.

appropriated any property and society remained in a primitive state. As long as the living standards of the modern propertyless are as high as Stone Age hunter-gatherers, the proviso is fulfilled.²⁵¹ The strength of Nozick's weak version depends on the results of an esoteric empirical investigation of Stone Age hunter-gatherer lifestyles. If historical research revealed that most hunter-gatherers lived with recurring famines and massive starvation, property owners could argue that the weak proviso is fulfilled even in a nation in which large numbers of propertyless individuals died periodically from preventable causes. However, if historical research shows that Stone Age hunter-gatherers lived enjoyable lives with plenty to eat at the cost of very little effort, even the weak proviso would be quite strong. Some research into Stone Age lifestyles shows that they lived at a surprisingly high standard with much less toil than factory workers.²⁵²

Narveson and Kirzner pare the weak proviso down to no proviso. They argue that people have no positive right to resources. Therefore, there is no question of a propertyless individual being harmed even if others appropriate everything.²⁵³ If no one has any right to any resources, they argue no one is worse off in terms of their rights after all resources are appropriated. This is a self-consciously non-Lockean theory, but they argue that it makes the theory of unilateral appropriation logically stronger.

Waldron, Sreenivasan and Tully agree that the proviso, if it is intended, must be interpreted in the strong version: Person A can appropriate x amount of land or resources if enough and as good is left in common so that every other individual can also appropriate x amount of resources. Under this proviso, any good, no matter how scarce, can be

appropriated as long as the appropriator takes no more than an equal share of the value of natural resources.²⁵⁴

However, none of these authors discuss the possibility an extra-strong version of the proviso: one can appropriate resources only if everyone else is still as well off as they would be with the opportunity to appropriate as many resources as they are physically capable of appropriating. On its own, the phrase “enough and as good left in common for others” seems to imply equal shares, but Locke clearly elaborates that the others are entitled not only to as enough and as good as the appropriator took but to enough and as good as they could have taken if that appropriation never occurred:

For he that leaves *as much as another can make use of*, does as good as take nothing at all.²⁵⁵ ... [I]t was impossible for any Man to intrench upon the right of another, or acquire, to himself, a Property, to the Prejudice of his Neighbour, who would still have room, for as good, and as large a Possession (after the other had taken out his) as before it was appropriated.²⁵⁶

The extra-strong proviso is extremely strict. If it is to be fulfilled in kind, it allows private property only in abundant resources. That is, resources with a market value of zero such as fresh air and ocean water. Under conditions of abundance, whether I take all I want or nothing at all, there is enough for you to take all you want. Under conditions of scarcity, an equal share is less than many of us would like to have. If I take an equal share, you (and everyone else) must make do with a smaller amount than you would if I took nothing at all. When assets are scarce, no division—not even equal division—of resources fulfills a condition of doing as good as taking nothing at all.

²⁵⁴ Waldron *The Right to Private Property*, pp. 214-215; Sreenivasan *The Limits of Lockean Rights in Property*, p. 40; Tully *A Discourse on Property: John Locke and His Adversaries*, pp. 137-138.

²⁵⁵ STOG, § 33, emphasis added.

²⁵⁶ STOG, § 36.

The importance of the extra-strong proviso is that when it holds, it justifies property on its own, in terms of the most extensive equal freedom with no need for the rest of the theory of property. If I take some air, as long as there is enough air for everyone else to use for any purposes they have, I do not interfere with anything others might consider doing with air. It doesn't matter whether I work with it (putting it in the tire on my truck), use it for my enjoyment (putting it inside a balloon), or waste it (blowing it into space); none of those uses interfere with anything others might want to do, as long as the extra-strong version of the proviso holds.

Thus, property under the extra-strong proviso is unequivocally consistent with maximal equal freedom. The same cannot be said even for the strong (equal shares) version under scarcity. Right-libertarians argue we are freer in some ways if the first-comer can unilaterally appropriate more than an equal share, but we are freer in other ways if we divide it equally. We are freer in some ways if we divide 90% of it evenly, and use 10% for collective projects (such as public roads and spaces), and freer in others if we divide only 10% of it evenly and use 90% for collective projects (such as factories and farms). Can any one of these be said to give the most freedom?²⁵⁷

The rest of property theory is an attempt to extend property to cases in which the extra-strong proviso cannot be fulfilled in kind. When the extra-strong proviso holds, property is consistent with *complete* freedom from interference; when it does not hold, which property theory provides the *greatest* equal freedom from interference?

²⁵⁷ Chapter 10 discusses this issue further.

5. Property in civil society

If people appropriate land unilaterally and population increases, at some point no more land will be available for appropriation, and the enough-and-as-good proviso can no longer be fulfilled in kind. It seems reasonable to think that reaching the limits of appropriation would reduce the size of property holdings in accordance with this proviso, but Locke instead focuses on how scarcity coincides with the introduction of a monetary economy, which frees owners from the no-waste proviso.²⁵⁸ According to Locke the rise of money frees owners from the no-waste proviso, because money provides a costless way to store wealth,²⁵⁹ and it (supposedly) requires general agreement to be valuable. Locke seems to connect these two, but the truth of the hypothesis that money implies consent is irrelevant to the argument that money can provide a waste-free store of wealth. The supposed need for an agreement to value money is as incidental to its ability to provide a waste-free store of wealth as the need for a mint or a printing-press. If consent is important, it must be consent to inequality,²⁶⁰ but Locke does not state why inequality should *require* consent.

Consent could be more logically valuable against the other provisos, but Locke's argument is vague, and it has been interpreted widely. He does not mention how, why, or whether money frees owners from the enough-and-as-good proviso. This omission gives credence both to those who believe that Locke intended it to remain in effect and to those who believe he never intended it as a proviso. Nozick, Tully, Simmons, and Sreenivasan argue that the proviso remains in effect with the propertyless agreeing to inequality but not

²⁵⁸ STOG, § 45-50.

²⁵⁹ See above.

²⁶⁰ STOG, § 50.

to less than sufficiency (in weak or strong version).²⁶¹ Locke quickly goes from the introduction of money to the introduction of government, civil society, and the regulation of property. It is unclear whether the rise of money and government are supposed to be simultaneous or sequential. If the agreement to use money and accept inequality comes first, social agreement validates property outside of and possibly with greater authority than government regulation of property. If government arises along with money, Locke's theory can more easily be interpreted to mean that property is contingent on legal validation.

When a monetary economy comes into existence, one of three things happens:

1. Property owners lose their natural property rights and receive whatever property rights civil society agrees they should be allowed to have.²⁶²
2. The propertyless voluntarily give up the rights that the no-waste and enough-and-as-good provisos were designed to protect, maintaining only the charity proviso.²⁶³
3. The propertyless recognize the unequal property rights of appropriators (and their successors) in exchange for valuing money, but maintain their rights under the enough-and-as-good proviso, which is fulfilled by cash, job opportunities, or investment capital.²⁶⁴

²⁶¹ Nozick *Anarchy, State, and Utopia*; Tully *A Discourse on Property: John Locke and His Adversaries*; Simmons *The Lockean Theory of Rights*; Sreenivasan *The Limits of Lockean Rights in Property*.

²⁶² Tully *A Discourse on Property: John Locke and His Adversaries*.

²⁶³ Waldron *The Right to Private Property*, chapter 6; Macpherson *The Political Theory of Possessive Individualism: Hobbes to Locke*, pp. 211-213. There is considerable room for disagreement within this point. Macpherson argues that money obviates both the no-waste and the enough-and-as-good provisos, and he makes little of Locke's charity proviso. Waldron argues Locke intended for money to obviate only the no-waste proviso. To him, the enough-and-as-good condition was never intended as a proviso, but the charity proviso remains in effect in a monetary economy.

²⁶⁴ Sreenivasan *The Limits of Lockean Rights in Property*, pp. 103-104, 112-117; Simmons *The Lockean Theory of Rights*, pp. 303-304.

Locke is extremely unclear about the extent to which consent is involved in his property theory. Consider these five statements:

- A. "I shall endeavor to shew, how Men might come to have a property ... without any expressed Compact of all the Commoners."²⁶⁵
- B. "[W]ill any one say he had not right to those Acorns or Apples he thus appropriated, because he had not the consent of all Mankind to make them his? ... If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him."²⁶⁶
- C. "The Turfs my Servant has cut ... become my *Property* without the assignment or consent of any body."²⁶⁷
- D. "Men have agreed to disproportionate and unequal Possession ... by tacit and voluntary consent."²⁶⁸
- E. "For Government and the Laws regulate the right of property, and the possession of land is determined by positive constitutions."²⁶⁹

Statement A, at the opening of the chapter, could mean that property does not require consent at all but it could also be interpreted to mean property requires tacit consent. Statements B and C clearly state that no consent is required either expressed or tacit. Statement D states just as clearly that voluntary consent is required for unequal property but that consent has been given. Statement E seems to make property in civil society completely subject to the law.

If consent is necessary, what consent? What happens when people choose to withhold their consent, and how can they express the desire to withhold consent? It seems difficult to make any consistent theory out of Locke without amending or absurdly interpreting at least one of these statements. Waldron observes, "Locke appears to connect the age of plenty with the lack of any need for consent to appropriate and the age of money and scarcity with

²⁶⁵ STOG, § 25.

²⁶⁶ STOG, § 28.

²⁶⁷ STOG, § 28.

²⁶⁸ STOG, § 50.

²⁶⁹ STOG, § 50.

a suggestion that now, after all, property is based on consent.”²⁷⁰ Even that interpretation, which doesn’t ascribe much consistency to Locke, involves amending C, which is a case of appropriation by labor in civil society without consent by anybody.

Perhaps Locke intends that people voluntarily agree to a general system of appropriation in which people may appropriate any unowned property without specific consent. But such an interpretation is inconsistent with statement B (“the paradox of plenty”), which demands that an individual be free to appropriate property without either specific or general consent from others. Perhaps consent is not necessary for property ownership in the state of nature in which property is roughly equal, but is necessary for *unequal* property ownership in a monetary economy. This interpretation runs into difficulty with statement C.

Tully argues that Locke limits unilateral appropriation to the state of abundance and that, in civil society, all property is contingent on whatever the polity decides.²⁷¹ The idea that unilateral appropriation is entirely replaced by contingent rights based on consent seems to be at odds with statements B and C. Most scholars—especially Waldron, Sreenivasan, and Cohen—find that to be an implausible interpretation of Locke’s intent.²⁷² It would mean that Locke endeavored to show nearly the opposite of what he said he would endeavor to shew (statement A). It would mean that most of the content of the chapter on property was irrelevant to the civil society in which Locke lived, and only the last few paragraphs were intended to be relevant to anyone who might read the chapter. Perhaps

²⁷⁰ Waldron *The Right to Private Property*, p. 210.

²⁷¹ Tully *A Discourse on Property: John Locke and His Adversaries*, pp. 164-170.

²⁷² Waldron *The Right to Private Property*; Sreenivasan *The Limits of Lockean Rights in Property*; Cohen *Self-Ownership, Freedom, and Equality*.

Ellen Frankel Paul's conclusion—that Locke's attempt to conflate natural rights with consent theory is self-contradictory—is best.²⁷³

However, Tully's interpretation should not be dismissed entirely, and it may make for a more robust property theory. The reason Cohen finds Tully's interpretation implausible is that pre-political owners would not make an agreement that reduced them to equal economic standing with pre-political indigents.²⁷⁴ Certainly they would resist such an agreement, but pre-political indigents would also resist an agreement that did not bring them into equality with pre-political property owners. Why should we assume that the propertyless would be the side to concede? A good argument for the possibility that the propertyless could hold out for equality is provided by one of Cohen's examples, used in another context. In his story of Able and Infirm, the more productive individual agrees to economic equality with the less productive individual because both have a veto over any land use.²⁷⁵ If property owners and indigents all have a veto over the move into civil society, the indigent can use their veto to force the more advantaged to accept equality (or at least less inequality). Thus, Tully is correct insofar as equality or contingent property rights is the logical consequence of Locke's statements that property is based on voluntary consent, but I do not agree with Tully, that it is the logical consequence of the whole of Locke's property theory, or that it is what Locke actually intended.

More likely, Locke believed consent merely validated property rights that already existed in the state of nature. Perhaps the most coherent connection between the two parts of Locke's property theory is that the propertyless had to agree to recognize property rights from the state of nature in order to move into civil society and are now bound to that

²⁷³ Paul (1981). "The Time-Frame Theory of Government Legitimacy." *Reading Nozick: Essays on Anarchy, State, and Utopia*. Paul, Ed. Oxford: Basil Blackwell: 270-285.

²⁷⁴ Cohen *Self-Ownership, Freedom, and Equality*, p. 194.

²⁷⁵ *Ibid*, pp. 94-103.

agreement whether or not they continue to agree. The propertyless had the choice of being propertyless *and* remaining in the state of nature or formally recognizing unequal property rights and entering civil society as a propertyless citizen. That's not much of a choice. This interpretation, I believe, is a coherent theory, but it means the role of "voluntary consent" in Locke's theory has been reduced to purely formal consent—an agreement that would not have been made if the option of disagreement was available.

6. Lockean property theories

This discussion has covered a lot of ground. Let's now step back and get a picture of Lockean property theory as a whole. The Lockean argument for unilateral appropriation of property can be summarized by the four-point outline below. Each point leaves the choice of interpretation open to reflect Locke's lack of clear division between what he did and did not intend to say, to leave open the wide range of theories that are Lockean in some way, and to allow for a conflict between the conclusions Locke drew from his premises and the conclusions that other authors have drawn from his premises.

Outline 1: Lockean Property Theory

- 1) In a state of nature, individuals have an equal claim, or an equal lack of claim, to unused natural resources (specifically land), meaning that resources are (one of the following)
 - A) unowned, or
 - B) owned in common, for the use of everyone but the property of no one, or
 - C) collectively owned as if by a corporation in which everyone owns one share of the whole, or
 - D) individually owned in equal-sized pieces.
- 2) In the state of nature, a natural resource may be unilaterally appropriated, (all three of the following)
 - A) by the first person or family to (one or more of the following)
 - i) work with it, and/or
 - ii) use it, and/or
 - iii) claim it,
 - B) because (all of the following)
 - i) it embodies the appropriator's labor, and
 - ii) labor improves and accounts for most of a good's value, and
 - iii) the first laborer has an unconditional right to take what she needs or wants, and
 - iv) improving land effectively makes more resources available for others,
 - C) providing (one or more of the following)
 - i) everyone has access to subsistence (*the charity proviso*)
 - a) in the form of resources, capital, consumer goods, cash, or job opportunities,
 - ii) none of the resource is wasted (*the no-waste proviso*), and/or
 - iii) (possibly) something is left for others (*the enough-and-as-good proviso*) (all of the following)
 - a) at weak, strong, or extra-strong level, and
 - b) in terms of standard of living or in terms of independent functionings, and
 - c) in the form of resources, capital, consumer goods, cash, or job opportunities.
- 3) Civil society and a monetary economy is established, at which time (all of the following)
 - A) rights to appropriated property (one of the following)
 - i) are carried over into civil society, because
 - a) a general agreement to value money entails acceptance of unequal property, and
 - b) the protection of property is the reason civil society exists, or
 - ii) become entirely subject to (and contingent upon) social agreement;
 - B) the charity proviso (if necessary) (one of the following)
 - i) remains in effect, or
 - ii) is obviated by agreement;
 - C) the no-waste proviso (if necessary) (one of the following)
 - i) remains in effect but no longer limits the size of property holdings,
 - a) because the existence of money provides a store of value, and/or because it is partially obviated by the agreement to use money, or
 - ii) is entirely obviated by agreement to use money; and
 - D) the enough-and-as-good proviso (if necessary) (one of the following)
 - i) remains in effect, or
 - ii) is obviated by agreement to use money.
- 4) Once civil society establishes legal property rights, a democratic government cannot arbitrarily seize property, (one of the following)
 - A) but it has the consent of the governed to tax or regulate property (some or all of the following)
 - i) to maintain necessary government expenditure on police, courts, public roads, etc.,
 - ii) to support the family's right to inheritance (if necessary), and/or
 - iii) to enforce whatever provisos remain in effect (if necessary), or
 - B) and it may neither tax nor regulate property without voluntary consent of specific owners, except when absolutely necessary to protect the owners' rights.

Proposition 4-B (no taxation) is not what Locke intended, but I include it here because some authors have claimed that the no taxation proposition follows from appropriation theory in 1 and 2. Instead, Locke uses a rather loose version of consent, and he may have believed that the taxes in 4-A qualify as taxation with consent as long as they are democratically approved.

In proposition 2-A, Locke asserts that it is first labor²⁷⁶ and not first use or first claim that confers ownership, but it is reasonable to argue that first use or first claim make a more coherent theory in combination with the other Lockean premises. I have argued above that premise 3-A-ii (contingent property rights) is unlikely to be what Locke intended, and contradicts some of what he wrote, but I have included it, because it plausibly follows from other statements in his treatise.

Now that I have set out the range of possibilities in detail, what is the most plausible interpretation of what Locke himself intended? On the basis of the discussion above, I tentatively suggest the following:

²⁷⁶ And only certain kinds of first labor, such as farming.

Outline 2: An interpretation of Locke's Property Theory

- 1) In a state of nature, individuals have an equal claim to unused resources. This means that natural resources are
 - B) held in common, for the use of everyone but the property of no one.
- 2) In the state of nature, a natural resource may be unilaterally appropriated,
 - A) by the first family
 - i) to work with it
 - B) because
 - i) it embodies the appropriator's labor,
 - ii) labor improves and accounts for most of a good's value,
 - iii) the first laborer has a right to take what she needs or wants, and
 - iv) improving land effectively makes more resources available for others,
 - C) providing
 - i) everyone has access to subsistence
 - a) in the form of job opportunities for the able and cash or consumer goods for the disabled, and
 - ii) none of the resource is wasted, and
 - iii) something is left for others
 - a) at the strong level,
 - b) in terms of standard of living,
 - c) in the form of job opportunities for the able and consumer goods for the disabled.
- 3) Civil society is established, at which time
 - A) rights to appropriated property
 - i) are carried over into civil society, because
 - a) a general agreement to value money entails acceptance of unequal property, and
 - b) the protection of property is the reason civil society exists.
 - B) the charity proviso
 - i) remains in effect
 - C) the no-waste proviso (is probably not necessary, but)
 - i) remains in effect but no longer limits the size of property holdings,
 - a) because the existence of money provides a store of value, and because it is partially obviated by the agreement to use money;
 - D) the enough-and-as-good proviso (is no longer necessary if jobs are available but)
 - i) remains in effect.
- 4) Once civil society establishes legal property rights, a democratic government cannot arbitrarily seize property,
 - A) but it has the consent of the governed to tax or regulate property (some or all of the following)
 - i) to maintain necessary government expenditure and
 - ii) to support the family's right to inheritance (unnecessary), and
 - iii) to satisfy the provisos (which is only necessary if there aren't enough jobs available for the able and not enough private charity for the disabled).

Admittedly, this specification of the outline involves picking and choosing which of Locke's statements are meant to be taken more seriously; and it is only one of many interpretations of Locke's true intentions.

However, even if this is the most plausible interpretation of the theory Locke intended, it is not, in my view, the most plausible theory of appropriation that can be

extracted from a discussion of Lockean insights. A more streamlined approach, leaving out some of the more peripheral premises such as family appropriation, would be simpler and at least as strong. Also, a focus either on unilateral appropriation with no need for validation through agreement or on a general agreement to create property without unilateral appropriation would be stronger than Locke's attempt to create a hybrid of the two. Most of the complexity in the theory comes in point 3 (the rise of civil society) where Locke tries to reconcile agreement and existing rights.

For unilateral appropriation, the most important premises are the method of appropriation (2-A), the reasons why appropriation confers ownership (2-B), and the charity and enough-and-as-good provisos (2-C-i and 2-C-ii), which I have combined into one, leaving the following structure as the core of the argument.

Outline 3: The Strongest points of Lockean Unilateral appropriation

- 2) A natural resource may be unilaterally appropriated,
 - A) by the first person to (either of the following)
 - i) work with it, and/or
 - ii) use it
 - B) because
 - i) it embodies her labor,
 - ii) labor improves and accounts for most of a good's value,
 - iii) the first laborer has an unconditional right to take what she needs or wants, and
 - iv) improving land effectively makes more resources available for others,
 - C) providing
 - iii) enough-and-as-good is left for others
 - a) at weak, strong, or extra-strong level, and
 - b) in terms of standard of living or in terms of independent functionings, and
 - c) in the form of resources, capital, consumer goods, cash, or job opportunities.

Either property rights are purely contingent on social agreement, or unilateral appropriation establishes that owners have some rights that civil society is ethically obliged to respect whether or not society agrees. If property is contingent on social agreement the

crux of the argument is between the binding agreement to accept property rights (3-A-i) and purely contingent property rights (3-A-ii).

Someone could pick and choose almost anything on the original outline to create a theory with some textual claim to be Lockean. Although some property theories are clearly closer to Locke than others, someone would be hard-pressed to come up with a theory of property that was in no way Lockean, especially if a theory only needs one or two Lockean premises to be Lockean. Even theories of collective ownership are related to Locke's premise of equal claim to natural resources (premise 1) and his statement of the need for social agreement (premise 3-A). Perhaps the malleability of Lockean property theory is one reason for its enduring popularity.

Nozick greatly streamlines Lockean theory in support of extremely strong property rights.²⁷⁷

Outline 4: Nozick's Property Theory in terms of the Lockean Outline

- 1) In a state of nature, individuals have an equal lack of claim to unused resources. Meaning that natural resources are
 - A) unowned.
- 2) Some unspecified theory of acquisition justifies appropriation,
 - C) providing
 - iii) something is left for others
 - a) at the weak level,
 - b) in terms of standard of living,
 - c) in the form of job opportunities.
- 3) Civil society is established, at which time,
 - D) the enough-and-as-good proviso
 - i) remains in effect
 - X) and provides sufficient justification for private property holdings even if they are unequal.
- 4) Once civil society establishes legal property rights, a democratic government cannot arbitrarily seize property,
 - B) and it may neither tax nor regulate property without voluntary consent of the specific owner, except when absolutely necessary to protect property rights and self-ownership.

²⁷⁷ Nozick *Anarchy, State, and Utopia*.

The operative premise in Nozick's theory is the weak proviso. Anyone can take full ownership of property as long as the market economy provides job opportunities that provide a higher standard of living than hunter-gatherers have in the state of nature.²⁷⁸

Narveson,²⁷⁹ although hostile to Locke, can be characterized as further streamlining Lockean property theory to fit right-libertarianism.

Outline 5: Narveson's Property Theory in terms of the Lockean Outline

- 1) In a state of nature, individuals have no claim to unused natural resources, meaning that resources are
 - A) unowned.
- 2) In the state of nature, a natural resource may be unilaterally appropriated,
 - A) by the first person to
 - ii) use it.
 - B) because
 - iii) the first user has a right to take what she needs or wants.
 - C) providing
 - x) no provisos necessary
- 3) Civil society is established at which time
 - X) nothing changes.
- 4) Once civil society establishes legal property rights, the government cannot arbitrarily seize property, (one of the following)
 - B) and it may neither tax nor regulate property without voluntary consent of the owner, except when absolutely necessary to protect the owners' rights.

The operative premise in Narveson's theory is that no one else has the right to interfere with the first user's appropriation. He needs no proviso at all because he draws a distinction between interference and prevention. Appropriation does not interfere with anything anyone is doing, it only prevents something they might do but have no right to do.²⁸⁰

Sreenivasan, Simmons, Otsuka, Steiner, and others have made more egalitarian reformulations of Lockean property theory that can also be characterized as some

²⁷⁸ Ibid, Chapter 9 discusses Nozick's theory further.

²⁷⁹ Narveson *The Libertarian Idea*; Narveson "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*." .

²⁸⁰ Narveson "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*." . Chapter 9 discusses Narveson's theory further.

combination of the above propositions,²⁸¹ but I do not need to address those here, because I am considering the case for full liberal ownership rights or similar strong property rights. The question for the next two chapters is whether any of these arguments for unilateral appropriation successfully establish that full liberal ownership of property is consistent with maximal equal freedom for all. If not, can unilateral appropriation establish any form of property consistently with maximal equal freedom for all?

²⁸¹ Otsuka *Libertarianism without Inequality*; Simmons *The Lockean Theory of Rights*; Sreenivasan *The Limits of Lockean Rights in Property*; Steiner *An Essay on Rights*.

Chapter 8: Lockean Appropriation Assessed

The great aim of the struggle for liberty has been equality before the law.

-F. A. Hayek²⁸²

Let me make this point before I meander: what's good for the goose is good for the gander.

-Webb Wilder²⁸³

This chapter criticizes the Lockean theories of unilateral appropriation outlined in Chapter 7. It evaluates the case for appropriation against the standard of providing maximal equal freedom for all. Chapter 7 showed that appropriation under the extra-strong version of the Lockean proviso (resource abundance) is consistent with equal freedom for all, and this chapter assesses whether any of the components of Lockean property theory (the reasons for appropriation, the strong-version of proviso, and tacit agreement) can extend unilaterally appropriated property beyond the state of resource abundance. I will follow the points of "Outline 1" from section 6 of Chapter 7, addressing the most powerful versions of the main points on the outline one by one, concluding that these points, individually or in concert, fail to establish that the unilateral appropriation of full liberal ownership rights (or any strong property rights) is consistent with maximal equal freedom. That is, Lockean property theory fails to make strong property rights more than legal privileges.

²⁸² Hayek *The Constitution of Liberty*, p. 85.

²⁸³ Wilder (1989). "Hittin' Where It Hurts." *Hybrid Vigor*. Island Records.

1. Unilateral appropriation diminishes joint claims out of existence

If people begin with strong collective property rights, either there can be no private property rights or private property is contingent upon social agreement. The important point in any such argument is the justification of initial collective ownership. If natural resources are initially unowned, it does not necessarily follow that they are up for grabs, but anyone who argues that unowned resources are up for grabs must also explain why resources are unowned. One strategy is to concede the opposing premise, to argue that private ownership can be derived from common resources or that common ownership can be derived from unowned resources.

Locke makes the attempt to derive private appropriation from a common claim to resources, but he does so by defining common ownership claims so narrowly as to make them practically nonexistent. He states that everyone has equal claim to the Earth (premise 1-B of Outline 1), but individuals get only two things for their common claim to ownership of the Earth: the right to appropriate unowned resources (in the unlikely even that they find any) and the Lockean proviso.²⁸⁴ Even if resources are initially unowned, the reason most people don't have the opportunity to appropriate is that laws protect earlier appropriations. How can this be reconciled with maximal equal freedom? This question does not rely on a claim to collective ownership. It relies only on the observation that if resources are unowned, they are *equally* unowned by everyone. To make unequal ownership of initially unowned resources consistent with maximal equal freedom requires at least one of two

²⁸⁴ I am following the simplification of the three provisos down to one as discussed in Chapter 7.

arguments: either the appropriators have provided a service to others sufficient to earn their property, or they have left enough so that they have done no harm. Therefore, the weight of collective claims is shifted to the method of appropriation (point 2-A) and the proviso (point 2-B), and none of the argument put forward here relies on collective ownership of property.

2. Appropriation based on first labor (or first use) has no value without historical accuracy

If the historical link to the original appropriator is lost, original appropriation theory implies nothing at all about the distribution of property. The problem is not simply that it does not justify the property-rights regime the way it is; but that it neither justifies changing it nor leaving it the same nor any specific regime. It is simply irrelevant.

A central point of any unilateral appropriation theory is that ownership goes only to the *first* person who labors with (or uses) a piece of property (premise 2-A). Therefore, all current property rights require a historical link between the current owner and original appropriator. If the resource has been traded, all of the wealth (money) that was traded for it must also be traced back to just original appropriations—not just the money that purchased it in the most recent transaction but all money used to purchase it every time it has exchanged hands since it was appropriated. Given that Locke's appropriation theory relies so heavily on a historical accuracy, Locke offers a very poor account of how property actually came into existence. Hobbes's hypothesis that property begins with the arbitrary

decision of the sovereign is much more realistic,²⁸⁵ as are accounts by Rousseau and Marx in which people aggressively assumed control of resources, sometimes after long conflicts.²⁸⁶

A very small amount of land rights in the world can be traced back to the first person to mix her labor with the land. In Western Europe, most ownership rights to land can be traced back to the feudal period when the people who worked the land were distinctly separate from and subordinate to landlords who claimed ownership by force not by a connection with original laborers. In Eastern Europe, many property rights can be traced back to an enormous grab during the fall of communism. The United States is one of the few countries that for a time had a policy of granting ownership of land to the first person to farm it. The Homestead Act of 1862 granted 160 acres of federally owned land to the first person²⁸⁷ who built a house on it and farmed it for five years. Only about 10% of U.S. land ownership can trace its origin back to such appropriations,²⁸⁸ and in most cases that land had already been used by Native Americans, many of whom met Locke's condition of being farmers.²⁸⁹ The few cases of direct connections to the very first users are places that were inaccessible before modern technology such as the Falkland Islands (and many such places were fought over as well).

One could argue that if land were appropriated in a just process it would have a similar ownership pattern to the one we see today. That is hardly a justification. Suppose you lived in a country with arbitrary arrest and imprisonment, and one day the police arrest

²⁸⁷ ~~Citizens were not all given equal claim to appropriate land; the rules for filing a claim varied by "race."~~

²⁸⁸ U.S.-National-Park-Service (2005). "Homestead National Monument of America."

²⁸⁹ Locke's appropriation required uses such as farming and mining that alter the land, but not hunting or gathering which leave the land basically as it is. Because I am arguing that unilateral appropriation is unjustified, I do not need to address the argument of what sort of work justifies unilateral appropriation.

you. They are uninterested in evidence of your innocence. They simply reply, “every time there is a crime, we imprison someone. The same *pattern* of inequality of rights exists in our country as in countries with ‘due process of law.’ Therefore, you have nothing to complain about.” The argument that justice would involve putting someone in prison is not a justification for simply putting anyone in prison. Arrest interferes with you, and saying that there might be a justifiable reason for someone to interfere with someone in this manner hardly justifies their arbitrary interference with you.

Property owners could conceivably defend their holdings if they could argue, “We are the legitimate successors to people who did something to entitle themselves to it.” But they cannot defend their holdings by arguing, “If there were people who did something to entitle themselves to this property, and if their legitimate successors were identified, they would have the same privileges over someone that we claim over you.”

If the theory of original appropriation is not fiction, not hyperbole, not metaphor, not propaganda, world society is under a strong obligation to make a few Native Americans very, very wealthy and to use genetic science to search for the nearest relatives of the ancient Mesopotamians. But, for the vast majority of assets, *we will never find the original appropriator.*

A theory arguing that certain people, who cannot possibly be identified, are entitled to large holdings is not relevant to the world we live in. For almost all property on Earth the link to the first appropriator is lost forever. Someone out there is the legitimate successor of the original appropriation of every piece of property. If original appropriation theory is correct, it implies that whatever we do with property today will be an injustice to the heirs of the anonymous appropriators.

Be that as it may, we need a theory of what to do when the original appropriator cannot be found, but that is not original appropriation theory—that is a replacement theory with a very different starting point. Even if original appropriation theory is morally correct, it is irrelevant to the way property is or should be distributed in the world today. The replacement theory of what to do when the connection is lost becomes the *only* relevant theory for virtually all property. Locke, Nozick, and Narveson do not specify this theory and dwell instead on a fiction.²⁹⁰ Original appropriation theory is a distraction from this other unspecified replacement theory that might actually be capable either of justifying current property rights or of indicating how property rights must be changed to become just. Nozick mentions an unspecified principle of rectification, but the name implies that it is a theory of returning property to the true successor of the original appropriator.²⁹¹ The replacement theory is not simply a matter of returning property to the true owner, but finding another way to begin a line of property when there is no way to find the true successor of the original appropriator. This theory, whatever it is, must become the *entire* theory of property. If unilateral appropriation theory is correct, no one can claim ownership, aside from the legitimate successors of the original appropriators. Therefore, it will be difficult for this replacement theory to explain why some people have more claim to the ownership of external assets as original appropriation is supposed to show.

One might argue in response that the burden of proof ought to rest on those who would interfere with the current property holder, but there are two problems with this reasoning: first, the burden of proof is usually invoked in cases of punishment, when one is in a position with fewer rights than others or when one's rights are being reduced. But it is

²⁹⁰ Locke *Two Treatises of Government*; Narveson *The Libertarian Idea*; Narveson "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*"; Nozick *Anarchy, State, and Utopia*.

²⁹¹ Nozick *Anarchy, State, and Utopia*.

the property owners who have assumed greater rights than the propertyless and reduced the rights of the propertyless, implying that the burden should be in the other direction. Further, it is those who are arguing against redistributive taxation who are arguing for changing people's rights status. For generations, governments have claimed the right of taxation for any purpose that suited the sovereign, including many purposes far less noble than support of the indigent. Prohibition of redistributive taxation and the establishment of a right-libertarian minimal state would be a major change in property rights and a signification decrease in the rights status of the propertyless.

Second, there is no lack of proof—it is a historical fact that current ownership rights did not emerge from a series of legitimate transactions going back to the original appropriators. This is not a minor problem; unilateral appropriation theory rests on the premise that everyone has equal claim (or equally lacks claim) except for the original appropriator. If the current holders do not have that link, they have no more claim to the resources they hold than everyone else. If we take seriously the right-libertarian claim that the justness of the current situation depends entirely on the justness of the events that brought it about, all property must have had a just origin to be legitimate. If, instead, all past violations are forgiven and their advantages now protected, the obvious strategy is to lie, cheat, and steal today, and argue for recognition of past property rights tomorrow. The attempt to justify property on a fiction is not an argument for rights but for legal privileges.

3. Original appropriation as metaphor

If the fictional original appropriation story can be dismissed offhand, what is the value of this theory that has been resorted to for three centuries? Perhaps it has metaphorical value: every owner does something equivalent to appropriation. The story of original appropriation might represent the idea that people who have worked to get ahead under the existing rules should be allowed to stay ahead. If metaphorical appropriation works, it functions as the missing replacement theory for a literal original appropriation theory. In the metaphor, the state of nature represents the previous generation of property owners and appropriation by labor mixing represents trading one's labor with them to become an owner. Everyone who trades metaphorically appropriates property with her labor. If I trade with the current generation of property holders, you are no worse off than before. Anyone of us can make trades with property holders, and in that sense, all the property of the world is available for appropriation.

The problem with this metaphor is that equality before the current generation of property holders is not the same as equality before the law or equality before nature. In the metaphorical original appropriation story, the more senior property owners are legally endowed with the right to distribute property according to their whim. They don't have to accord equal right to appropriate property to anyone, and so people begin in a state of inequality. Property law creates the situation in which not everyone is equally free to take property. Therefore, property is still a legal privilege.

The metaphorical appropriation story seems either to beg the question or to regress to the literal story of original appropriation. If I succeed in trading my labor for property and you are left propertyless, you are no worse off than when you started: you are still propertyless. But your propertyless starting point is the problem that the story is meant to justify. Why does the current generation of property holders get to decide who is and is not

privileged in the next generation? Because the previous generation of property holders gave them that power. Why did the previous generation of property holders have that power? Because the generation before... and on and on until you get to the original appropriator, who is a fiction.

If the metaphorical story can justify property at all, the act of appropriation through trade has to do something for the propertyless. Current property owners have to satisfy the reasons for appropriation (2-B) and/or the proviso imposed on appropriation (2-C-iii) consistently with maximal equal freedom. Therefore, the attention next turns to point 2-B in the outline.

4. What is labor supposed to do in appropriation theory?

Chapter 7 argued that if the extra-strong proviso holds (resource abundance), nothing else is necessary to justify the unilateral appropriation of property. Whether I add value to a piece of property by laboring with it or whether I simply take it does not matter as long as there is more than enough to go around. What is the role of labor?

Labor can give one reason why a person might claim a particular piece of property, but it is not necessarily decisive. Suppose Gilligan labors with a previously untouched piece of land when abundant land of the same value in every sense is available for everyone. Any attempt to take that land from Gilligan is apparently nothing more than an attempt to take the fruits of his labor. But suppose Gilligan and Mary Ann both have claim to the same a piece of land. Gilligan's claim is based on labor mixing, and Mary Ann's claim is based on a sentimental attachment—her grandmother died on that piece of land. Neither claim is

inherently more consistent with maximal equal freedom, and a decision in such a dispute might reasonably go to the person with the longest-standing claim rather than the person with the labor-claim. One could argue that people who labor more deserve more than people who do not, but that is not a freedom-based claim, and I am only considering freedom-based claims. If the extra-strong proviso is fulfilled, certainly there is greater equal freedom if anyone can appropriate natural resources for any reason rather than restricted reasons. Therefore, the labor mixing argument (2-B-i) does not establish greater right to property than other kinds of claims. This sort of reasoning, I believe, partly explains why modern right-libertarians have replaced the first-labor with first-use or first-claim.²⁹²

Labor or some analogous attribute of ownership is needed to give the metaphorical appropriation story any weight. Some attribute of labor, such as value added, has to make up for the absence of the extra-strong version of the proviso.

5. Labor does not fulfill the proviso if it is not otherwise fulfilled

According to Locke, labor accounts for most of the value of property (premise 2-B-ii), and this improvement effectively makes more resources available for others (premise 2-B-iv). Perhaps laboring to improve land is meant to compensate people for taking it out of a collective in which there are not enough and as good resources left in common for others. Sreenivasan argues that because laboring so greatly increases the output of land, it satisfies the proviso almost necessarily.²⁹³ However, Cohen argues that, in terms of noninterference

²⁹² Ibid; Narveson *The Libertarian Idea*; Narveson "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*." . See Chapter 10.

²⁹³ Sreenivasan *The Limits of Lockean Rights in Property*, p. 57.

and in terms of in-kind resources, this argument can only be true when a large commons exists and the population is small enough that every time someone appropriates property the ratio of the size of the commons to the number of people who live on the commons increases.²⁹⁴

Sreenivasan's contention is not necessarily true in an economy with scarce land, without some limit on property that forces the benefits of increased productivity to be shared with the propertyless. A person, who appropriates property, assuming full liberal ownership rights, improves the resource for her own benefit,²⁹⁵ but she is under no obligation to share the value of those improvements with the propertyless. Suppose Mr. Howell takes some land that produces a given amount of coconuts without cultivation, and improves it so that it produces ten times what it produced before. The appropriator has the *ability* to give the propertyless the fruits of the land he could have gotten if it were left in common, but no mechanism ensures that he *will* share his fruits with the propertyless. As the owner of the land *and* the improvements he makes to the land, Mr. Howell is at liberty to keep all of its fruits or to charge Gilligan the full value of his improvements *plus* the full value of the land, which could make Gilligan worse off than he was in the state of nature.

Unless an appropriator is forced to pay some kind of rent or tax on the resources she holds there is no mechanism that puts her under an obligation to share the value of her improvements with people without property. If Mr. Howell wants Gilligan to work, he needs to pay him no more than it takes to motivate a starving person to work for survival,

²⁹⁴ Cohen *Self-Ownership, Freedom, and Equality*, p. 187-188.

²⁹⁵ Under the metaphorical appropriation story she benefits the previous owners through trade, but not necessarily future owners or the propertyless.

and if he doesn't want Gilligan to work for him, he doesn't necessarily have any reason to share the benefits of production with Gilligan at all.²⁹⁶

Even if the appropriator offers a wage that converts effort into consumption at a greater rate than a person could do with access to commonly held property, there are two reasons why it is not the same as taking nothing at all. First, the appropriator blocks others from making the same or a similar appropriation. Appropriators have the opportunity to capture the benefits of trading not only their labor but also property they work with. Wage laborers have no such opportunity. Gilligan might be as well off as he would be with access to land in common, but not as well off as he would be if he could appropriate land and trade it as Mr. Howell does. The privilege to take free resources and to be paid both for one's improvements to them and for the resources themselves is one that cannot be granted to everyone under a system of unilateral appropriation and full liberal ownership.

Second, appropriators offer wages in exchange for service, which, because of the power relations it entails, may not be as valuable as the ability to work for oneself even if it affords a higher standard of living.²⁹⁷ Suppose Gilligan likes to walk in the woods and gather coconuts. But just as he is about to do it, Mr. Howell appropriates the land, saying, "No problem. You can be my butler. You can bring me my coffee, make my bed, and draw my bath. I will make sure that you spend fewer hours per day working and receive more coconuts than you would, if you gathered them yourself on common land." Mr. Howell has offered Gilligan a higher standard of living, but Gilligan might have reason to think it might

not be enough and as good. Any theory of *unilateral* appropriation specifically rules out asking the propertyless whether their new options are enough to fulfill the proviso.

 Laboring with resources does not compensate others for the loss of resources, but then, what function does it perform? If a non-appropriator is not entitled to a share in the improvements of land created by the labor of the appropriator, what difference does it make whether the appropriator labored to improve it, labored to make it worse, or did not labor with it at all? Unless some part of the value of improvements is put toward compensation for those who have less, distributing natural resources according to labor seems to be a needless restriction on freedom and a legal privilege for those who attained property. However, holding owners to that obligation is a departure from full liberal ownership, and if the level and form of compensation must be negotiated, property rights depart entirely from unilateral appropriation.

6. The size of labor's contribution cannot give one group exclusive claim to all the land

 Perhaps the statement that labor improves the value of resources (premise 2-B-ii) is meant to show that the value of natural resources is so small that it is completely irrelevant. Locke asserts that labor accounts for the greatest portion, perhaps 99/100^{ths}, of the value of property. This statement appears to imply the argument that people who claim redistribution based on a claim to natural resources are actually attempting to claim value mostly created by labor.

Locke's claim about the value of natural resources is questionable and his argument for it is fallacious.²⁹⁸ The reasoning aside, even if it is true that labor accounts for most of the value of improved land, and even if the current owners are entitled to all of the value added by all people who have labored with property, it does not give the propertied class claim to *all* the land. There is still no reason *not* to fulfill the proviso in kind or in something of equal value to those who are blocked from appropriation by others' ownership of scarce resources. The value added by previous laborers does not explain why individuals who would like to acquire scarce assets and improve them should be denied that opportunity by others who asserted no more than that same right.

No matter how large the contribution of labor is to the value of assets, making all access to natural resources contingent upon service to the ownership class makes access to natural resources a legal privilege and inconsistent with maximal equal freedom for all. Suppose the previous generation took possession of everything, improved its value 100 fold, and designated a small group of people in the current generation to have complete control over those resources. The improved value of property does not change the fact that property rights interfere with people who might like to take raw resources and increase their value by their own effort.

The argument from improvement fails to eliminate the privileged aspect of property. If access to resources is inconsequential to the propertyless, why is it so important to protect the rights of past appropriators? As Waldron argues, it is impossible to argue from the standpoint of equal rights for a special right that is only legally available to some.²⁹⁹ One cannot say, from the standpoint of equal rights, "You should respect my property for I

²⁹⁸ Ibid, pp. 182-185. Locke's method of factor-attribution credits human effort with 99% of the value of output, but the same method applied to land would credit land with 100% of the value of output for a total of 199%.

²⁹⁹ Waldron *The Right to Private Property*, pp. 423-445.

would respect yours if you had any.”³⁰⁰ If the right to appropriate property is consequential for people who manage to appropriate something, it cannot be inconsequential for those who are legally blocked from appropriation themselves by the appropriation of others. Such appropriation still cannot establish property as something other than a legal privilege.

7. Appropriation conflicts with the right to unconditional subsistence on which it is based

One step in Locke’s justification of appropriation is the “paradox of plenty:” People would starve despite the plenty of available resources if they had to wait for unanimous approval before they could use resources. Doing so, he relies on an unconditional right to subsistence or to the resources necessary to produce subsistence (2-B-iii),³⁰¹ and even a right of access to the resources to produce for one’s wants as well.³⁰² But unilateral appropriation does not secure an unconditional right to subsistence for everyone—only for the appropriators. Unless ownership rights are weakened, unilateral appropriation blocks access to an unconditional right to subsistence for the propertyless.

The connection between an unconditional right to subsistence (2-B-iii) and a right of unilateral appropriation of property (2-A-i) is not literally true. Unilateral appropriation of resources is not a necessary condition for survival. Subsistence can be secured through collective projects or by private access to collectively owned or unowned resources. Even if, for some reason, survival required *private* property, aside from coordination problems,

³⁰⁰ Ibid, p. 441.

³⁰¹ STOG, § 28.

³⁰² STOG, § 31.

people would only starve for want of unanimous consent if a voter wanted to starve herself.³⁰³ Possibly, one suicidal person might have a death wish and want to bring the whole human race down with her, but it is reasonable to disenfranchise the mentally ill. Among sane people it is likely that they could come up with *some* use rights before people started to die off, even if they were constrained by a unanimous consent rule. What value is there in the paradox of plenty?

The value of the “paradox of plenty” is not the coordination problem of agreement but the need for *unconditionality*: people ought to have the right to take the resources required to produce the goods they need for survival without anyone else’s consent. It is not necessarily true that people actually will starve for want of consent, but it is true that no one’s permission ought to come between an individual and the means of her preservation. If no one has more claim to resources than anyone else, and if human life is valuable, unconditional subsistence is essential to any meaningful conception of maximal equal freedom.³⁰⁴ The arguments behind the “paradox of plenty” imply that *everyone has the same unconditional right to use natural resources to meet their needs and wants.*³⁰⁵

One could argue that there are mechanisms in Lockean property theory—such as the right of charity and the enough-and-as-good proviso—to ensure that people have a right to subsistence and perhaps even a right to thrive. Property owners have a responsibility to make sure there are enough jobs available to secure employment and subsistence for everyone. There is no bargaining power on either side: workers have the responsibility to work and property owners the responsibility to employ them. They cannot impose involuntary unemployment on propertyless workers.

The problem with this argument is that employment lacks the *unconditionality* that appropriators enjoyed and that is where the privilege lies. The most generous full employment policy imaginable cannot mean that the employee can do whatever work she wants without the consent of her employer. The right to work without anyone else's consent is not the right to a job, but the right to direct access to resources. If it is objectionable for society to put *any* conditions between appropriators and their subsistence even though appropriators have *some way* of attaining their subsistence, then it is also objectionable for society (or employers) to put *any* conditions between propertyless workers and their subsistence even though workers have *some way* of attaining their subsistence.

Unilateral appropriation puts the propertyless worker in the same position as the constrained appropriator in Locke's paradox of plenty—in need of someone else's consent to attain the resources she needs for survival despite the plenty of resources available. It is no better—and possibly worse—to be prevented from attaining the means of subsistence by having to ask permission of a property-owning class than by having to ask permission of a collective body representing society. There are no known historical cases in which people starved for want of unanimous consent for resource use, but people do die of complications of economic deprivation (such as malnutrition, exposure, and disease) because they are unable or unwilling to meet the conditions that governments and employers put between them and survival. The propertyless are worse off than they would be under the unanimous consent rule. Under unanimous consent everyone must strike a deal with them to survive, but under capitalism, propertied individuals have no need to strike a deal with all of the propertyless to survive.³⁰⁶

³⁰⁶ Cohen *Self-Ownership, Freedom, and Equality*, pp. 100-101. This argument should not be taken to imply that the unanimity rule (all property collectively owned, with each individual having a veto over its use) implies equality of condition, as Cohen seems to imply in his story of Able and Infirm (pp. 94-103). The unanimity rule implies that self-ownership gives people who are talented at producing goods no particular

The argument behind the “paradox of plenty” simply cannot support the division of property into haves and have-nots. If *unconditional* access to the means to support oneself is a right and not a privilege of property owners, a right to employment is not enough for the propertyless; they need some form of *unconditional* compensation either in cash or in resources. If we are concerned about the paradox of plenty we must be concerned about it for the propertyless as well. Without unconditional access to resources or unconditional compensation, property rights make the unconditional right to survive not a universal right but a legal privilege for the ownership class.

8. Locke’s consent theory lacks consent

None of the arguments for unilateral appropriation have succeeded in establishing exclusive property rights to scarce external assets. The remaining tool in the Lockean closet is implied consent based on the acceptance of money (premise 2-A-i-a), but it is a very weak argument.

The mere valuation of money hardly represents consent to a specific property-rights regime. A vagrant sleeping on a park bench values money, but she holds neither land nor money. I do not see the logical connection between the mere fact that she would like to have money (but has none) and her consent to others’ appropriation of all the land that she would also like to have (but has none). The primary reason she wants money is because it

can buy the things she could get from external assets—a place to sleep, food to eat, etc. How do we know that her valuation of money is more than her expression of a desire for the things she can get from external assets?

This kind of “consent” theory could justify extremely oppressive relations. Suppose a slave works all year for his master. Once a year, the master gives the slave a few pennies to buy liquor to celebrate the New Year. If the slave accepts the money, has he consented to the property-rights regime that makes him property? Is he no longer a slave but a willing worker? The slave did not have a choice in bringing the system about and he would not accept the pennies, if refusing them would bring about another system. The world today has many people who would find it in their interest to trade their desire to live in a monetary economy for an equal share of national wealth. Waldron argues that those who are least well off in a monetary economy are those who are least likely to have had a say in bringing the monetary system about, and that consent to putting a value on money is not the same as consenting to inequality.³⁰⁷

Any argument justifying the inequality in a market economy on tacit consent uses an unreasonably generous definition of tacit consent. If someone picks up my book, looks me in the eye, motions toward the door, and then walks out with my book, I have tacitly given her my consent to take the book. It is clear because I could easily have stopped her. At what point do people without property have the opportunity to object? When can people say, “I choose not to accept participation in a monetary economy because I do not consent to the property-rights regime?” What can they do to withhold this tacit consent? It is possible that people can voluntarily consent to things that they are forced to accept,³⁰⁸ but without the

³⁰⁷ Waldron *The Right to Private Property*, pp. 224-225.

³⁰⁸ Cohen (1988). “Are Disadvantaged Workers Who Take Hazardous Jobs, Forced to Take Hazardous Jobs?” *History, Labor, and Freedom: Themes from Marx*. Oxford: Clarendon Press: 239-54.

power to dissent there is no evidence of consent. Carole Pateman writes, “Unless refusal of consent is possible, talk of consent is pointless.”³⁰⁹

Perhaps Locke means that a monetary economy is good for people, even though it entails inequality. He could say that people do or would consent to a monetary economy as opposed to the alternative, and therefore they consent to its inequality. However, there are many different kinds of monetary economies with different levels of inequality and with different people in positions of authority; what evidence is there that the propertyless are better off in the one in which they are destitute? Early modern philosophers made a similar argument for the rule of kings.³¹⁰ Without a government to protect you, all of your property would be stolen. Therefore, everything you own is attributable to the protection of the king. Now that we know that chaos is not the only alternative to absolutely monarchy, the consent argument has no value in supporting monarchy. What greater value is there in comparing the modern economy to its worst possible alternative?

If consent is the right strategy for justifying property, it has to be genuine consent. If so, the property-rights regime presumably could have been very different and is still subject to change. People do voice complaints about the prevailing property-rights regime. To say that none of these complaints are valid or that no complaints can possibly be valid is to lose a legitimate claim to a consent-based theory. But if complaints are valid and consent is necessary to legitimize a property-rights regime, property brought into civil society via unilateral appropriations is illegitimate.

³⁰⁹ Pateman *The Disorder of Woman*, p. 12.

³¹⁰ Hobbes *Leviathan*. My portrayal is admittedly an oversimplification.

9. What kind of ownership?

Locke lists a few limits to ownership, but he confers full or nearly full ownership³¹¹ to the family of the appropriator, and certainly people have employed Lockean theory to argue for full liberal ownership. But there is little reason given in, or discernible from, his unilateral appropriation theory justifying strong property rights or full liberal ownership. Locke's arguments for labor mixing and value added by labor seem to imply ownership to no more than the value added by labor, and that the unconditional right of access to resources establishes no more than use-rights, not ownership.³¹² As argued above, the "paradox of plenty" and the equal right to use natural resources to satisfy individual needs and wants imply powerful limits on property rights to assure every generation the same right of equal access to resources.

Locke seems to believe that the end of government is to protect property rights,³¹³ but that a specific definition of property rights exists prior to and with greater authority than government or any agreement among individuals. Who decided that full ownership is what property must be, and why are the propertyless bound to that definition of property? How can this institution be consistent with consent maximal equal freedom unless the propertyless agree to the incidents of ownership? A weaker version of property rights could be made consistent with consent or compensation for the propertyless or with some version an equal right to appropriate for all.

If I have rejected Lockean appropriation, what, then, was Locke on to? What is appealing in the theory that "those who ... usefully employ some unowned good ought to

³¹¹ In the sense of Honoré's 11 incidents, see Chapter 6.

³¹² Waldron *The Right to Private Property*, pp. 161-162.

³¹³ *Ibid.*, pp. 161-162.

be allowed to keep it (if in so doing they harm no others)?”³¹⁴ I think the idea is appealing, if it holds. The problem is that when it does not hold, it is difficult to see where the harm comes from. The harm is not in any one owner’s action but in the system. Owners benefit from a system that defines rights so strongly to exclude most people from becoming owners, and privileges people who manage to do so.

If I work hard and honestly, and acquire property, I have personally hurt no one and benefited all of the people I have traded with, but I have benefited from a system that hurts someone. It is easy for me to lose sight of the fact that the people I have benefited are the previous owners of property, not the people who have to make do with fewer resources because I have more. If I pass a homeless person on the street, I have access to more land than he does and more gold, more jet fuel, more clean water, more oil, more wood, and more of every resource the world has to offer, and I thereby force him to take less of every resource. What have I done *for him* in exchange for my larger share? Nothing.

A unilateral property-rights regime is not wrong because people who work hard get ahead; it is wrong because people can only get ahead by working for the wrong people. The system is set up so that the only people I need to benefit to attain a large share of natural resources are those who previously controlled larger shares of resources, and the government will interfere with everyone else to force them to accept my share. When did they agree to accept this burden—what free agreement does this follow from? Lockean theory cannot show that this follows from any sense of equal freedom or rights. Chapter 9 considers whether modern right-libertarian formulation of unilateral appropriation theory can do any better.

Chapter 9: Right-Libertarian Appropriation Assessed

The very beginning of Genesis tells us that God created man in order to give him dominion over fish and fowl and all creatures. Of course, Genesis was written by a man, not a horse. There is no certainty that God actually did grant man dominion over other creatures. What seems more likely, in fact, is that man invented God to sanctify the dominion he had usurped for himself over the cow and the horse.

-Milan Kundera, *The Unbearable Lightness of Being*³¹⁵

Modern right-libertarians tend to use a stripped-down version of Lockean unilateral appropriation in which first labor is replaced by first use or first claim, and the proviso is reduced or discarded. Nozick retains the weak version of the Lockean proviso; others, such as Narveson and Kirzner discard the proviso entirely; but all three base their reasoning on some concept of not harming. Nozick argues that some weak proviso is necessary to ensure everyone is as well off as before appropriation. Narveson argues no proviso is necessary because no one has any positive right in anything until it is appropriated, and so there is no question of harm. Kirzner argues that the value the appropriator takes does not exist until she discovers and thereby creates it.³¹⁶

This chapter argues that, to reach the conclusion that appropriation does no harm, these authors must define harm so narrowly that substantial reductions in freedom do not count as harm. But doing so, they are unable to make an argument that establishes property consistently with maximal equal freedom, and their arguments are unable to limit government in the way they would like.

³¹⁵ Kundera (1999). *The Unbearable Lightness of Being*. London: Harper Collins.

³¹⁶ Nozick *Anarchy, State, and Utopia*; Narveson *The Libertarian Idea*; Narveson "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*." ; and Kirzner "Entrepreneurship, Entitlement, and Economic Justice."

Section 1 discusses Nozick's weak version of the proviso. Section 2 discusses Narveson and Kirzner's right of appropriation without proviso. Section 3 shows that the principles these authors establish, consistently applied, cannot limit government to a minimal state but could actually justify an extremely strong state, such as a for-profit monarchy. Section 4 criticizes right-libertarianism as an after-the-fact justification that cannot be consistently applied from inception. Sections 5 and 6 place these arguments in context.

1. The weak version of the proviso

Nozick's property theory has great value in clarifying the difference between end-state distribution theory and entitlement theory, but as a defense of right-libertarian entitlements it does not succeed, largely because the crucial argument is missing. Nozick seems to take the institution of full liberal ownership for granted, and simply does not offer an argument why property rights must necessarily be so strong {O'Neill, 1981 #49} {O'Neill, 1981 #49}.³¹⁷ I will argue that Nozick ignores losses of liberty and privileges created by strong property rights.

Nozick drops some of the less appealing points of Locke's theory, such as the connection between first labor and appropriation (opting for first use instead). He concedes that a historically based theory of first appropriation requires a genuine connection to the first appropriator, and although he argues that such a measure would only be necessary in the short run, he goes so far as to say that something like Rawls's difference principle could

³¹⁷ Fried (2005). "Begging the Question with Style: Anarchy, State, and Utopia at Thirty Years." *Forthcoming*; Ryan "Yours, Mine, and Ours: Property Rights and Individual Liberty."

be used as a rough rule to rectify past injustices.³¹⁸ After all past injustices have been rectified, no further redistribution will take place; any pattern of ownership that is consistent with the weak proviso is just.

He makes the metaphorical appropriation story somewhat more explicit. His Henry Ford example is meant to show that the effects of an initial set of holdings wash out over time and eventually become irrelevant. "If anyone would have bought a car from Henry Ford, the supposition that it was an arbitrary matter who held the money then... would not place Henry Ford's earnings under a cloud."³¹⁹ If society were to begin trading from a position in which every individual supported themselves, great inequalities would appear.³²⁰ Wouldn't the just distribution of property be whatever followed from voluntary trade or "capitalist acts between consenting adults?"³²¹ If the distribution of property is merely the expression of voluntary interaction of individuals, why should any particular pattern be more just than another?

Nozick's discussion of what rights are in general and where they come from is rather brief,³²² and he has been roundly criticized for this omission.³²³ For the right to appropriate, he spends several pages critically discussing Locke's theory of appropriation without being entirely clear whether he is endorsing it or building his own theory.³²⁴ Nozick simply concludes, "I assume that any adequate theory of justice in acquisition [appropriation] will contain a proviso similar to the weaker of the ones we have attributed

³¹⁸ Nozick *Anarchy, State, and Utopia*, p. 231.

³¹⁹ *Ibid.*, p. 158.

³²⁰ *Ibid.*, p. 184.

³²¹ *Ibid.*, p. 163.

³²² *Ibid.*, pp. 9–10, Chapter 3.

³²³ Fried "Begging the Question with Style: Anarchy, State, and Utopia at Thirty Years."; Nagel (1981). "Libertarianism Without Foundations." *Reading Nozick: Essays on Anarchy, State, and Utopia*. Paul, Ed. Oxford: Basil Blackwell: 191-205; Sheffler (1981). "Natural Rights, Equality, and the Minimal State." *Reading Nozick: Essays on Anarchy, State, and Utopia*. Paul, Ed. Oxford: Basil Blackwell: 148-168.

³²⁴ Cohen *Self-Ownership, Freedom, and Equality*, p. 74.

to Locke,”³²⁵ and “I believe that the free operation of a market system will not actually run afoul of the Lockean proviso.”³²⁶

Although Nozick’s explanation can be ambiguous,³²⁷ I take Nozick to mean that he pares down the theory of appropriation essentially to the weak version of the Lockean proviso. That is, metaphorical appropriators may take whatever property they want, for whatever purpose, as long as everyone else is no worse off than if *no one* had appropriated *any* property and all resources were still unowned.³²⁸ In the sense that workers have a higher living standard than hunter-gatherers in a hypothetical state of nature, a society with a property-owning class and a propertyless class can be consistent with the proviso.

Nozick’s argument may have some force against the belief that realizing a particular pattern is all there is to distributive justice, but it is not a very valuable defense against the argument that full liberal ownership is inconsistent with maximal equal freedom. The parts of Nozick’s argument that he dwells on are largely true, but they only function to distract from the harms that unilateral appropriation inflicts on the propertyless and from the lack of any justification in his theory explaining why property must be defined as full liberal ownership or some similarly strong version property rights.

A. The argument ignores or begs the central question

Why must property rights be so strong? Nozick’s essay is presented as an answer to that question, but he never actually addresses it. Consider his Henry Ford example again, which is supposed to show that the effects of the initial set of property holdings wash out

³²⁵ Nozick *Anarchy, State, and Utopia*, p. 178.

³²⁶ *Ibid.*, p. 182.

³²⁷ Wolff (1991). *Robert Nozick : property, justice and the minimal state*. Cambridge: Polity.

³²⁸ Nozick *Anarchy, State, and Utopia*, pp. 178-179.

over time.³²⁹ To the extent that it washes out the initial set of holdings, it does so only because it takes the definition of property as full liberal ownership, or some other strong set of property rights, as given. The implied argument is: full liberal ownership exists. Someone like Henry Ford improves the production process for automobiles, increasing the value of existing property, and thereby, accumulates a large amount of property. Assuming purely voluntary trade (no externalities, etc.), Ford's actions do not harm anyone else, relative to where they were at the outset; he got what he has by creating value and trading for the property of others. Anyone without property is no worse off than they were before Ford did his trading. Therefore, any restriction on Ford's property rights punishes someone who has harmed no one. Therefore, strong property rights must continue to exist.

The problem with this argument is that the strong property rights that the example is supposed to justify exist at the outset.³³⁰ Henry Ford does not harm the propertyless, because the institution that made them propertyless existed before he came along. It is not the trade of property rights, but the existence of strong property rights that causes propertylessness. As long as private property includes the absence of term, transmissibility, and so forth (see Chapter 6), people will be born without property. Henry Ford's attaining those property rights by trade given the existence of the institution of full individual ownership is inconsequential. The Wilt Chamberlain example does very much the same for the future. The example begins with some pattern of ownership but with the institution of full liberal ownership of property. Under that institution, people willingly trade their property for the service of watching Chamberlain play basketball, making him rich and everyone else a little poorer.³³¹ Thus, all the perils of propertylessness and poverty are

³²⁹ Ibid. p. 158.

³³⁰ That is, it begs the question. Dworkin makes a similar argument and reply as a hypothetical without connecting it to Nozick: Dworkin *Sovereign Virtue: The Theory and Practice of Equality*, p. 88.

³³¹ Nozick *Anarchy, State, and Utopia*, pp. 160-164.

supposed to flow from voluntary exchange. However, at least for anyone who is born later, voluntary trade had nothing to do with it. Their propertylessness exists because the earlier generation assumed the right to decide who does and does not have access to resources in the next generation. Propertylessness follows from the existence of the institution of full liberal ownership that exists unquestioningly at the beginning and the end of both examples. Nozick gives no argument why the property that people trade is defined so strongly, and therefore, these examples cannot function as a defense of that institution. If Ford and Chamberlain traded under an institution with weaker property rights (see Chapter 10), their trades would not need to be accompanied by the propertylessness of others.

B. The weak proviso ignores significant harms

One might argue that the weak proviso is the essential version of the proviso because it leaves non-appropriators no worse off and no better off than they were before appropriation, in the sense that they have access to living standards that are as high as they would have if they were hunter-gatherers in a state of nature. They are entitled to remain unharmed by others' appropriation, but they are not entitled to share in the benefits of others' appropriation.

This standard ignores that there are many other things people would like to do with natural resources other than use them to live a stone-age lifestyle. As Chapter 6 argued, people have an interest in appropriating resources individually, appropriating them collectively, or using them without ownership, and all of these possibilities are prevented by strong property rights of others, but none of those uses count for Nozick's weak proviso—at least if we are to agree with Nozick that, "I believe that the free operation of a market

system will not actually run afoul of the Lockean proviso.” That is plausible if we assume that the only alternative is a rude state of nature in which life is nasty, brutish, and short,³³² but not if there are other alternatives. As Cohen asks, “Why should institutionally primitive common ownership be the only alternative?”³³³

To say that appropriation benefits the appropriators and leaves the propertyless no worse off than they were before, is not sufficient to say that it extends equal liberty. The appropriators take legal rights to natural resources that are defined in a way to preclude others from taking the very same rights. Property still opposes the equal liberty to use natural resources and remains, therefore, not a special right but a legal privilege.

C. The weak proviso violates the principle of justice in transfer

Why should there be *any* proviso at all? To admit that appropriation requires even a weak proviso admits that the propertyless have some claim to natural resources, and that appropriation interferes with that claim, depriving the propertyless of the liberties they would otherwise have. If so, Nozick’s principle of justice in transfer implies that people can give up these liberties only by voluntary agreement.³³⁴ But appropriators take these claims away without consulting the people who lose them, and give them something else instead. Allan Gibbard argues that the strict libertarian position would be that the propertyless can give up whatever claim they have to common resources only by consent.³³⁵ As long as Nozick recognizes *any* claim to unowned resources his principle of justice in original acquisition conflicts with his principle of justice in transfer.

³³² Hobbes *Leviathan*, p. 100.

³³³ Cohen *Self-Ownership, Freedom, and Equality*, p. 87.

³³⁴ Nozick *Anarchy, State, and Utopia*, p. 150.

³³⁵ Gibbard "Natural Property Rights.", p. 25.

Nozick's argument becomes suddenly paternalistic.³³⁶ He argues for coercing people in a state of nature to make the propertyless proletarians, who are initially much worse off than people with direct access to unowned resources. But by granting extensive property rights to others, this coercion reaches an end-state distribution that is justified by the positive opportunities it gives them, which, he supposes, will make them better off. As Chapter 4 argued, this argument is not only similar to, *it is the same* as the argument that if the government may take money from you to build an opera house, you will be better off after you use the opera house or interact with people who have been enriched by the opera. Nozick normally decries that kind of argument as a violation of justice in transfer. He argues rights are inviolable; the only just way that the right of one person can be transferred to another is through voluntary exchange, "the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or ... for their *own* good or protection."³³⁷ Nozick does not apply the same principle to the claims of the poor as he does to the rich; he is not arguing for rights but for privileges.

D. Nozick's proviso gives workers nothing for their claim to the land

In any property system, there must be some contingency for compensation for involuntary transfer, but I will argue Nozick's weak proviso doesn't actually offer compensation. Suppose I accidentally destroy your house. You can sue me for the market value of your house, but you cannot sue for how much you would have charged me if I had asked for permission beforehand, even if you really would not have allowed me to do it for less than five times the market value. Compensation might include a penalty premium, but

some form of compensation has to fill the function of rectifying an involuntary transfer. That much supports the proviso, except that Nozick's version doesn't actually offer any compensation. "Compensation would be due those persons, if any, for whom the process of civilization was a *net loss*, for whom the benefits of civilization did not counterbalance being deprived of these particular liberties."³³⁸ The benefits of civilization for workers do not include compensation for lost opportunities but wages for work performed.

To see this, consider two groups of propertyless workers. Imagine that one group of workers has claim to natural resources and the other has no such claim. Appropriators take all of the natural resources and offer all of the workers jobs at market wages that happen to be high enough to satisfy the weak proviso. All of the workers are paid the same market wage for their labor. The workers with claim to resources receive no more than the workers without claim. It's only logical for the workers to complain, "My wages are for my labor, what have I received in compensation for my claim to resources?" The answer is nothing; access to property under unilateral appropriation is the privilege of the proprietor, and the weak, post-trade proviso, effectively reduces any resource claim to nothing. The weak, post-trade proviso inherently recognizes a claim to resources, and then discards it. Perhaps the weak proviso should be discarded instead.

2. Resources as unowned

Narveson discards the proviso altogether, arguing that people have no claim to the Earth: "*none of it belongs to anyone, individually or collectively.*"³³⁹ Many writers,

³³⁸ Ibid, p. 178f.

³³⁹ Narveson "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*." . p. 10, emphasis original.

including both supporters and opponents of unilateral appropriation have assumed that unowned assets are naturally up for grabs,³⁴⁰ but there is a missing connection in that supposition. The open sea is unowned, but it is not up for grabs. Resources can be unowned and incapable of being owned. There must be some explanation why unowned resources are up for grabs rather than simply unownable. Self-ownership cannot make the connection. It is possible for a government to protect self-ownership without protecting property in external assets.

Narveson bases his explanation for why unowned resources are up for grabs on a rather odd application of the principle of noninterference. The first person to claim a resource owns it because “second-comers would then be *interfering* with the courses of action initiated and being continued by those first-comers.”³⁴¹ He argues that there is no more to property than this, presenting his theory as a derivation of unilateral appropriation from the consistent application of the principle of freedom as noninterference. But, to do this, he has to answer the argument that appropriation interferes with anyone else who might want to appropriate resources or use them without appropriation.

Narveson argues that appropriation does not interfere with the propertyless by drawing a distinction between interference and prevention. According to Narveson, if you stop a person from doing something, after she has started (or perhaps after she has formed the intention of starting), you interfere with her, but if you stop people from doing something before they start you merely prevent them. By establishing property, the appropriator merely *prevents* others from doing things they had no previous plans of doing; he does not *interfere* with their doing anything they had already planned to do. He

concludes that appropriators do not need to bother with any proviso. They may take whatever they want to use even if that prevents another person from being anything more than a “starveling.”³⁴²

There are two critical problems with the distinction between prevention and interference. One is that, consistently applied, it simply cannot do the work that Narveson wants it to do. The other is that it is difficult to defend the distinction ethically.

A. Equal freedom from prevention

There is no equal freedom from prevention in Narveson’s theory. If it is not important that the propertyless are prevented from appropriating property, neither is it important that the propertied class is prevented from appropriating property or from appropriating with full liberal ownership rights. What Narveson actually wants—freedom from prevention for the wealthy but not for the poor—is not a right but a legal privilege. The government’s prerogative to regulate and tax property was well established long before any entrepreneur alive today was born, and long before the concept of entrepreneurship or a market economy existed. Therefore, under a consistent application of Narveson’s theory, taxation and regulation of property do not *interfere* with owners at all; they merely *prevent* owners from assuming the strong property rights they have always been prevented from assuming. Therefore, the interference-prevention distinction eliminates the right-libertarian argument against taxation.

Narveson repeats Locke’s inconsistency on an unconditional right to appropriate 308 years later. Arguing for the rights of the first comer to assume ownership, Narveson

³⁴² Ibid , p. 23.

says they do not have liberty without an unconditional right to property, “Since a very large part of the point of having a right is precisely that you *do not* have to get anybody else’s permission, that is a fatal objection to any thought that universal common-ownership exemplifies *liberty*.”³⁴³ Ten pages later he denies that anyone else needs this right, “That the starveling is so badly off that he will not last long if he does not accept a proffered job, or whatever, is not the fault of those who offer it, nor, quite possibly, of anyone.”³⁴⁴

If the lack of unconditionality is fatal to common ownership’s claim to exemplify liberty, it is also a fatal objection to any claim that appropriation and full ownership rights exemplify *equal liberty*. A society that maximizes the freedom of some by minimizing the freedom of others has no claim to embody freedom. Stalin was very free in Soviet Russia, but Russia did not embody freedom. If the unconditional right to appropriate property is something essential to the freedom of primordial appropriators, then it is also essential to the freedom of “starvelings.” If it is not important to the freedom of starvelings, neither can it be important for appropriators. If it is acceptable for the propertied class to prevent the propertyless from appropriating resources, it is equally as acceptable for the government to prevent the propertied class from appropriating full liberal ownership rights. One cannot have different standards of freedom for the rich and for the poor and have any claim to support equal liberty for all. Therefore, Narveson’s theory is not one of rights and freedom but of legal privileges at the expense of freedom.

³⁴³ Ibid , p. 13 emphasis original.

³⁴⁴ Ibid , p. 23.

B. No Ethical distinction between prevention and interference

Another criticism of Narveson's argument is that there is no important ethical difference between prevention and interference. If there is value in the concept of freedom as noninterference, it must mean freedom from all constraints imposed by others, not merely the freedom from *new* constraints. Suppose, as I am being born in a vacant lot, someone builds high walls around it, effectively imprisoning me. At the time of my birth, I had no current plans to leave the lot, and as Narveson argues, I have no natural right to the land outside the lot. Therefore, the continued maintenance of the walls, the building of spikes on the walls, and the posting of guards on the walls, all to prevent me from climbing out, do not "interfere" with me; they merely "prevent" me: and under Narveson's theory as stated, they are not ethically troubling in any way. Only if the people who imprison me wait until after I attempt to leave the lot, before they begin their efforts to keep me in, do they "interfere" with me. For Narveson, there is supposed to be some important moral difference between the two, but I cannot see what it is.

Narveson argues that to say appropriation interferes with the propertyless is to say people have a positive right in things,³⁴⁵ but it says nothing at all about rights. It says only that preventing people from doing things makes them less free. The question I am examining here is not what are "natural property rights," but what set of property rights confers the maximal equal freedom from interference. The first-come rule greatly frees the first come from interference, but only by allowing her—with the help of government enforcement—to interfere with all the second comers. A freedom-based theory has to derive its rights from freedom, not the freedoms it allows from its theory of rights.

³⁴⁵ Ibid . p. 11.

3. State appropriation of property

Right-libertarians such as Nozick, Narveson, and Kirzner advocate unlimited inequality of wealth and see this as parallel of advocating limited government.³⁴⁶ Nozick, for example, argues that the justness of a distribution is entirely determined by how it came about rather than by any principle evaluating the pattern of the end-state distribution.³⁴⁷ But these authors don't examine the full implications of having no restrictions on inequality. This section argues that any theory of unlimited wealth has to allow monarchy, at least in the sense in which one person owns all the property in the nation, and assumes through that property right nearly all of the powers of a true monarch. Therefore, virtually unlimited government power is consistent with right-libertarian property theory.

This section shows how monarchy can grow without violating Nozick's principles of justice in acquisition and transfer, and without violating principles of other right-libertarians. This exercise will show two things: first, that right-libertarian principles, consistently applied, do not necessarily lead to a limited government, and second, that right-libertarian principles allow a property-owning class to assume powers over propertyless individuals that right-libertarians would not allow a state to assume over entrepreneurs.

The development of the state in *Anarchy, State, and Utopia* begins after natural resources have been appropriated into private property through unilateral appropriation. Nozick examines how a state could develop out of mutual protection associations, but that

³⁴⁶ Kirzner "Entrepreneurship, Entitlement, and Economic Justice."; Narveson *The Libertarian Idea*; Narveson "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*."; Nozick *Anarchy, State, and Utopia*.

³⁴⁷ Nozick *Anarchy, State, and Utopia*, pp. 150-160.

is the not the only way to get to there. Suppose all the land on the island of Britain is appropriated by a relatively small portion of the population following whatever rule of acquisition right-libertarians prefer. All proprietors prefer to protect their property themselves, and they are not interested in joining mutual protection associations. Propertyless people come to proprietors seeking land, materials, and protection in exchange for labor, money, or obligation to participate in their own protection. Suppose each proprietor insists that any propertyless persons who wish to live on her estate must accept her as the arbiter of all disputes. Individuals may band together to protect their nominal self-ownership from the proprietor, but all disputes involving property are the sole domain of the proprietor.

The proprietor creates different sorts of deals with different people. To some she sells permanent tenancy rights, a sort of quasi-ownership called a “title” that tenants can buy and sell from each other so long as they recognize that the proprietor retains lordship over all property. She thereby retains rights to charge the royalty on all titles, to reclaim any rights granted under title at any time, and to change the royalty rate or the conditions under which a person holds a title. Other tenants may be interested in living on the proprietor’s land without quasi-ownership of it. The proprietor may allow them to rent from quasi-owners with the understanding that she has the right to collect rent directly from them in whatever form she wants or indirectly through the holders of titles. She can take a portion of their income, a portion of their sales, a portion of their work-day in work direct for her, etc. This trade is voluntary in the sense that it follows from the principles of “justice” in appropriation and transfer. Anyone who doesn’t like it can make a deal with another proprietor.

The proprietors find it advantageous to form strategic marriage alliances and to use custom of primogeniture in inheritance. Over the generations, land holdings get larger as marriages and inheritance join holdings together, until one day one proprietor owns the entire island of Britain. At this time she decides to call herself “Queen” rather than “proprietor.” She prefers to refer to her “tenants” as “subjects” and her “royalties” as “taxes.” But the nature of these payments has not changed. They are voluntary transfers that fulfill all of Kirzner’s, Narveson’s, and Nozick’s criteria for justly acquired property. It doesn’t matter what the Queen does with the taxes she collects. She can use it for her own amusement, for public works, for the common defense, or for alms to the poor in her estate or, as she prefers to call it, her “realm.” Her tax revenues are her profit on the titles she allows her subjects to hold, and they are her property to do with as she will.

After several generations, the quasi-landowners begin to forget that the Queen is the heir of the original appropriators of land, and begin to think that they had somehow appropriated the land, and should have full liberal ownership rather than the quasi-ownership the Queen allows. They could espouse right-libertarian theory as a justification for their complaints against the Queen’s taxation and regulation, but it would be an attempt at usurpation. It would amount to saying that through just acquisition and transfer we have attained the level of holdings X (our current level of ownership subject to the Queen’s taxes and regulations), and we therefore are entitled to the level of holdings X+ (our current level of ownership plus freedom from the Queen’s “interference”). They are looking at themselves as just appropriators of the land, who have unjustly been denied full rights of that ownership, but they have forgotten that they only hold such titles as the Queen has established, and she has always retained the right to tax and regulate.

Consider the Queen a “property-owning monarch” to reflect the “just” method by which she came to power and the minor limits on her power that we can derive from right-libertarian principles. What restrictions are there on such a monarch? Nozick, Narveson, and Kirzner’s principles imply that the Queen has to respect the nominal self-ownership of her subjects, and Nozick adds that the Queen has to respect the weak proviso. It is possible that a parliament could develop to protect citizens’ rights—such as they are—against the Queen. Parliament cannot protect any individual “property rights,” because they don’t have any. The Queen is the one, true, just property owner according to the principles of acquisition and transfer. She could not order a person beheaded, but under Kirzner and Narveson’s property rights, she could order them to be deprived of food and water. Nozick’s weak proviso would disallow that, but she would have no responsibility to allow anyone to attain a living standard higher than they could in a state of nature. A confiscatory tax above that point would be within the Queen’s rights.

The parliament could pass laws about how people could treat each other, but the Queen would have the power to decide whether to allow any of her property to be used to enforce these laws. They can declare war, and she can decide whether any property will be used for war. Effectively, she has nearly all the power of an ordinary monarch. The Queen’s government is just in terms of right-libertarianism because it does everything a right-libertarian minimal state is supposed to do: she protects everyone’s nominal self-ownership and she protects the property rights of everyone who happens to own property.

The arguments in earlier parts of this thesis give two reasons to believe that the Queen’s subjects are profoundly unfree. First, her subjects have no effective control self-ownership.³⁴⁸ Their status as free, self-owning individuals is purely nominal. They must

³⁴⁸ See Part One.

provide service for the Queen to get access to the resources with which they can produce any of the necessities of life. Second, the Queen has privileged property rights that violate the principle of maximal equal liberty. She was born with privileges of ownership that block them from assuming any of the same privileges.

Unfortunately, for right-libertarians, the Queen's subjects are unfree in the same way that propertyless persons are unfree in right-libertarian society. To see this, simply, re-read the above story substituting "property owning class" for "Queen." Therefore, right-libertarians are unable to object to the Queen on the above grounds. The story of the property-owning monarch presents a dilemma for so-called property rights advocates. They can accept that a property-owning monarchy is consistent with right-libertarian freedom and lose their claim to principled support for minimal government, or they reject the property-owning monarchy and lose consistent advocacy for full liberal ownership of property.

If right-libertarians take the first option, they would have to admit that right-libertarianism is not classical liberalism, but a form of classical royalist conservatism. They have created an argument for property rights so strong that it cannot function as an argument for *private* property rights. However, state-ownership of property isn't limited to monarchy. If a Queen can be the successor to the appropriators of property, so can a democratic community. The Queen could choose to bequeath ownership of her realm to a democratic community, or it would be easy to retell the story replace the Queen with a democratic cooperative.

If right-libertarians take the second option, they will find it impossible to apply any arguments against the state-ownership of property that does not also apply to a capitalist class. Consider three such attempts. First, right-libertarians could say, that this story is not

literally true. The government of my country is not actually the successor to the original appropriators of property. But, as I argued in Chapter 8, the story of the private Lockean original appropriation is not literally true either. The propertied class is not actually the successor of the original appropriators. The only appropriation story that had any hope of holding up was the metaphorical appropriation story, but this story, which gives property to whoever has the more senior claim, supports the Queen. In Britain, every piece of property traces back to a title granted at the Queen's pleasure. She has transferred much of her property rights to parliament. All of the property rights to 40% of the world's surface stem from treaties signed by agents of the monarchs of England. It is hard to find any property rights in the world that cannot be traced back to "the arbitrary distribution of the sovereign."³⁴⁹ One might think of Native American Reservations, but those are owned by tribal *governments* (many of which have signed treaties recognizing national governments). Therefore, the unilateral appropriation story points to the government, rather than the capitalist class, as the ultimate landlord.

Second, consider Nozick's argument that taxation is on a par with forced labor.³⁵⁰ Speaking of redistributive taxation, he says, "These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in *other* people."³⁵¹ Samuel Wheeler explicitly connects this argument with taxes on property, "No significant moral difference in kind exists between eliminating my ability to play softball by taking my knees away and eliminating my ability to play the market by taking my money away."³⁵²

³⁵⁰ Nozick *Anarchy, State, and Utopia*, pp. 169-172.

³⁵¹ *Ibid.*, p. 172.

³⁵² Wheeler (2000). "Natural Property Rights as Body Rights." *Left-Libertarianism and its Critics: The Contemporary Debate*. Vallentyne and Steiner, Eds. New York: Palgrave.

It is a mistake to consider the argument about taxation as having something to do with self-ownership; it is a dispute about property ownership. If you have a valid ownership claim to property, and the Queen takes some of it away, she has violated your property ownership. If someone else has a valid claim to property ownership, and the government takes a portion when they want to transfer it to you, the government violates their property ownership, not necessarily your self-ownership. However, if the Queen has a valid property right in all of the external assets in her realm, her “royalties” or her “taxes” violate neither property rights nor self-ownership. They are simply the expression of her ownership rights. The Queen can limit people’s ability to play the market, not by taking “their” money away, just by taking some of her money back. She even put her picture on the money to remind people that they hold it at her pleasure. If right-libertarians attempt to take away the Queen’s ability “to play the market” by collecting taxes on the use of *her* money, they have attempted—in Wheeler’s terms—the moral equivalent of eliminating her ability to play softball by taking her knees away. The supposed effect of taxes on *self*-ownership is actually a dispute about *property* ownership. The Queen’s power stems entirely from her control of property; all her subjects maintain full, nominal self-ownership. Her subjects’ propertylessness forces them to serve her by paying her taxes, but as Narveson says this “is not the fault of those who offer it, nor, quite possibly, of anyone.” If it is permissible to put the working class in the position where they must give some of their labor to the ownership class to get access to property, then it is permissible to put entrepreneurs in the position in which they must serve a property-owning monarch to get access to property.

Third, consider the argument that if the Queen owns all the resources, she has too large a concentration of power. That argument requires an end-state principle of justice, strictly ruled out by Nozick’s entitlement theory. The only end-state principle he allows is

the weak proviso, which gives the Queen's subjects the right to compare their standard of living to what they would have in the state of nature. Narveson and Nozick theories do not even allow them to make that comparison.

The argument that a government monopoly on property is too great a concentration of power falls into the same category as egalitarian arguments against a world in which the richest 10% of people own 90% of the world's property. Right-libertarian theories have not responded to those arguments by saying that this pattern of distributional inequality is within acceptable limits, but by saying that any argument based on a pattern of distributional inequality is unacceptable. If they are serious, they must say that a pattern in which one entity owns all property is also acceptable. Arguably, Nozick's weak proviso is one small end-state principle,³⁵³ but once the minimal state is shown to be an end-state distribution of property, the crux of right-libertarianism is exposed to be simply a preference for one kind end-state distribution over others. The contention that taxation is theft or forced labor relies on the tacit assumption that a pattern of ownership in which the government or the people as a whole have property rights in all natural resources is an unacceptable pattern, but in which a property-owning aristocracy controls all natural resources is an acceptable pattern. But they cannot derive this pattern from any more basic principle, because the freedom people lose to the property-owning monarch is the same as the freedom propertyless people lose to a property-owning aristocracy. If the Queen's pervasive ownership is a threat to the self-ownership of the title-holding class, the pervasive ownership of the title-holding class is a threat to the self-ownership of the propertyless.

³⁵³ Cohen *Self-Ownership, Freedom, and Equality*, Chapter 3.

Kirzner argues that the person who first appropriates the only watering-hole in the desert is entitled to it because he is the first to discover its true value; others could have done the same had they been as alert as the original entrepreneur.³⁵⁴ On the same grounds, a new-coming entrepreneur cannot complain if an earlier entrepreneur (the government) has previously appropriated the right to *tax* the only watering-hole in the desert. In other words, if a class of business owners can appropriate resources in such a way as to have life-and-death power over individuals, governments can appropriate resources in such a way as to have life-and-death power over businesses.

These arguments show that right-libertarianism does not imply a minimal state. It has no principled argument for limited government based on equal freedom for all. Once the underlying end-state principle that the government cannot own property is exposed and dismissed, right-libertarian principles do not make an argument for the market economy or limited government, but for unrestricted government for the material benefit of whoever owns the government. Right-libertarianism is not meant to be a simple assertion that “we don’t like government ownership of property;” it is supposed to derive that conclusion from deeper principles. If right-libertarians are serious about original appropriation, transfer, and rectification being the only ethical principles of propriety, they have to be serious about accepting the results, and therefore, their principles endorse a much stronger government, not a more limited government.

³⁵⁴ Kirzner "Entrepreneurship, Entitlement, and Economic Justice.", pp. 405-406.

4. Equal rights under the law and after-the-fact justifications for property

Property theories based on unilateral appropriation and tacit-yet-binding consent are ethically objectionable because they are after-the-fact justifications. Right-libertarians argue that in the beginning, resources are unowned and people have equal right to take them. But that beginning is a fiction. In the real beginning, resources are owned, and right-libertarians go back in time to try to justify those rights. If, before-the-fact, everyone is told that resources are up for grabs, and everyone is able to grab them, then we could in some sense say that unequal property holdings are not legal privileges but special rights that stem from how people chose to exercise equal freedom. But people are born into a situation in which everything is already owned, and they do not have the same legal rights to attain property as the appropriators. Access to natural resources and anything made out of natural resources is at the whim of the people who have been awarded the legal privilege of holding property. After-the-fact justifications for preexisting privileges have to rely on fictional “rights” that existed before anyone agreed to them, but that no longer exist for everyone today.

Waldron argues convincingly that people could not agree before-the-fact and in good faith to appropriation of property without compensation.³⁵⁵ Imagine that our castaways are on a floundering boat, and they can see that they will be washed ashore on an uncharted desert island. Mr. Howell suggests, “Let’s make a rule that all resources on this island are up for grabs for the first taker, so that a few of us will have all of them and everyone else must serve them to survive.” It is ridiculous to assume that people would agree to that rule

³⁵⁵ Waldron *The Right to Private Property*, pp. 171-183.

unless they somehow knew they were good at grabbing property.³⁵⁶ Yet the crux of right-libertarian theory seems to be that unilateral appropriation is the *only* legitimate method to distribute resources *whether or not* people actually do or would agree to it. Even if everyone on the boat wanted to use some other method to distribute property or some definition of property other than full liberal ownership, they should not be free to do it. This is a very strange position to be taken by a theory that claims to have something to do with liberty.

It is stranger still when the justification is applied only after-the-fact. It is not the justification of liberty or any kind of a right but of privileges akin to the privileges of kings and feudal lords. If right-libertarians want to argue that property rights arise from equal freedom they have to point to a time and place where every individual is equally free to appropriate, but no such time or place could exist.

Even if appropriation starts from Nozick's hypothetical situation in which everyone lives by their own efforts, it is after-the-fact for anyone born into propertylessness later. Scanlon argues that many of the inequalities that are of most concern to egalitarians are the inequalities of starting point that do not result from the voluntary choices of members of a given generation.³⁵⁷ Steiner and Zelleke argue that property rights based on a right of appropriation in one generation that allows bequests deny equal rights and equal freedom to individuals in successive generations.³⁵⁸ This argument can be extended from bequests to any form of cross-generation transfer. The current generation can make no binding

³⁵⁶ Ibid, pp. 276-278.

³⁵⁷ Scanlon "Nozick on Rights, Liberty, and Property.", pp. 110-111.

³⁵⁸ Steiner Ibid "Justice and Entitlement." 380-382; Zelleke (2005). "Distributive Justice and the Argument for an Unconditional Basic Income." *Journal of Socio-Economics* 34 (1): 3-15. This argument outflanks Kirzner's justification for appropriation, which relies on the assertion that the appropriator was not doing anything that the others "were not free to do" (Kirzner "Entrepreneurship, Entitlement, and Economic Justice."). A justification for permanent property rights relying on the existence of equal opportunity is irrelevant across generations and it would seem, in any given generation without perfect equality of opportunity, which seems to include every society in every generation.

decisions about the distribution of property rights for the next generation without making some of them less free than others. There might be a way to justify that interference, but it is nonsensical to claim that it is noninterference.

Suppose, for example, that Nozick, Narveson, Kirzner and Wheeler are on a boat with Gilligan and the others. The ship goes down at night in a terrible storm. They all struggle to swim, and finally make it to a beach, where they lie exhausted and fall asleep. Thinking ahead, Mr. Howell sets his waterproof-wristwatch alarm-clock and wakes up Mrs. Howell, Gilligan, the Skipper, Ginger, the Professor, and Mary Anne. The seven quickly begin using all of the land in some way. When the right-libertarian theorists wake up, the other castaways inform them, “The entire island has already been appropriated. If you want to step out of this narrow part of the beach (which we have declared by compact to be a public park), you must accept our jobs, at our wages, under our conditions. The only jobs open now are washing dishes at two bucks an hour and working weekends.”

How will the right-libertarians reply? “Yes, that is your right...Perfectly legitimate. You were first; we will serve, now and forever, and so will our descendants. We and our descendants will faithfully hope for the day when—through our service—you will voluntarily choose to grant us some ownership of property, but if you never do, that is your prerogative.”

Or will they say something more like this? “You can’t just make rules that say you can take things that we might want without asking or at least warning us first. If you were going to do that this morning, you should have told us last night.”

An after-the-fact justification is so unreasonable that *no one*, who is disadvantaged by it, would or should accept it. To apply a quote from Dworkin to a different context, “The brute fact remains that some people have much more than others of what both desire,

through no reason connected with choice.”³⁵⁹ That condition is the necessary result of unilateral appropriation, which therefore cannot confer property rights that are more than privileges. Strong property rights oppose maximal equal freedom.

5. Forget about ancient history

The most plausible argument for property rights suggests forgetting about the origin of property rights. It is: people who hold property today are largely hardworking people who played by the rules and got ahead, and who do not deserve to be suddenly dispossessed. Perhaps in the past we have given owners an unrealistic expectation of the property rights we would willingly respect. Must we be forced to endure right-libertarianism as the punishment for our sins? To the extent this argument is valid, it cannot be an argument for full liberal ownership or any strong property rights; it is Bentham’s argument of legitimate expectation, and it justifies no more than a reasonable maintenance of whatever laws are in force.³⁶⁰ It cannot be used to justify strengthening property rights by making them immune to powers of taxation that all property owners were lead to expect long before they started accumulating their property. It can justify a phase-in of changes in taxes, but it cannot justify an argument that society must stick with or strengthen the current property-rights regime no matter what its detrimental affects on the propertyless.

6. Conclusion

There is no certainty that ancient man was endowed with a positive right to appropriate property that propertyless people lack today but are bound to respect. What seems more likely, in fact, is that propertied men invented the right of appropriation to justify the dominance they had usurped for themselves over property and the propertyless.³⁶¹

Right-libertarians want to apply a principle of voluntary, uncoerced agreement only *after* the establishment of property rights, but they want property rights to be established coercively in a way that interferes with the propertyless without any voluntary agreement on their part and which forces them to accept agreements that they would not accept without force. Cohen argues that right-libertarians are in fact entitlement theorists who put historical entitlements and a narrow conception of self-ownership above a broader conception of liberty.³⁶² But he does not go far enough. Right-libertarians or so-called property “rights” advocates are not advocates of freedom or rights but of legal *privileges*. Full individual ownership puts the privileges of unilateral appropriators above any meaningful conception of noninterference, freedom, liberty, self-ownership, equal rights, or voluntary agreement.

To maintain a coherent position, right-libertarians need to admit that they favor privileges in opposition to freedom. It is not a freedom-based argument to say that replacing feudalism with a market economy reduces the liberties of kings, dukes, earls, and lords. Although it does reduce their freedom, it reduces privileges they claimed at the expense of

equal freedom for the propertyless. It is not a freedom-based argument to say that replacing Stalinism with democracy reduces Stalin's liberty. Nor is it a freedom-based argument to say that replacing a privileged system of property by a system that defines property by agreement reduces the liberty of privilege holders. In the same way that it is not a freedom-based argument, it is not a rights-based argument consistent with equal rights under the law.

The attempts to derive a strong, special right to private property from noninterference, self-ownership, or the no-harm principle fail. If scarce natural resources are unowned, they are equally unowned by everyone. There is nothing a person can do unilaterally to establish a property right without denying equal freedom to the propertyless.

In the absence of unilateral appropriation, what rule for privatization of unowned resources is fair? What rule is consistent with maximal equal freedom? It is on this point where the libertarians get it right. "The question, 'when is a deal fair?' ... has only one reasonable answer: when each party is free to say 'no.'"³⁶³ That principle must be consistently applied to the establishment of property and to subsequent trade, not only after pervasive, one-sided property privileges dressed up as "rights" have been established.

A genuine concern with minimizing interference requires the application of the principle of voluntary agreement not only to the *exchange* of property rights but also to the *establishment* and *definition* of property rights. How to do this is the subject of the next chapter.

³⁶³ Narveson "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*." , p. 21.

Chapter 10:

Property Rights by General Agreement

The liberty of man in society is to be under no other legislative power but that established by consent.

-John Locke³⁶⁴

The history of ... consent theory of the last three centuries largely consists of attempts by theorists to suppress the radical and subversive implications of their own arguments.

Carole Pateman³⁶⁵

The previous chapters rejected unilateral appropriation, concluding that there is nothing one person can do unilaterally to make unowned assets her property without denying equal freedom to the propertyless. If people have equal rights, are equally free, and resources are unowned, they are *equally* unowned by everyone. How then can they become owned by anyone? People who want to own resources have to buy them by paying for the duties their ownership imposes on others.

The justification for private property is the payment of taxes for distribution to those who have less. This chapter argues that one person acquires exclusive property rights by compensating others for the duties her ownership imposes on them. I use the term “acquisition” for any method to acquire property other than unilateral appropriation. Taxation of property, in this theory, is not “interference” with an existing ownership right but a part of the purchase price of property. It interferes as much and for the same reasons

³⁶⁴ STOG, § 22.

³⁶⁵ Pateman *The Disorder of Woman*, p. 71.

as the private portion of the purchase price of property. If a unanimous agreement is reached, the compensation could come in almost any form agreeable to the payers and the recipients—cash or specific goods and services—but without unanimity, this chapter argues that a substantial portion of the redistribution must come in the form of an unconditional basic income to give recipients the widest choice of what to do with their compensation.

Section 1 outlines the theory of property rights by general agreement in ideal theory, arguing that any contract to establish property must be beneficial and agreeable to those who are assigned fewer property rights in external assets—not only for those who assume greater property rights. Section 2 discusses barriers to achieving the ideal property rights agreement, such as overlapping generations, the improbability of unanimity, and the undesirability of irrevocability. Section 3 discusses how to make a non-ideal social agreement to create property given the existence of those barriers. This discussion implies both limits on and protections of property rights.

Section 4 discusses a possible left-libertarian reply, concluding that although the concerns presented in this chapter are left-libertarian, the solutions are not entirely contained in familiar left-libertarian prescriptions. Section 5 answers a right-libertarian query about why people with resource-intensive lifestyles pay higher taxes. Section 6 summarizes and concludes.

1. Property rights agreement in ideal theory

Suppose A and B are the only two people on an island and neither has any ownership claim to the island's resources. There is nothing (ethically or legally) to stop

them from making an agreement that some resources will be used only by A, others only by B, and others may be used by both. They have by voluntary agreement—and without coercion—established something like public and private property. It is not quite property; it is an agreement to treat unowned resources as if they were property. It holds only as long as A and B continue to agree, and it has no bearing on any C who might appear. But this example establishes the kind of agreement necessary to create something like property.

As long as ownership reflects a general agreement, it does not need to involve equal division, collective ownership, or any particular set of incidents of ownership. A and B can hold all resources jointly or designate almost any portion of resources for exclusive use.³⁶⁶ The private resources do not necessarily need to be divided evenly. B could offer to provide a service for A in exchange for a larger share of resources. There is no natural price at which A and B must exchange services for natural resources; the exchange rate is whatever A and B agree to. They can decide that they have stronger or weaker rights to their holdings, but they can't assign full liberal ownership without denying equal access to resources to future generations or future citizens. A's contract with B does not give him true property, only B's agreement to refrain from using those resources that remain unowned. But hopefully, this process gives an example that can be extended beyond the two-person case.

³⁶⁶ In the two-person case, public spaces are not essential, but they quickly become essential in larger groups.

A. Equal division

The most obvious way to establish property by contract is to divide it into equally-valuable portions,³⁶⁷ but equal division is by no means the only possible solution or necessarily the best solution. There are at least four reasons why equal division is too restrictive.

First, no fixed portion of available resources should necessarily be divided. Society needs to hold some amount collectively for public spaces and thoroughfares, but people might choose to hold a larger amount for use in collective projects. People can still divide whatever is left equally, but if so, the amount that constitutes an “equal share” becomes variable. Is a person entitled to an equal share of all resources or merely of all privatized resources? This question becomes important if there is no universal agreement about how many resources should be devoted to public projects or about the value of particular public projects.

Second, the argument for ECSO freedom in Part One of this thesis might be thought of as a constraint on the distribution of property that could justify a departure from equal shares. Imagine an island populated by a giant and several dwarves. Imagine equal division provides each dwarf with enough to secure her physical needs and a substantial amount of luxuries, but it does not provide the giant enough to secure her needs. Without ECSO freedom the giant is effectively forced to be a servant of the dwarves. This giant needs a larger share of resources simply to enjoy the same status freedom as everyone else.

Third, simple equal division takes the size of the population as exogenously given. Under simple equal division, an individual is entitled to the total value of natural resources

divided by the size of the population, whatever the population happens to be. The amount of resources a person can claim is subject to everyone else's fertility decisions (or the fertility decisions of the previous generation), and the amount of resources each person in the next generation can claim is subject to our fertility decisions. If the size of the population were to impose serious restrictions on core liberties, conceivably the moral claim could be the other way around, with each person's fertility options subject to maintaining a goal for the size of an equal share. However, both of those options are too restrictive. If human effort increases the value of resources, it might be possible to have a large population with sufficiently large shares available for everyone, but it might necessitate departing from equalizing the value of external assets (see Chapter 12).

Fourth, equal division is not necessarily what everyone wants. Suppose Mr. Howell is more talented, diligent, hardworking, and/or ambitious than the other six castaways on Gilligan's island. He wants a larger share of property and a higher standard of living than everyone else, and he is willing to work for it in ways the others are not. It could be in the interest of all parties to grant Mr. Howell a larger share of property, or even stronger rights of ownership than others have, in exchange for his agreement to perform some sort of service to those who agree to make do with less property. One way to achieve this would be to make everyone's equal share tradable. Another way would be for those wanting large shares and those accepting smaller shares to negotiate. There is not a unique outcome for such a process. The agreed price could vary with the negotiation process and the incidents of ownership. If there is no one right price of external assets relative to services, there is no unique answer for the value of an equal share.

B. Full collective ownership

Conceivably, people could agree to a rule that all natural resources are strictly collectively owned. As Cohen demonstrates that collective ownership with an individual veto over all resource use renders self-ownership merely formal,³⁶⁸ it would be inconsistent with any meaningful understanding of maximal equal freedom. But it is too quick to go from that observation to the conclusion that no form of egalitarian ownership of property can be consistent with ECSO freedom. There is room for collective ownership tempered by the rule of unconditional access to a sufficient amount of resources, limiting the collective or individual power over resources. The limitation could be operationalized by giving individuals the right to demand a sufficient share of external assets or equivalent compensation at any time.

C. Property rights by general agreement

Property rights by general agreement is a simple way to create property rights in unowned resources. It is more flexible and avoids some of the problems with equal division and full collective ownership. It is simply the following: *one person establishes a property right in a natural resource by paying everyone else for the duties her ownership imposes on them.* This is an agreement for “as-if property,” an agreement to get everyone else to treat unowned resources as if they were property. The rest of this section discusses it in an ideal form, in which everyone agrees.

³⁶⁸ Cohen *Self-Ownership, Freedom, and Equality*, pp. 94-101.

Imagine a perfect market for acquisition by general agreement using a Walrasian auctioneer,³⁶⁹ a nearly omnipotent convener who calls out prices for all goods in a market. The auctioneer uses her powers to observe how much each potential market participant is willing to buy and sell at that price. If the quantity supplied and the quantity demanded of each type of commodity match, she allows trade. If not, she adjusts the prices in whatever direction seems likely to be closer to a match and announces again. She repeats this process until there is a perfect match, and only then allows trade. If the auctioneer fails to find an equilibrium in which the supply of resources is equal to or greater than the demand,³⁷⁰ resources remain unowned. However, the only requirement for a property agreement is some set of prices that could establish a set of property rights that everyone would willingly choose over leaving resources unowned and unownable. (Other fallback positions might be equally justifiable, such as equal division or unlimited access to the resources one can use oneself without the right to trade them, but I will use unowned resources as fallback position in my examples.) There might be many different Walrasian equilibriums that satisfy this requirement, and negotiating between them is an important problem, but the discussion here does not require that there be a unique solution.

The Walrasian auctioneer asks the following questions for each natural resource: At price x , for vector of rights y , in resource z :

1. How much are you willing to purchase for your own property?

³⁶⁹ The controversies about the Walrasian process are not relevant to the problem at hand. Most of the controversy about Walrasian equilibrium centers on whether a market economy actually approximates this process. Other controversies include whether a Walrasian equilibrium is unique, stable, and efficient. But none of these problems are essential to the way I am using the auctioneer.

³⁷⁰ Disequilibrium, in this case, is only a problem if demand exceeds supply. If there is no equilibrium, but there is at least one vector of prices in which the supply exceeds demand, it meets the qualification of establishing property rights by voluntary agreement.

2. How much are you willing to privatize to others in exchange for 1/nth share of the revenue?

The auctioneer asks these questions for each natural resource including land, minerals, water, clean air, and so on. Once the auctioneer is done, society has several other questions to address:

3. What would you prefer be done with the revenue from the privatization of resources?
4. Of the remaining resources, how much are you willing to make collective property?
5. How much are you willing to leave unowned?
6. How should collectively held resources be used and managed?

These questions are important, and they imply that the establishment and management of collectively held property is an important concern of a society committed to maximal equal freedom. Except for briefly touching on question 3 below, I set these questions aside, because this thesis focuses only on the establishment of private property, which is accomplished by the answers to questions 1 and 2: one person acquires the right to hold a piece of property by paying everyone else for the duties her ownership imposes on them. This means simply that if you want to own property you have to *buy* it from everyone who has to make do with less so that you can have it. That is from the rest of society. You cannot simply appropriate property or buy it from the successor of the appropriator; you have to buy it from the people on whom you want to impose the duty to respect your property rights.

Once an agreement is reached, everybody pays a central authority for the resources they use, and this money is used (somehow) to compensate everyone who has less. Under unanimous agreement, the revenue could be used for anything at all. But without unanimous agreement, there is a strong case for returning a large part of the money to people in cash so that they can use it for whatever they want. The government can divert funds for merit goods and other goals, but the goal of maximal equal freedom gives reason to make sure that an individual has something of her own and to consider cash distribution the default solution.

Assuming that everyone would choose to own something, everyone would both pay into the authority and receive revenue from it. Assuming no funds are diverted for public purposes, those who hold more than an average-sized share pay in more than they receive back, and those who hold less receive back more than they pay in. If funds are diverted for public purposes, there will be more net-payers than net recipients. Net recipients can use the revenue they receive to buy services from others. The consumption of these services is their compensation for holding less property than everyone else. If no one wishes to hold a disproportionately large share, everyone would pay in exactly what they received and no money would need to change hands at all. But as long as people have different desires for property and different willingness and ability to trade services for them, some people will be net payers and some therefore net recipients.

This method of distribution has two similarities with Ronald Dworkin's clamshell auction—both have people bidding for resources and a Walrasian auctioneer.³⁷¹ It is probably more similar to Allan Gibbard's method.³⁷² The method here is based on unowned

³⁷¹ Dworkin *Sovereign Virtue: The Theory and Practice of Equality*, pp. 65-83.

³⁷² Gibbard "Natural Property Rights.". Dworkin does not cite Gibbard, and both neglect to cite the television show described in Chapter 6 (Schwartz and Crawford "Plant You Now, Dig You Later.") even though it also has people on a desert island bidding for resources to which no one has a special claim.

resources and maximal equal freedom while Gibbard's is based on an equal ownership claim to resources. Gibbard spells out the solution in less detail, and seems to fall back onto hypothetical rather than literal agreement.³⁷³ Dworkin's auction is designed to achieve an equal division of resources, while this method is designed to achieve a mutually acceptable division that can deviate from resource equality. Thus, Dworkin uses a special currency (clamshells) that cannot be exchanged for anything but resources, while this method uses currency. No one in Dworkin's auction is a net payer or a net recipient of the auction, although their bundles may be traded. To maintain resource equality over time, Dworkin creates a hypothetical insurance scheme to make sure that the distribution of resources is ambition sensitive and endowment insensitive.³⁷⁴ Endowment insensitivity is not a goal here. People own their endowments as much as they own their ambitions and they are welcome to trade the benefits of those endowments for greater shares of external assets as long as doing so is beneficial and agreeable to people with smaller shares of external assets. They are also welcome not to trade their endowments and to use them only to enjoy their minimum share of external assets.

This method is substantially different and substantially more consistent with maximal equal freedom than the unilateral appropriation favored by right-libertarians. If everyone in every generation agrees that the system of property rights is just and in their interest, the agreement establishes property virtually without interference. Every liberty a person sacrifices to create property for someone else is exchanged either for similar property of her own or for services provided by others. Therefore, it creates no legal privileges; everything a rich person has is paid for, and paid to the right people. These property rights reflect a general agreement that is in the interest of everyone as they

³⁷³ Gibbard "Natural Property Rights.", pp. 27-28.

³⁷⁴ Dworkin *Sovereign Virtue: The Theory and Practice of Equality*, pp. 73-83, 89.

perceive it themselves. If the bargaining process is efficient it will also exhaust all possible opportunities to improve people's welfare relative to their starting point, but efficiency is not an essential justification for it. If such an agreement could be reached, it would not create equality, but it would create a more egalitarian form of property than the full liberal ownership rights favored by right-libertarians, yet more consistent with maximal equal freedom.

If a unanimous agreement is possible, it creates property virtually without that interference. However, there are barriers to a general agreement.

2. Three barriers to a property-rights agreement

There are barriers to reaching the agreement described above, including overlapping generations, the improbability of unanimity, and the undesirability of irrevocability.³⁷⁵ This section examines the ramifications of these barriers, and the following section examines how society can approximate a general agreement to create property given the existence of these barriers.

A. Overlapping generations

One generation might want to establish permanent, transmissible property rights, but they cannot do so without interfering with the ways future generations might want to

³⁷⁵ This is not an exhaustive list. There are other barriers to agreement such as rent seeking, unrealistic beliefs about what agreements are possible, and the existence of entities that have moral value but are unable to make an agreement. But I will set these issues aside.

use resources and define property. Imagine a world in which humans mate like salmon at the very end of their lives. Suppose members of each generation are born and die together with no overlap between lives at all. Wilt Chamberlain lives in this society, and provides the service of playing basketball for the enjoyment of his contemporaries. Suppose also that there are no cameras or recording equipment, so that only people who see Chamberlain play live benefit from his service. He plays so well that all of his contemporaries sign over the use rights to all natural resources during his lifetime. But now that he owns everything, they have nothing to give him as an incentive to continue to play basketball. Chamberlain offers to keep playing basketball if his contemporaries agree to leave a note for subsequent generations assigning some or all of the property rights at that time to whomever Chamberlain designates. How well must Chamberlain play for generation A to earn the power to decide who is rich and poor in generation B? When the next generation is born they read the note, but nothing binds them to follow it. It is not a voluntary agreement on their part, and amounts to nothing but external interference.

The above does not imply a need for an inheritance tax, but for something stronger. Suppose Chamberlain lived twice as long as everyone else. The earlier generation has assigned him ownership of everything. When the next generation is born, they are propertyless because of an agreement Chamberlain made with the previous generation. This agreement is not voluntary on their part, and is not binding on them. Chamberlain provided services for people who are now dead, but he has not benefited the people who now must make do with less property so that he can have more.

Of course, people in one generation often create things that directly benefit subsequent generations. Imagine Shakespeare writes great plays in one generation that last to the next generation. If Shakespeare, his descendants, or his trading partners (e.g. his

publisher) carry over exclusive rights to his plays into subsequent generations, they have a greater claim on property than other members of the next generation, but they have this greater claim without the agreement of the next generation. If Shakespeare could travel in time and make an agreement with future generations saying that he will only write these plays if they respect his copyright in their generation, he might be able to make a mutually beneficial agreement. But he cannot travel in time. He can only make agreements with his contemporaries, and so he must decide whether the amount he can make from his contemporaries is enough to make it worthwhile for him to write his plays. If not, he does not write plays or he keeps his writing secret. If so, he writes the plays, accepting that they eventually become public domain.

Other people do things that benefit future generations by altering physical property rather than creating purely intellectual property. Suppose Michelangelo alters blocks of granite in ways that make them far more valuable. His contemporaries are willing to give him much larger shares of use rights to goods in his time in exchange for this service. But if they also confer permanent ownership of Michelangelo's sculptures to him or to people in the next generation he designates, they impose interference on subsequent generations in the same way that a permanent copyright would interfere with future, would-be readers of Shakespeare. It is interesting that current law gives Michelangelo and his successors permanent rights to his creation than Shakespeare, when the whole of the value of Shakespeare's work is his intellectual creation while a portion of Michelangelo's work is a natural resource to which he has no more claim than anyone else.

This discussion of the overlapping-generations problem implies that no generation can establish permanent property rights, which in turn implies both that the discussion of the assignment of property rights must be ongoing (see below), and that the discussion

applies not only to natural resources, but to all external assets or at least those produced by earlier generations. That is, time limits that are applied to copyrights can be extended to physical improvements to natural resources. A worker can negotiate voluntary rewards in the form of services from her contemporaries, but any rewards she claims from future generations cannot be voluntary. This argument applies not only to Shakespeare and Michelangelo but also to Locke's original appropriator and to the value of any improvements made to the resource value of ordinary goods by past generations. Thus, the property in question is extended from natural resources to external assets (or at least those external assets altered by previous generations), implying limits to property rights discussed below.

B. The improbability of unanimity

A lack of agreement is not necessarily a failure of the Walrasian process; it means simply that no price makes it worthwhile to establish property rights rather than remain in the default position in which all property remains unowned. If property rights make far greater production possible, it is likely that it is possible to make a deal that is better for everyone, but even if there is one, reaching it by unanimity is unlikely. One problem is that the unanimity rule is not necessarily optimal or free from manipulation.³⁷⁶ Another problem is that, in an ongoing negotiation of property rights, it is not possible to return to the default position. If a large number wants an agreement that a smaller number finds objectionable, they can't simply go back to the default position.

³⁷⁶ Mueller (1989). *Public Choice II*. New York: Cambridge University Press, pp. 43- 53, 96-111,

Suppose one person or a small group holds out and refuses any price (or every price that anyone else can afford) for accepting property rights of others. Some might genuinely prefer some other social arrangement to the one on offer at a price others are willing to pay; others might have unrealistic beliefs about how much they can get. A society that imposes one kind of property-rights regime on a small group of people who prefer something else interferes with that group's freedom to use resources the way they want. But if the small group forces the large group to remain in the state in which resources remain unowned, they also interfere. It is not certain which of these two actions constitutes the greater interference.

One partial solution to the problem of a lone holdout is that everyone in a like position receives and pays the same amount, making it impossible for one person to hold out for a privileged deal. But it is still possible and even likely that some net recipients will reject something that is acceptable to the majority of net recipients. It is not necessarily morally impermissible to hold out for the best deal possible, if a default position exists. It is the basis of voluntary exchange; the two sides of the transaction do without the benefits of exchange unless or until they come to an agreement. Without that possibility the agreement won't be completely voluntary, and the approximation of a general agreement runs the risk that it will either give too much power to dissenters or force them to accept burdens unwillingly. The section on non-ideal theory discusses how to balance these concerns.

C. Revocability

It is likely that many people will not want to make an irrevocable agreement to create property rights, but will want the power to revise that agreement if it turns out to be

less desirable than expected. It is problematic for society to place individuals in the position in which they *must* choose between a permanent, irrevocable agreement and no agreement at all. Also, even if people are initially willing to make an irrevocable agreement (such as marriage without the possibility of divorce), there are agreements that people ought to be able to revoke.³⁷⁷ But these concerns need to be balanced against the needs for a secure agreement. The more permanent the agreement is, the greater the problem of people who want to revoke it, but the less permanent the agreement is, the greater the insecurity of property. Again the non-ideal solution will involve balancing.

3. Property rights agreement in non-ideal theory

If a unanimous agreement is not possible, it is important to remember that maximal equal freedom for all is not complete freedom for all. The goal is to minimize rather than to eliminate interference caused by the property rights agreement. However, a simple majority rule, with the power to impose whatever it wants on the minority, is not enough. The widest possible agreement with the minimum impact on dissenters achieves the maximal freedom consistent with equal freedom for all. Although it is beyond the scope of this thesis to specify the exact institutional setting for determining a property-rights regime, I will suggest five limits to the property rights that follow from the above discussion. First, the government must not alienate anyone's status as an effective control self-owner—or aid anyone's self-alienation. Second, the protection of ECSO freedom ensures the consent of

net-payers but not net-recipients. Third, there cannot be a dichotomy between a one-time assignment of property rights and subsequent trade. Fourth, any agreement must seek to minimize its impact on people who do not wish to be party to the agreement. Fifth, the government also has a responsibility to protect buyers' access to property.

A. Inalienability of ECSO freedom

Chapter 2 argued that the government has a strong responsibility not to enforce any contract alienating an individual's status as a free person. According to Arthur Kuflik, Kant, Locke, Rousseau, and Spinoza concur for various reasons and to various extents.³⁷⁸ John Stuart Mill and John Gray have made similar arguments.³⁷⁹ Those who oppose inalienability do so on the basis of some right of contract³⁸⁰ or something like a right to waive rights,³⁸¹ but such theories effectively put the promotion of positive opportunities ahead of government's primary responsibility to protect the individual's core liberties from interference.

So-called voluntary slavery requires three parties. Call them me, you, and the government. I might want to promise to be your slave. At some point, I might want to renege on that agreement, and you might want the government to enforce that agreement against my (current) will, or you might want the government to waive its protection of me so that you can enforce the contract yourself. Either way, the government becomes involved. What should the government do? If it refuses to enforce the contract, it interferes with no

³⁷⁸ Kuflik (1984). "The Inalienability of Autonomy." *Philosophy and Public Affairs* 13: 271-298.

³⁷⁹ Mill *The Essential Works of John Stuart Mill*, p. 348; Gray *Mill on Liberty: A Defense*, p. 93.

³⁸⁰ Nozick *Anarchy, State, and Utopia*, p. 331.

³⁸¹ Steiner *An Essay on Rights*, pp. 64-65, 71-72, 232-233.

one; it merely denies aid. If the government enforces the contract, it interferes with one of my most important core liberties. Its greater responsibility is clear.

There are many things that I might want the government to help me do. I might want the government to burn me at the stake, let me take the space shuttle out on weekends, let me blow myself up with an old discarded nuclear bomb out in the desert where I won't hurt anybody else. The government has no responsibility to help me do these things, and it has a strong responsibility *not* to help me, even if I want its help. Selling myself into slavery belongs in the same category. There are some positive opportunities that the government ought to help me attain even if it involves some level of force. For example, it might want to make rules to help me cross the street without getting hit by a car. But it doesn't have to help me do everything I might want to do. If I want to burn at the stake, I'll have to do it all by myself, and I can't expect any special treatment from the government to help me. If I want to make good on my promise to be your slave, even after I change my mind, I will have to maintain the willpower to do everything you ask, even though I no longer want to. If it is understood before I agree to be your slave, that I will have the legal right to renege on that contract, you may not trust my willpower, and you might refuse to accept me as your slave. This fact allows me to argue that the government's refusal to help me effectively prohibits me from being a slave. That's true; so's this: the refusal to give me a nuclear bomb effectively prohibits me from blowing myself up with it—too bad. That is freedom from interference.

The above, I presume, is widely acceptable. My position is more unusual in the high level of functioning that I argue a person must have to be an effectively free person. Along with chattel slavery and involuntary servitude, people may not sell themselves into such

severe economic destitution that they are effectively forced to work for others.³⁸² This responsibility implies a substantial constraint on the property rights agreement: the government cannot enforce any agreement that allows people to become economically destitute. Therefore, certain kinds of agreements cannot be irrevocable, and some cannot be enforced at all.

Modern contract law rightly refuses to enforce contracts that explicitly alienate an individual's status as a free person. Currently, the failure to fulfill a contract cannot be grounds for imprisonment,³⁸³ corporal punishment, or any other denial of an individual's status as a free person—except impoverishment. If we recognize propertylessness as a threat to freedom, as argued in Part One, the same kind of economic prohibitions against selling oneself into slavery should also apply to protecting people from severe economic deprivation. The government refuses to assist in self-alienation of ECSO freedom by refusing to honor any contract alienating an individual's claim to the property they need to maintain their free status, and by not imposing any such propertylessness on individuals without their agreement.

This argument does not imply that the defendants should pay no financial penalty at all for breaching an agreement, but they may declare bankruptcy while keeping enough property to secure their ECSO freedom. This justification for a social minimum could be called by a name that might sound oxymoronic—permanent, starting-gate sufficiency. It allows each person the right to return to an acceptable starting point that secures their ECSO freedom. It is equivalent to bankruptcy without destitution. Permanent, starting-gate sufficiency does not imply that no one can be deprived of their status as a free person for *any* reason, just not by contract or trade. Criminal law is still enforceable by imprisonment.

³⁸³ Except in the case of criminal negligence.

Severe violations of civil law such as negligence, accidental bodily harm, and paternity also might be grounds on which a person's ECSO freedom could be alienated, but I do not explore the issue of exactly when the government can deny a person's status as free.

This argument has implications for the treatment of basic income. Assuming that a basic income is in place and set just at the level that secures a person's basic needs, it could not be used as collateral for a loan, and would be a protected asset in the event of bankruptcy (with the exceptions above noted). However, if the basic income is set higher than that level, a portion of it could be used as security for a loan and could be seized in the event of bankruptcy.

More important than the government's responsibility not to enforce a voluntary agreement alienating a person's effective control self-ownership, is its responsibility not to impose (or force an individual to accept) the loss of ECSO freedom. As long as it is possible to create some property-rights regime that protects everyone's ECSO freedom, the government may not impose a property-rights regime that denies ECSO freedom to someone. If no possible property-rights regime protects everyone's ECSO freedom, the government must limit everyone's ECSO freedom in the same way and to the same extent.³⁸⁴

B. ECSO freedom assures the consent of property holders

The protection of ECSO freedom has a centrally important role for the rest of the property theory laid out in this chapter. It establishes the maximum amount the government can interfere with an individual's access to external assets. At most, it may limit a person's

³⁸⁴ See Chapter 12.

access to resources to just enough to secure their basic needs as discussed in Chapter 5 but not more than that. So, the person who has the minimum access to resources also has the maximum amount of interference. If a person wants more than that amount of external assets, she must buy them from the government as representative of the people, and she has rights similar to a buyer.

Any person who chooses to buy a greater amount of property has in that sense voluntarily accepted the conditions. If I buy a car for \$20,000, I might think the price was too high but I could have kept my money or I could have chosen to work less instead of earning the money to buy the car. This is what we mean by voluntary trade. It does not mean that I like the price, or I think the price was fair, but it means that I *accept* the price, when I could have said no. This condition makes all of the net-payers in this property-rights regime voluntary taxpayers. If they want to live with a modest amount of property, ensuring a life that is not thoroughly bad in an absolute sense, they may do so, and no one will force them to do anything. If they are more materially ambitious than that, and they wish to hold a greater share of resources, they may choose to accept the terms and conditions of holding a greater share of resources. Participation in the economy needs to be voluntary to that extent, and if it is, it establishes the voluntary agreement for everyone who lives above the minimum. Taxation, then, does not interfere with established property rights or with self-ownership rights. People choose to pay taxes in the same way and for the same reasons that they choose to pay the private purchase price of goods. They might complain that either or both prices are too high, but they accept them willingly as free persons.

This method does not, however, establish the voluntary agreement for those who live at or near the minimum. They hold less property than everyone else, and they receive compensation for that fact in the form of money with which they may purchase services

provided by everyone else, but their acceptance of this compensation does not indicate that this level of compensation is enough to make them willingly accept the fact that others have greater shares.

C. No dichotomy between initial assignment of property rights and subsequent trade

The problems of overlapping generations, dissent, and revocability all imply that there cannot be a dichotomy between an initial allocation of property rights and subsequent trade of property. No group of people at any one time in history can confirm full, permanent ownership rights over an external asset in the sense of all of Honoré's eleven incidents.³⁸⁵ To do so would be to attempt to make a contract binding on generations of people who were not signatories to it. The process of maintaining a coalition in favor of the property rights system must be continuous, but this process must be balanced against property owners' need for stable property rights, and importantly, everyone's desire to make long-term plans and to know what their rights are when they agree to purchase property.

One way to create such a balance would be to define all property as fixed-term leases, which have to be renegotiated at expiration. Each person at any time could buy a lease for a one-time fee or a regular rent for a period of say 20, 50, or 100 years or the lifetime of the buyer. It is in no one's interest that all property rights terminate after one week or one year. The government could retain some of the right to manage the property (incident 3), and it may or may not sell the right to trade and transfer these rights (incidents 4 and 5). However, these are temporary leases and no matter how many times a piece had

³⁸⁵ Honoré *Making Law Bind*.

been transferred, the lease still terminates at its expiration date. The buyer might not want to buy a temporary lease, and the lack of availability of permanent ownership is interference, but it is no more so than the interference that property holders today impose on people who would like to buy a house but can only afford to rent. The fixed-term-lease solution would be cumbersome and difficult to administer, and its distributional goals could be achieved much more simply through the tax system.

Although the government could create property in almost any combination of Honoré's eleven incidents³⁸⁶ (with the exceptions noted), it need not make radical changes to achieve the necessary goal. It could simply keep the familiar institution of full liberal ownership of property with only one change: the liability to execution (incident 10) could be explicitly extended to include the responsibility to pay a tax sufficient to maintain the widest possible property rights agreement and/or to minimize interference with dissenters from the agreement. The tax rate would have to be variable to avoid imposing the regime on future generations, but it should not vary widely in a short time to allow owners to make long-term plans.

Perhaps the simplest solution is a wealth tax redistributed in the form of a basic income. A yearly wealth tax is essentially a rental price for holding external assets.³⁸⁷ Each year, people pay a percentage of their wealth into the basic income fund. Potential owners are warned that all property is subject to that tax and that the government may raise or lower that tax as needed, and they may revise their decisions to purchase property based on that knowledge. The government's ability to change the tax rate has to be balanced against

³⁸⁶ Ibid.

³⁸⁷ A natural resource tax could be used instead; an income tax or a combination of taxes are also possible. The argument here does not imply that it must be a wealth tax, and the choice of which type of tax to use depends as much on empirical efficiency concerns. The argument does imply that there should be specific kinds of natural resource taxes, such as taxes for depleting nonrenewable resources or fines and fees for polluters, but these specific issues are beyond the scope of this thesis.

the wealth holder's need for security. Therefore, the government must not lead people to believe that taxes will remain low and suddenly raise them to confiscatory levels as soon as owners have improved the property in some way. Perhaps changes in the tax rate should be announced well in advance and phased in over a period of years. If my landlord announces that my rent will go up next year, I can decide to pay or I can move into a smaller house. If the holder of wealth does not want to pay an announced increase in the wealth tax, she can divest herself of her wealth. If the wealth tax is not extremely high or variable, it leaves the private property rights system basically in place and raises enough revenue to end propertylessness and to justify property rights on a contractual basis. If a revisable wealth tax is in place, there is no need for time-limited property rights, confiscatory inheritance or income taxes, or any major disruption of basic market exchange to make the agreement in the interest of people with less property now and in subsequent generations.

D. Minimizing the negative impact on those who are not party to the agreement

Because no system of property relations eliminates interference without unanimous agreement, and unanimous agreement is often not possible, the best possible system attains the widest possible agreement and minimizes its impact on the people outside the agreement. There might be some conflict between the goals of achieving the widest agreement and the minimum impact on dissenters, but I will focus on the latter. If people cannot agree on one property system, the first solution to seek is a way to divide resources so that everyone has a proportionate amount of resources to devote to their uses, and diverse lifestyles are possible. Earmarking resources for various uses is not always practical, but if compensation is paid in cash, the cash can be used to buy resources,

finished goods, or services to put toward the kind of lifestyle individuals prefer. To minimize the impact of an agreement on people left outside, society should be careful not to set compensation payments too low or give them in a form that people don't want. These issues provide an argument not only for a basic income in cash but for the highest sustainable basic income.

The property-rights regime that supports the highest basic income allows the most resources and creates the most real options for those who do not want to be a part of the agreement. Therefore, it has the minimum interference with dissenters. Suppose a substantial majority wants to move to a market economy with reasonably strong private property rights, but a small group wants something else (e.g., a hunter-gatherer economy or a socialist cooperative society). If the majority merely imposes their system on everyone else without compensation, they substantially and significantly interfere with everyone else's attempt to lead their lives in their own way. If they make resources available to dissenting minorities, giving them some ability to lead their chosen lifestyle, they do not eliminate interference, but they reduce its significance.

Distributing compensation in cash as a basic income gives dissenting minorities the widest opportunities to use it to pursue their chosen lifestyle. If all net-recipients were willing participants, they could choose to accept compensation in the form of specific services or public goods. But if there are unwilling people who are being compensated, cash becomes the only reasonable option. Otherwise there is the possibility that people would be forced to accept less of everything and who are given "compensation" in the form of something they do not want. Imagine the government appropriates your backyard and compensates you by promising to subsidize a public center for Greco-Roman wrestling (assume you don't like Greco-Roman wrestling). This does not mean that there can be no

collective projects, merely that they do not necessarily perform the compensatory function of basic income.

E. Protection of property owners

The above discussion rules out permanent, full ownership rights without compensatory taxation for the (otherwise) propertyless, but it leaves the general agreement free to define property in a wide range of ways. As I stated above, property could be anything from fixed-term leases to permanent ownership subject to adjustable tax rates. In other words, property does not naturally entail transmissibility, the absence of term, and residuary character,³⁸⁸ but all of these can be bought by the liability to taxation (strong version of incident 10). The social agreement to create property could retain some of the right to manage (incident 3) and the right to income (incident 4). For example, society could privatize the land along a river subject to the restriction that owners maintain a footpath along the river, do nothing to pollute the river or disturb traffic on the river, and make no loud noises that would disturb others in the area. The rights of the private holder here are similar to the rights of a potential renter of property. I might want to rent a house with the right to tear out the walls, repaint it, and remodel it, but I cannot force the owner of the house to rent it to me under those conditions.

However, potential buyers should have more rights than a renter in the private housing market today; restrictions on property rights have to be balanced against the potential owners' equal freedom to use resources to satisfy their needs and wants, which requires both security and equal access to property. Laws regulating property should not be

³⁸⁸ Incidents 7, 8, and 11, from Honoré *Making Law Bind*, see chapter 6 of this thesis for details.

used to make any particular lifestyle impossible unless it uses more resources than the potential buyers are willing to pay for or unless the lifestyle poses a danger to others who are not willing to accept it. For example, society can prohibit outright an activity that releases plutonium into the atmosphere because it creates a cost that the polluter cannot possibly pay for. It can prohibit an activity that releases a harmless substance into the atmosphere that will turn the sky orange, simply because the person who wants to do this cannot pay others enough to make them willingly to accept an orange sky. But if someone wants to live a loud lifestyle, society should try to find an area where people can be loud without disturbing others.

Like cases must be treated alike. Society can charge more for uses of property that take up more resources or have more harmful activities. It cannot charge more for people who want to use resources to build a temple to Isis than it charges for people who want to use the same amount of resources to build a temple to Zeus, simply because the majority wants to promote the worship of Zeus. If a person or a group of people do not demand a disproportionate amount of external assets (or are willing to pay the required compensation) and are not posing a danger to others, they must not be prohibited from the assets they need to practice their lifestyle in a society that provides the maximal equal freedom. These protections for property buyers and holders are strong enough to ensure that extensive markets cannot be prohibited.

There is, of course, a Coase Theorem problem in determining what constitutes harm,³⁸⁹ especially in *advance* of the assignment and definition of property rights. This is an involved legislative issue, but I will suggest two guides. First, the default is to leave the environment alone. People who want to change the sky from its natural blue to an artificial

³⁸⁹ Coase (1960). "The Problem of Social Cost." *Journal of Law and Economics* 3: 1-44.

orange have more to prove than those who want to leave it as we found it. Second, whoever gets their way compensates those who do not. Part of an individual's basic income compensates her for the fact that she cannot turn the sky orange or release plutonium into the atmosphere, which she could do if she was alone or in a world of like-minded people.

4. A left-libertarian reply?

A left-libertarian might reply that the concerns with property rights expressed in these chapters are contained in left-libertarian theories of justice and they can be solved by left-libertarian policy prescriptions. This section argues that the concerns I have expressed are broader than the concerns of better-known, left-libertarian theories and that while left-libertarianism implies a unique solution, the negotiated solution proposed here could have many different, but equally legitimate, outcomes.

According to Peter Vallentyne's definition, "Left-libertarian theories of justice hold that agents are full self-owners and that natural resources are owned in some egalitarian manner."³⁹⁰ By that definition, the theory presented in this chapter is arguably left-libertarian. Although the theory does not begin with the assumption that external assets are naturally collectively owned, it shows that beginning with the assumptions that they are equally unowned by everyone and that society is committed to maximal equal freedom leads very much to the same outcome. Most left-libertarians agree that the equal right to use

³⁹⁰ Vallentyne (2000). "Introduction: Left-Libertarianism - A Primer." *Left-Libertarianism and Its Critics: The Contemporary Debate*. Basingstoke: Palgrave: 1-20, p. 1.

external assets is consistent with maximal equal freedom for all and that unequal ownership of natural resources without compensation is inconsistent with equal freedom. But I would like to outline several ways in which this theory differs from the better-known forms of left-libertarianism.

Left-libertarianism is most often associated with the idea that natural resources are the only legitimate tax base. The government may (and should) tax away all of the resource value of assets, but it should not tax labor or improvements made to natural resources.³⁹¹ Therefore, many left-libertarians would reject the arguments above that extended the tax base from natural resources to all external assets and extended the possible forms of taxation from eco-taxes to income and wealth taxes. Some left-libertarians might argue that the lack of a dichotomy between resource taxes and wealth or income taxes implies a rejection of full self-ownership, but that is not the case. The theory in Part One proposes ECSO freedom as the primary concern of government policy, but neither part of this thesis rejects full self-ownership as an important concern.

Rather than rejecting full self-ownership, it rejects the belief that income or wealth taxes infringe full self-ownership. They infringe property ownership, not self-ownership. The income aspects of self-ownership entail a right to negotiate with others for property. If society as a whole has a legitimate claim to all external assets, it is a party to any transaction, and therefore, it can tax any transaction involving external assets or claims on external assets. The right to mix one's labor with an asset, increase the asset's value, and resell the asset for a higher price is an incident of ownership of *the asset* that the holder must buy from others. If I live in a rental house, and I alter the rental house, increasing its value by 100 fold and then resell it, the owner can sue me to have his entire house back. If I

³⁹¹ George *Progress and Poverty*; Spencer *Social Statics*; Vallentyne "Introduction: Left-Libertarianism - A Primer."; Steiner *An Essay on Rights*, pp. 235-236.

want to the right to alter and to own the alterations I make to the rental house, I must negotiate this with the owner of the house. We might agree that I will receive 99% of the value of my alterations, or only 1% of the value of my alterations. We might not come to any agreement at all and I might have to choose not to rent the house. If I am capable of increasing the value of the property and the owner is wise, she will give me a good incentive to do so, but there is no fixed “value” of my labor.

Most left-libertarians do not focus on the need for social agreement, but view the taxation of natural resources as an application of the Lockean proviso on unilaterally appropriated resources rather than the rejection of unilateral appropriation altogether. Therefore, most left-libertarians (1) do not argue that the incidents of ownership are subject to social agreement, (2) take the quantity of privately held natural resources to be approximately fixed, and (3) believe the legitimate tax revenue is determined by the market value of natural resources (variously defined). If 1 and 2 become subject to agreement, 3 is no longer fixed. Applying Christman’s observation more broadly,³⁹² there is no unique solution to the question of what is the value of human effort relative to the value of natural resources, only the opportunity to negotiate.

Without a need for social agreement, the policy implications of left-libertarians are relatively clear, if not unique, as can be shown from the following graph. The horizontal axis shows the percentage of resources held privately. Point 0 on the left corresponds to a society with no private ownership of property and Point 100 on the right is the point at which all external assets are private property. The vertical axis shows the price of holding resources privately. The downward sloping line labeled with the large D is a demand curve relating the price of holding resources privately to the quantity of resources private citizens

³⁹² Christman *The Myth of Property: Toward an Egalitarian Theory of Ownership*.

are willing to hold. Under the normal assumptions the demand curve generally slopes down from left to right, showing that the lower the price the more people are willing to buy.³⁹³

The left-libertarian complaint is that the price for holding natural resources privately (the resource tax) is less than the market price. Graphically, current property law puts society at a point like A inside the demand curve on the graph. Property owners hold Q_A and pay only P_A for it in taxes, although a competitive market or an auction would force them to pay P_B . Point A would not necessarily violate equality of access to natural resources, if holdings of resources were rationed so that everyone had an equal amount. But, of course, resources are not rationed. Some people have more access to them than others. People who control resources resell them to the rest of society and realize gains equal to the difference between the market price and the actual resource tax multiplied by the quantity.³⁹⁴ These excess gains are attributable to the scarcity value of natural resources rather than to some valuable service provided by the people who own them. If society charged P_B (reaching point B on the demand curve), and used the proceeds to fund public projects, a welfare state, or a basic income, it would achieve equal access to resources and freedom as noninterference more fully than right-libertarianism.

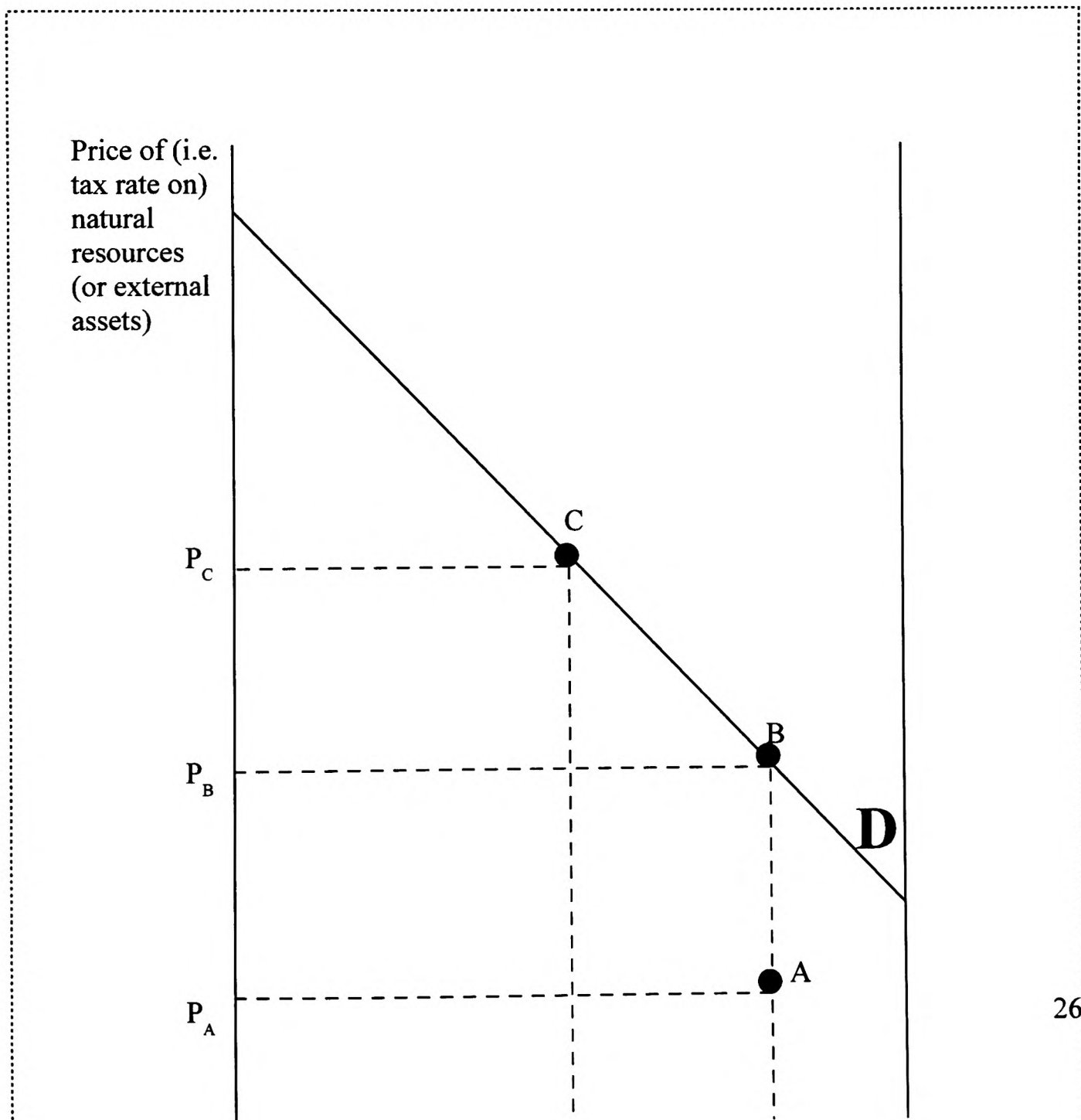
If Q_A is taken as given, left-libertarianism implies that achieving point B is the unique solution to the problem of private property. A tax rate of P_B fully satisfies the requirements of left-libertarian justice. In the introduction to the principle anthology on left-libertarianism, Vallentyne writes, "For natural resources, there is a fixed supply, so we can here focus solely on how the competitive value is determined by demand."³⁹⁵ Supply, or the willingness to designate natural resources as private property, plays no role, and the

³⁹³ People are not always willing to buy more at lower prices, but that assumption is not essential for the process here.

³⁹⁴ $Q_A(P_B - P_A)$ to express it mathematically.

³⁹⁵ Vallentyne "Introduction: Left-Libertarianism - A Primer.", p. 16.

empirical question of the competitive value of natural resources becomes extremely important. However, although the amount of natural resources in the world is approximately fixed, the amount of natural resource in private hands could be highly variable and subject to discretionary government policy. This fact gives the social agreement enormous price-setting power, which is usually ignored by left-libertarians. Estimates for the value of natural resources currently in private hands vary enormously from 0.5% to 20% of gross domestic product. The latter figure gives great leeway for redistribution and the former figure leaves very little, but much left-libertarian literature hinges on that empirical question.



0

 Q_C Q_A

100

Percentage of resource(s) held privately

My criticism of left-libertarianism is that the legitimate tax is not determined by the empirical question of the market value of natural resources. If the actual market value of natural resources (or the relevant external assets) is close to the higher figure, the left-libertarian solution is sufficient. However, an argument for redistribution sufficient to free people from abject poverty does not hinge on that fact, because **the price of privatizing natural resources is a key subject for social agreement**. If government policy achieved point B, but P_B was not sufficient to make people with lesser shares accept the agreement to establish property, maximal equal freedom for all would not be realized. P_B *might* be sufficient to establish a general agreement, but if not, there is room to negotiate a higher price, which might involve moving to a point like C (or any point along the demand curve) at which the price of (tax on) resources is higher, fewer resources are held privately (more being unowned, used collectively, or kept in reserve for future generations), and the share of income attributed to human resources is lower. Q_A is merely the percentage of resources that are currently in private hands. It is not certain that the amount of resources currently held privately is the optimal amount to hold privately. The arguments above imply that the government should use its price-setting power to obtain the widest-possible social agreement in favor of the property-rights regime and to minimize interference with those who dissent from the agreement.

In other words, the solution is more complex than equalization of the current market value of privately held natural resources, but there are several reasons why the question is more complex still. First, it is not simply a matter of choosing what percentage of all external assets to privatize, but the percentage of each asset to privatize. A social agreement might result in privatizing 90% of society's copper, 50% of its zinc, 20% of its oil, 1% of its ancient artifacts, and 0% of its plutonium. Flexibility in the quantity of each resource to

privatize implies flexibility in the price of each resource. The social agreement might choose to use much more of its price-setting power for some resources than others. Second, as argued above, there are different rules under which external assets can be privatized. The incidents of ownership that potential owners are bidding for will affect the price they are willing to pay, and therefore the outcome is very far from being tied to the current market price of natural resources or external assets.

If ECSO freedom is a constraint on the process the government should, if necessary, use its price-setting power to ensure that everyone has at least enough income to secure their basic needs. Thus it is different from much left-libertarian literature, such as that of Van Parijs and Steiner, who argue that the just amount of distribution is a purely empirical question that has nothing to do with whether it provides enough to live on.³⁹⁶ It is possible that the government will be unable to raise sufficient revenue to achieve that goal even using its price-setting power. This issue is discussed in Chapter 12.

5. A right-libertarian reply?

This property theory provides an answer to Nozick's question about "redistributive" taxation:

Why should we treat the man whose happiness requires certain material goods or services differently from the man whose preferences and desires make such good unnecessary for his happiness? Why should the man who prefers seeing a movie (and who has to earn money for a ticket) be open to the required call to aid the

³⁹⁶ Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*; Steiner *An Essay on Rights*.

needy, while the person who prefers looking at a sunset (and hence need earn no extra money) is not?³⁹⁷

The man who wants to earn extra money works for the tax authority for the same reason that he works for the employer, client, or landlord: he wants a larger share of external assets and these are the people who can reward him with it. If he does not want to own a relatively large share of external assets, he need not work for his employer and he need not be a net-taxpayer. If he wants to own a relatively large share of external assets, he must pay for them through “redistributive” taxation. If he wants to hold a large share of property without paying that tax, he simply wants something for nothing. He wants to take more without doing anything for those who must therefore make do with less.

One cannot use the theory presented in this chapter to justify any kind of tax, such as an arbitrary tax or a confiscatory tax designed to make a certain lifestyle impossible. Libertarians of all stripes are correct to argue against such taxation. But this theory counters the assertion that taxation in general is freedom-inhibiting. Quite the reverse: unequal ownership of property without redistributive taxation is freedom-inhibiting.

6. Conclusion

This chapter has argued that a justification for property consistent with maximal equal freedom for all requires property rights to be established by an agreement between those who assume rights of property and those who thereby assume duties. The contract

must be mutually beneficial in the sense that those who assume larger shares of property must compensate those who accept smaller shares sufficiently to make property in both parties' interest. This objective can be achieved by subjecting property to a wealth tax used for redistribution in the form of a basic income.

In a modern economy or in a right-libertarian ideal state, the person who holds property claims ownership, saying, "This is mine, because I have paid for it," but she knows that she paid only the person who held it before her, connecting through a long line of exchanges to a person who arbitrarily appropriated and by doing so forced other people to have less without their consent or compensation. She may have worked hard for her property, but she has paid the wrong people. Property rights by general agreement, as proposed here, allows a person to claim ownership, saying, "This is mine, because I paid for it. Everyone who is less fortunate than I am has benefited from the services I provide. I have received the consent or paid compensation to everyone who must make do with less because I have more." It is her property because she has paid the right people. She has a far stronger ethical claim to ownership than under any theory of unilateral appropriation.

Part Three:
Reply to Objections

Chapter 11: Who Exploits Who?

This chapter and the next consider two closely related objections to basic income, the exploitation and the duty objection. Both converge on an obligation to contribute to a social project, but I will draw a distinction between how they ground that responsibility. The exploitation objection derives the obligation from an interest in the shared output of the project while the duty objection make a more general claim connecting moral duty to an obligation to actively contribute. There is some overlap, but the two objections are separable. It is possible that people do not necessarily have a moral duty to actively contribute to a project, but they could only benefit from a project by exploiting claims to resources. It is possible that people could attain income by selling claims to resources without exploitation, but they still have a moral duty to actively contribute to a social project. This chapter considers the exploitation objection and Chapter 12 considers the duty objection.

The exploitation objection (also know as the exploitation, reciprocity, or parasitism objection) is based on the idea that basic income gives something to people who do not work, leaving less for (and so exploiting) those who contribute to the social product.³⁹⁸ In Jon Elster's words, "[I]t is unfair for able-bodied people to live off the labor of others."³⁹⁹ The property theory outlined in Chapter 10 provides a ready answer to that point of view.

³⁹⁸ For summary see Van der Veen (1998). "Real Freedom versus Reciprocity: Competing Views on the Justice of Unconditional Basic Income." *Political Studies* 46: 140-163. Van der Veen describes the exploitation objection without endorsing it.

³⁹⁹ Elster "Comment on Van der Veen and Van Parijs." , p. 719.

An unconditional basic income is the result of a reciprocal exchange. People receive it in exchange for recognizing the larger shares of property in unowned external assets assigned to others, and for being blocked from access to the resources with which they could pursue their own projects. If no one took a larger share, no one would have the responsibility to pay taxes to support basic income. In a sense basic income recipients passively contribute to whatever social product generates the revenue.⁴⁰⁰ People contribute to the project for rewards of property, which are possible because some people make do with smaller shares.

Gijs van Donselaar (GVD) provides a response to the idea of passive contribution. His thesis and article represent the most thorough attempt yet to derive the exploitation objection and a contributory obligation from more basic principles.⁴⁰¹ Philippe Van Parijs (PVP), whose argument for basic income⁴⁰² has attracted abundant rebuttals,⁴⁰³ did not feel that he could ignore GVD's objection.⁴⁰⁴ This chapter addresses GVD's version of the exploitation objection. Section 1 summarizes how GVD uses two principles, Donselaarian exploitation and abuse of rights, to argue that people have equal right to *use* assets but not equal right to *income from* assets that they have no 'independent interest' in using. He concludes that exploitation and abuse are essential to basic income.⁴⁰⁵ Section 2 argues that GVD fails to give adequate consideration to independent interests that exist outside of commercial production. Section 3 demonstrates that if noncommercial interests exist, basic income need involve neither Donselaarian exploitation nor abuse of rights, and applying

⁴⁰⁰ Pascal Couillard coined this term (personal correspondence).

⁴⁰¹ Van Donselaar *The Benefit of Another's Pains: Parasitism, Scarcity, Basic Income*, hereafter abbreviated as BOAP; Van Donselaar "The Stake and Exploitation."

⁴⁰² Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*.

⁴⁰³ Reeve and Williams (2003). *Real Libertarianism Assessed: political theory after Van Parijs*. Basingstoke: Palgrave Macmillan.

⁴⁰⁴ Van Parijs (2003). "Hybrid Justice, Patriotism and Democracy: a Selective Reply." *Real Libertarianism Assessed*. New York: Palgrave MacMillan: 201-216, pp. 207-208. PVP's reply is somewhat dismissive, but he does not ignore GVD.

⁴⁰⁵ Van Donselaar *The Benefit of Another's Pains: Parasitism, Scarcity, Basic Income*, p. 191.

GVD's 'right and obligation to work' (pp. 166-190⁴⁰⁶) where noncommercial interests exist can cause exploitation and abuse. Section 4 concludes.

This reply to GVD's version of the exploitation objection applies to other versions of it to the extent that they fail to consider passive contributions or noncommercial interests. Lack of attention to this issue is exhibited, to some extent, by many authors who make the exploitation objection, including Anderson, Barry, Elster, Gauthier, Giddens, Rawls, and White.⁴⁰⁷ For example, White pays strict attention to making sure "willing beneficiaries of cooperative industry" reciprocate through work. But he pays little attention to making sure those who have unwillingly sacrificed options to make a particular system of cooperative industry possible receive reciprocal compensation other than employment opportunities within the system.⁴⁰⁸

1. GVD's argument

GVD builds his case against basic income on PVP's case for it, but it applies to any theory that envisions resource egalitarianism as equalizing the income each individual receives from resources rather than equalizing individuals' opportunities to work with

⁴⁰⁶ Unless otherwise specified, page numbers in this chapter refer to BOAP (Ibid.).

⁴⁰⁷ Anderson "What is the Point of Equality?"; Barry (1996). "Real Freedom and Basic Income." *The Journal of Political Philosophy* 4 (3): 242-276; Elster "Comment on Van der Veen and Van Parijs."; Elster (1989). *Solomonic Judgments*. Cambridge: Cambridge University Press; Gauthier (1986). *Morals by agreement*. Oxford: Clarendon Press; Giddens (1998). *The Third Way, The Renewal of Social Democracy*. Cambridge: Polity Press; Rawls *Justice as Fairness: A Restatement*; White "Liberal Equality, Exploitation, and the Case for an Unconditional Basic Income."; White (1999). "The Egalitarian Earnings Subsidy Scheme." *British Journal of Political Science* 29 (3): 601-622; White (2000). "Social Rights and the Social Contract: political theory and the new welfare politics." *British Journal of Political Science* 30 (3): 507-532; White "Fair Reciprocity and Basic Income."

⁴⁰⁸ White *The Civic Minimum*.

resources. This includes, for example, Paine, Dworkin, Varian, and the property theory in Chapter 10.⁴⁰⁹

A. Crazy and Lazy

PVP argues that the freest society maximizes the freedom of the least-advantaged individual to do whatever she might want to do, and that basic income capitalism delivers that freedom. He argues that taxes to support basic income do not exploit people who pay them, if they are based on “external assets”—assets that no one alive created but that have monetary value—such as land, natural resources, the products of past generations, and to some extent jobs.⁴¹⁰ The existence of jobs assets plays no part in the argument in this thesis.⁴¹¹

PVP illustrates his argument with the story of Crazy and Lazy⁴¹² who are the only inhabitants of an island with 4 units of land. Each unit of labor mixed with 1 unit of land produces 1 unit of the consumption good, which provides subsistence. More than 1 unit of consumption is luxurious. Crazy prefers to work and consume as much as possible. Alone, she works all 4 units of land and consumes 4 units (Figure 1, at the end of the chapter). Lazy prefers to work as little as possible. Alone, he works 1 unit of land, and consumes 1 unit of the consumption good (Figure 2). If Crazy and Lazy are together and endowed with 2 units of land each (without trading), Crazy works both of her units, and Lazy works only

⁴⁰⁹ Dworkin (1981a). "What is Equality? Part 1: Equality of Welfare." *Philosophy and Public Affairs* 10 (3): 185-246; Paine *Agrarian Justice*; Varian (1985). "Dworkin on Equality of Resources." *Economics and Philosophy* 1: 110-125; White *The Civic Minimum*.

⁴¹⁰ Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*, pp. 96-130.

⁴¹¹ For criticism of GVD's application of his argument to job assets see Widerquist (2006). "Who Exploits Who?" *Political Studies* forthcoming .

⁴¹² Assume Crazy is female and Lazy and Hippie (introduced below) are male. Their genders are unimportant, but using two different pronouns adds clarity.

1 of his (Figure 3).⁴¹³ When trade is introduced, Crazy agrees to farm all of the land (Figure 1), giving 1 unit of consumption to Lazy, who subsists without working. Both are better off than before trade (Figure 3), and PVP concludes there is no exploitation under several standard definitions of it.⁴¹⁴

B. Donselaarian abuse of rights

According to GVD, the abuse of rights, or “marketable nuisance,”⁴¹⁵ occurs when a person sells a right in which she has no “independent interest”—an interest aside from the desire to resell it.⁴¹⁶ Lazy’s trade is abusive because he has no private use for the land he gives up; he doesn’t genuinely suffer a loss if Crazy takes it. Although Lazy has an equally legitimate claim to use assets, GVD argues, if Lazy auctions off assets without having an independent interest in them, he obtains control over, “things that were explicitly excluded from the auction: other people’s labor and services.”⁴¹⁷ He concludes, “Nuisance value is an essential element in the argument for basic income.”⁴¹⁸ If the abuse of rights is a successful challenge to basic income, it also condemns rental income, financial speculation, interest on debt, and most property as we know it. GVD is willing to argue for a new conception of property; he condemns the market economy as we know it, along with basic income, but his primary focus is to establish a work obligation over basic income.⁴¹⁹

⁴¹³ Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*, pp. 92-96.

⁴¹⁴ Including Lockean, Lutheran (Marxian), and Roemerian exploitation. *Ibid.*, pp. 133-185.

⁴¹⁵ BOAP, p. 5.

⁴¹⁶ BOAP, pp. 1-3.

⁴¹⁷ BOAP, p. 131.

⁴¹⁸ BOAP, p. 191.

⁴¹⁹ BOAP, pp. 166-190.

C. Donselaarian exploitation

GVD defines exploitation in a way PVP did not consider. Although GVD derives his definition from Gauthier,⁴²⁰ call it “Donselaarian exploitation” because GVD is the first to employ it in this way and to this extent. “Donselaarian exploitation” or “parasitism” is the condition in which, *A is better off than she would have been in the absence of B, while B is worse off than he would have been in the absence of A.*⁴²¹ This definition changes the baseline for comparison. PVP’s baseline compares Crazy and Lazy’s exchange to the position in which both share the island but do not trade (Figure 3). GVD’s baseline compares Crazy to the position in which Lazy does not exist (Figure 1) and Lazy to the position in which Crazy does not exist (Figure 2). Crazy is now worse off than she would be if Lazy did not exist (she works the same and consumes less), and Lazy is better off than he would be if Crazy did not exist (he works less and consumes the same).

Because GVD’s baseline focuses on the absence of the other party, it attributes effects of increased scarcity (caused by a larger population) to exploitation.⁴²² To separate exploitation and scarcity, a different baseline might be necessary. For example, is Crazy better off with Lazy or another Crazy? Although Lazy’s disappearance would benefit Crazy, Lazy’s transformation into another Crazy would not. Crazy would work 2 and consume 2 although she prefers working 4 and consuming 3. But I will set this issue aside and focus on whether accepting Donselaar’s two principles implies rejection of basic income.

⁴²⁰ Gauthier *Morals by agreement*.

⁴²¹ Van Donselaar "The Stake and Exploitation.", p. 98.

⁴²² Widerquist (2005). "Does She Exploit or Doesn't She?" *The Ethics and Economics of the Basic Income Guarantee*. Widerquist, Lewis and Pressman, Eds. Aldershot, UK: Ashgate: 138-149.

D. Usury, usurpation, and the relationship between exploitation and abuse

The relationship between Donselaarian exploitation and abuse of rights is somewhat unclear in BOAP. GVD is aware that each one can occur separately, but his discussion of the difference is limited to the case of “usury” (defined below). Insufficient attention to the relationship between them creates ambiguity: is abuse of rights condemned because it can lead to exploitation? Is exploitation condemned because it can follow from abuse? Is either one independently sufficient to condemn a transaction or does condemnation require the two together?

GVD defines usurpation as pure abuse of rights, selling an asset in which one has no independent interest.⁴²³ He defines usury as selling an asset in which one has an independent interest for a price high enough to cause exploitation. He allows sellers of assets to be net beneficiaries to trade relative to resource equality as long as their benefits do not exceed the point at which the sellers become better off than they would be in the absence of their trading partners (meaning with unlimited access to natural resources).⁴²⁴ This discussion implies that GVD sees exploitation as problematic whether or not it follows from abuse of rights, but on further examination he seems to give priority to the abuse of rights.

It is difficult to see how these principles could be applied to the economy in general. For example, speculators commit Donselaarian abuse of rights (buying low with no other desire than to sell high), but if speculation is beneficial to the market, they do so without exploitation. If any such abuse does not cause exploitation, GVD’s effort to eliminate all abuse of rights implies he finds it morally problematic by itself. For another example, some

⁴²³ BOAP, pp. 125-128.

⁴²⁴ BOAP, pp. 142-144.

markets can potentially be zero-sum games in which the fact that participants work is not enough to guarantee that they benefit others. Sometimes competition forces firms to advertise solely to protect their market position. Although other advertising can be beneficial to society, zero-sum advertising makes firms and/or consumers worse off than without it giving exploitive benefit to people who work in advertising.⁴²⁵

Donselaarian exploitation can exist without abuse of rights or without the sale of assets. For example, consider Muhammad Ali and George Foreman: Ali was the greatest boxer of his generation. Foreman was his most formidable opponent. Ali would be worse off if Foreman did not exist (because defeating Foreman solidified his reputation), and Foreman would have been better off if Ali did not exist (because he would have been the greatest boxer of his generation). The intuitive appeal of Ali's right to defeat Foreman and therefore, to benefit at his expense, implies that Donselaarian exploitation without the abuse of rights is not morally problematic.

Donselaarian exploitation can also result from more clearly cooperative interaction. Consider the example summarized in the following table, in which cooperation increases farming output. By herself, Ann can produce 4 units of consumption alone using all of the island's resources and 2 units using half. Ben is better at farming alone, producing 6 units of consumption with access to all of the island's resources and 3 units using half. But assume both of them contribute just as much to the output of a joint project. Working together, they can produce 10 units of consumption. If they split their product equally, Ann exploits Ben in the Donselaarian sense: Ann consumes 5 instead of the 4 she would consume in the absence of Ben, who consumes 5 instead of the 6 he would consume in her absence. This judgment relies entirely on GVD's starting points. Under PVP's baseline, this

⁴²⁵ Widerquist "Does She Exploit or Doesn't She?", p. 147.

transaction is mutually beneficial: Ben consumes 5 instead of the 3 he would consume in the presence of Ann without trade; Ann consumes 5 instead of 2. I do not believe that GVD would wish to condemn this incident of Donselaarian exploitation, but making an exception to his exploitation rule would weaken his case against Lazy.

	Producing alone with access to the entire Island (GVD baseline)	Producing alone with access to half of the Island (PVP baseline)	Producing Cooperatively and splitting evenly
Ann	4	2	5
Ben	6	3	5

One possible response would be to condemn only exploitation that follows from abuse of rights, but that concession would also cause difficulty for GVD. He would have to drop his condemnation of usury, relying exclusively on usurpation, leading to strange conclusions: someone with a miniscule independent interest in an asset could sell it for enormous exploitive gains, but someone without interest would not be allowed to sell it even for a minute gain. This concession would make it difficult to maintain his condemnation of basic income, because he admits everybody has at least some interest in productive resources.⁴²⁶ I mention the ambiguous relationship between Donselaarian abuse and exploitation because it complicates this critique. The rest of the chapter tries to deal with them both jointly and separately.

E. From two principles to the obligation to work

Whether taxes are applied to job assets, land, or any other assets, GVD argues that redistribution is exploitive and abusive unless revenue is shared only with people who are

⁴²⁶ BOAP, p. 175.

willing to work with those assets. Therefore, he finds resource equality insufficient to justify *any* level of basic income,⁴²⁷ and argues for a social obligation to accept employment.⁴²⁸

[T]he right to exploit one's nuisance value [i.e. abuse of rights] is an *essential* element in the argument for basic income. If such a right were rejected it would *never* be possible to infer a person's entitlement to an income without some corresponding obligation to accept work.⁴²⁹

The conclusion that resource equality and basic income are inherently abusive and exploitive relies on the assumption that a right of access to employment is sufficient to cover all possible interests in external assets. GVD explicitly makes this assumption in his models;⁴³⁰ "Land produces income only when people work on it."⁴³¹ Although the only work in the Crazy-Lazy example is outside of any employment system, independent toil disappears (along with all independent access to resources) when GVD discusses an industrial economy,⁴³² and his conclusions ignore non-work interests entirely:

Those who are entitled to some labor-free income from the productive activities of others must be those who have an independent interest in the assets that make these productive activities possible but have no access to them, and such independent interest cannot exist without a willingness to work.⁴³³

⁴²⁷ BOAP, p. 180.

⁴²⁸ BOAP, pp. 166-190.

⁴²⁹ BOAP, p. 191, emphasis added.

⁴³⁰ BOAP, pp. 104-165.

⁴³¹ Van Donselaar "The Stake and Exploitation.", pp. 96-97.

⁴³² BOAP, pp. 166-205.

⁴³³ BOAP, p. 172. "Work" in this context means employment p. 171-172.

F. GVD's theory of distribution

In the Crazy-Lazy example, GVD proposes distributing resources to people according to their interest in working with them.⁴³⁴ Those who get smaller shares receive compensation up to the welfare level they would have reached with access to all the resources they want but without trade.⁴³⁵ Technically, he defines the X distribution, which distributes resources to equalize everyone's "marginal purchase interest"—the amount (or the percentage) of output one is willing to give up to attain inputs.⁴³⁶ Another way to potentially avoid these kinds of abuse and exploitation is with Maimonides rule, "Give an equal amount to every claimant or the full amount of his claim, whichever is smaller."⁴³⁷ GVD has considered Maimonides rule, but moving to it would not change the criticism here.⁴³⁸

When GVD moves beyond two-person examples,⁴³⁹ he argues for "the right and obligation to work:"⁴⁴⁰ Job sharing, compulsory if necessary, is the preferred method of equalizing access to job rents when possible.⁴⁴¹ When it isn't, people "with so-called low quality jobs" receive proportional compensation from those with better jobs⁴⁴² in proportion to how many days per week they are willing to work.⁴⁴³ If most people agree that certain jobs (such as prostitution) are unacceptable, everyone will be taxed to allow people to refuse those jobs, but able-bodied people receive nothing if they refuse jobs deemed acceptable.⁴⁴⁴ This strategy uses employment as the only test for independent interests in

⁴³⁴ BOAP, p. 145.

⁴³⁵ BOAP, pp. 154-158.

⁴³⁶ BOAP, pp. 149-152.

⁴³⁷ Young (1994). *Equity: In Theory and Practice*. Princeton: Princeton University Press.

⁴³⁸ GVD (personal correspondence). See Widerquist "Who Exploits Who?" for discussion of the rule.

⁴³⁹ BOAP, pp. 166-190.

⁴⁴⁰ BOAP, p. 166.

⁴⁴¹ BOAP, pp. 178, 184, 189.

⁴⁴² BOAP, p. 190.

⁴⁴³ BOAP, p. 178.

⁴⁴⁴ BOAP, pp. 189-190.

any asset, skipping quickly from *independent* interests to *productive* interests to *commercial* interests as if they were all the same.

2. Resources as consumption goods

The two-person, Crazy-Lazy model is a relatively minor example for PVP,⁴⁴⁵ but it and other two-person examples make up the bulk of the reasoning in GVD's work—both in explanations of parasitism and in the theory of how to eliminate it. Two-person models have a great advantage in focusing in on specific issues, but Jonathan Wolff argues that they have important disadvantages: they can leave out pertinent issues; they are difficult to test for representativeness; and they are often the least advantageous to egalitarian policy.⁴⁴⁶ I argue (both using simplified models and discussing their applicability) that GVD's analysis exemplifies this difficulty; many of his conclusions result from assumption-specific examples that are unrepresentative in important ways.

The central problem with the Crazy-Lazy example is the relationship between Lazy's preferences and the resources he has available: he has access to all the external assets he wants—and more. Do you know anyone who enters the labor market owning more land than she wants to use? Perhaps this assumption holds for a few people with extremely wealthy and generous parents, but it does not hold for most of the potential net recipients of income transfers that Lazy is supposed to represent. A model in which the poor have all the resources they want and use government transfers to get more has

⁴⁴⁵ Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*, pp. 92-106.

⁴⁴⁶ Wolff (1998). "Fairness, Respect, and the Egalitarian Ethos." *Philosophy and Public Affairs* 27 (2): 97-122.

extremely limited applicability to a society in which people own nothing until they satisfy an obligation to work for others.

GVD's justification for equating any interest in resources with an interest in employment is that Lazy has access to all the resources he wants to work with, and employment gives people equal access to all the resources they want to work with. Using employment to stand for all independent interests in resources relies on two faulty assumptions:

(1) External assets have value only as factors of production, not as "consumption goods"—goods with a direct value to the consumer. But, in fact, everyone wants (and even needs) land as a direct consumption good, as place to sleep, to live, and to enjoy.⁴⁴⁷ People clearly have an independent interest in private space whether or not they are willing to accept employment.

(2) Conflating employment opportunities with independent interests treats "work" in the sense of "toil" synonymously with "work" in the sense of "labor" or "employment." Toil constitutes expending effort to achieve a goal. Employment constitutes serving the goals of a client or a boss in exchange for pay to put toward one's own goals. People can have an independent interest in toiling with resources without the desire to accept given employment, wages, and working conditions. The homeless have an independent interest in building their own shelter, but they are prohibited from building even a shanty. It's hard to say how many external assets people who refuse employment have an independent interest in toiling with, but it is much more than zero.

Economists define all nonmarket uses of goods as "consumption" whether they involve toil or not. This term is somewhat misleading because some consumption activities

⁴⁴⁷ Cohen *Self-Ownership, Freedom, and Equality*; Waldron "Homelessness and the Issue of Freedom."

(such as raising children, planting a garden, or building a shelter) involve a great deal of toil and are very productive. I substitute the term “noncommercial” for “consumption” interests to emphasize that they can involve toil. There is no commercial employment in the Crazy-Lazy model; “work” is noncommercial toil.

GVD admits—in footnotes—that noncommercial interests exist,⁴⁴⁸ and admits that no one is completely uninterested in productive opportunities.⁴⁴⁹ But he seems to believe that noncommercial interests are simply negligible, and he doesn’t relax the assumptions of his models to take these interests into account. He doesn’t elaborate how he can make this concession and argue that abuse of rights is *essential* to basic income. If noncommercial interests exist at all, basic income is at worst “usury” not “usurpation.”

Some versions of the exploitation objection treat different interests inconsistently, arguing that only work confers ownership. It is hard to see why those who want to work with and resell resources to consumers have claim to them, but people who want to consume resources directly do not. Why do ten people who want to make money playing football for ten spectators have claim to ownership of a field, but twenty people who want to play football together do not? GVD tries to rescue the exploitation argument from this problem by arguing from the more basic concept of independent interest. But trying to avoid the argument that the voluntarily unemployed *do not deserve the resources they might want*, he makes the implausible assumption that the voluntarily unemployed *simply do not want resources*. If that assumption were true, the police would not need to knock down shanties; the government could offer homesteads in Central Park and no voluntarily unemployed persons would take it.

⁴⁴⁸ BOAP, p. 172f, p. 184f.

⁴⁴⁹ BOAP, p. 175.

GVD proposes an effort to reach a social consensus on employment acceptability, but this requires binding answers to controversial questions: do all individuals agree that employment is preferable to toiling with resources for their own direct benefit? May an individual object to job opportunities based on her opinion of their desirability or fairness? What constitutes work? In a few cases, GVD gives extreme answers to these questions. For example, his “feminist” case against basic income⁴⁵⁰ argues that parents might prefer job-sharing so that they can “earn money half a day,” and “raise children during the other half,⁴⁵¹ implying that the parent who wants to raise children *all* day is “Lazy” and that her toil is not valid “work.” Even if parents are considered contributors, there will always be dissenters who reject society’s reward system. It is plausible to say that a democratic society has the right to decide what work is worthy of reward. It is somewhat less plausible to say that anyone who refuses to seek those rewards does not deserve any access to the resources they need for survival, but it is simply implausible to say that anyone who refuses to seek those rewards has no independent interest in resources and rents.

3. Exploitation and the obligation to work

If resources have noncommercial value, GVD’s work test fails to isolate independent interests.⁴⁵² This section argues that applying a work test when noncommercial interests exist punishes people who commit neither Donselaarian exploitation nor abuse of rights and can actually cause exploitation and abuse.

A. Crazy, Lazy, and Hippie

The following example uses toil-free interest as a proxy for noncommercial interests. Suppose Crazy and Lazy are joined by Hippie, who (like Lazy) has a strong aversion to labor, and (unlike Lazy) has a weak desire for environmental preservation (weak in the sense that he might trade it for leisure). The results below do not depend on why Hippie values land; he is merely an example of a passive interest in land, but his preferences stand for any noncommercial interest in resources.

To examine preferences in a more exacting way, this section uses simple utility theory with minimally specified functions. An individual always prefers more goods to less, but if one option has more of one good and less of another, her preference depends on the relative value she puts on each good. Crazy's and Lazy's utility functions depend on two goods: consumption (c) and leisure (l). The difference is in consumption's and leisure's relative value (which is open to consideration), but their functions take the same form:

$$\text{Crazy or Lazy: } U_i = u_i[c+, l+]$$

For those unfamiliar with the notation, $u_i[\dots]$ indicates that the individual's utility is some function of the variables inside the brackets. The symbol (+) indicates that utility is a positive function of c and l without specifying whether $u_i[c+, l+]$ represents $c + l$, cl , $Cc + Ll$, $5c^2 + 4cl + 2l^2$, or any other positive function of those variables.

Hippie's utility function includes an element that does not appear in either Lazy or Crazy's utility functions—vacant land (v):

$$\text{Hippie: } U_H = u_H[c+, l+, v+]$$

The relative value Hippie places on c , l , and v is open to consideration. Alone, Hippie works 1 unit of land, produces 1 unit of the consumption good, and lives at subsistence just as Lazy did (Figure 2). But his utility function is different:

$$\text{Hippie: } U_H = u_H[c=1, l=3, v=3]$$

$$\text{Lazy: } U_L = u_L[c=1, l=3]$$

B. Labor-free income without abuse and exploitation

Suppose Hippie and Crazy live on the island together. The greater scarcity of land (caused by the existence of Crazy) negatively affects Hippie (unlike Lazy). His utility function when land is divided equally but not traded (Figure 3) contains fewer goods (less vacant land) than it does when he is alone:

$$\text{Hippie: } U_H = u_H[c=1, l=3, v=1]$$

From this starting point, assume Crazy and Hippie make the same agreement as Crazy and Lazy: Crazy works the whole island, paying Hippie 1 unit of the consumption good in rent (Figure 1).⁴⁵³

⁴⁵³ Assuming units of land are indivisible this is the only purchase Crazy can make that could be better for the two participants than their starting points. If land were divisible, trades involving a small nature reserve

Hippie: $U_H = u_H[c=1, l=4, v=0]$

Crazy: $U_C = u_C[c=3, l=0]$

Crazy is no better and no worse off trading with Hippie or Lazy, but Hippie's agreement is free from the abuse of rights, because Hippie trades something he values. Therefore, the conclusion that a labor-free income is necessarily abusive⁴⁵⁴ is incorrect.

Whether Hippie exploits Crazy depends entirely on how much Hippie enjoys the exchange. How the trade affects Crazy doesn't matter, because she would clearly benefit if Hippie disappeared. If Hippie's utility is greater than in Crazy's absence, he exploits Crazy without abusing him, committing "usury."

If $u_H[c=1, l=4, v=0] > u_H[c=1, l=3, v=3] \rightarrow$ exploitation (usury)

This conclusion is easier to see if Hippie's utility function is specified. Suppose it takes a simple additive form: $Cc + Ll + Vv$,⁴⁵⁵ where the capital letters are coefficients showing his relative desire for each variable. Under this assumption, Hippie exploits Crazy if:

$$C1 + L4 > C1 + L3 + V3$$

become possible also.

⁴⁵⁴ BOAP, p. 172, p. 191; Van Donselaar "The Stake and Exploitation.", p. 99.

⁴⁵⁵ Additive functions are actually an oversimplification because they imply complete specialization of consumption. But more complex functions would not change the outcome for the purpose I am using them.

Which simplifies to:

If $L > 3V$ → exploitation
(usury)

In words (rather than mathematics): if the value Hippie puts on leisure is greater than three times the value he puts on vacant land, he exploits Crazy, but if not, the trade is exploitation-free.

The acceptable price varies with the seller's preferences: the more Hippie enjoys vacant land the greater the exploitation-free price. This fact causes both practical and ethical problems. The practical problem is obvious; Lazy can easily pretend he has Hippie's preferences. Without perfect information, society has to consider whether it is more important to prevent people like Lazy from making abusive trades or to allow people like Hippie to make abuse-free trades.

The ethical problem is less obvious but equally important. Suppose Hippie, Lazy, Crazy, and Moderazy live on the island together. Call that vacant unit of land behind their garden a "backyard." Lazy has no independent interest in his backyard; Moderazy has a moderate interest in his backyard; and Hippie has a great interest in keeping all three yards undeveloped. Lazy, Moderazy, and Hippie make the same passive contribution to Crazy's production (giving up their backyard), differing only in how much they miss it. With perfect information, the principle of independent interest requires Lazy, Moderazy, and Hippie to sell their lots at very different prices. Hippie receives compensation bringing him up to the welfare level he would get from *all three* backyards, Moderazy receives less, and

Lazy receives nothing.⁴⁵⁶ Suppose Lazy and Moderazy reply, “It’s my backyard. The price that makes me indifferent to exchange is not enough. You can’t have it unless I share in your net gains from using it, and unless you pay me what you paid him.” I am not sure they are obviously wrong to say this, but the right to make that claim gives Moderazy the right to so-called usury and Lazy the right so-called to usurpation.

C. The work test as the cause of exploitation

The previous section allowed trade starting from resource equality as in PVP and Dworkin.⁴⁵⁷ This section applies GVD’s method of equalizing access to work with resources (by equalizing individuals’ marginal purchase interest).⁴⁵⁸ What percentage of output is Hippie willing to give up for vacant land? None, producing output would defeat his purpose for purchasing it. Crazy, however, produces output to trade for more land, and can attain the 3 units of land Hippie will not work, leaving Hippie with 1 unit (Figure 4). Figure 4 becomes the basis for further negotiations, denying resource equality to Hippie not because he violates either of GVD’s principles, but because his independent interests do not involve production.

In Figure 4, both Hippie and Crazy are worse off than they would be in the other’s absence:

$$\text{Hippie: } U_H = u_H[c=1, l=3, v=0]$$

⁴⁵⁶ BOAP, pp. 154-159.

⁴⁵⁷ Van Parijs *Real Freedom for All: What (If Anything) Can Justify Capitalism?*; Dworkin "What is Equality? Part 1: Equality of Welfare." .

⁴⁵⁸ BOAP, pp. 148-153.

Crazy: $U_C = u_C[c=3, l=1]$

Hippie has no nature reserve, and it's difficult for him to get one. He can own land only as long as he works it, but as soon as he stops working a unit of land, it becomes available for whoever will work it. To get vacant land he has to pay Crazy to give up his right to work with it. If Hippie is willing to give up more leisure for vacant land than Crazy is willing to give up consumption for leisure trade become possible. For example, Hippie agrees to work 3 units of land; Crazy works nothing at all; Hippie gives Crazy 2 units of consumption in exchange for Crazy's promise not to exercise her right to work the fourth unit of land (Figure 5). In this case, Hippie enjoys 1 unit of leisure, 1 unit of consumption, and 1 unit of vacant land. Crazy enjoys 2 units of consumption and 4 units of leisure:

Hippie: $U_H = u_H[c=1, l=1, v=1]$

Crazy: $U_C = u_C[c=2, l=4]$

Hippie is worse off than he would be if Crazy disappeared, but Crazy is not clearly better or worse off. She enjoys a position that would not be possible without Hippie ($c=2, l=4$), but she exploits only if she enjoys it more than being alone ($c=4, l=0$). Crazy exploits Hippie, if:

$$u_C[c=2, l=4] > u_C[c=4, l=0]$$

Again, this is easier to see with an additive utility function:

If, $C2 + L4 > C4$ → Exploitation (usury)

This simplifies to:

$$2L > C$$

That is, if Crazy enjoys a unit of leisure more than twice as much as a unit of consumption, he exploits Hippie in both the Parijsian and Donselaarian senses. That is, exploitation occurs whether the outcome is compared to being alone (Figure 2) or to untradeable resource equality (Figure 3). Therefore, a rule that distributes resources to those who want to work with them can cause exploitation.

C. The work test as the cause of abuse of rights

Abuse of rights is possible with slightly different assumptions. Suppose Hippie remains the same, but Crazy is less crazy. Alone, she works only 2 units of land instead of 4, making Figure 2 the starting point for negotiations. Crazy has no independent interest in more than 2 units of land, but suppose she can use land in a more wasteful manner. By planting the rows of her crops farther apart, she can use 3 units of land to produce the same 2 units of consumption at the same expenditure of 2 units of effort. She has a dependent interest in wasting land because of the possibility that Hippie will pay her to stop.⁴⁵⁹ This is usurpation or abuse of her right to work.

⁴⁵⁹ She might also have a dependent interest in annoying Hippie, as in GVD's Keller v. Doerr example (p. 2).

From this starting point, Crazy and Hippie can strike the same bargain as in subsection B above (Figure 5).⁴⁶⁰ However, in this case, Crazy gives up nothing of value to her; she consumes the same amount as she would in the absence of Hippie while enjoying more leisure. Crazy is better off and Hippie worse off than either would have been without the other, creating Donselaarian exploitation as well as abuse.

I don't see a substantive ethical difference between the usurpation in this example and in GVD's example.⁴⁶¹ However, this usurpation was made possible by the rule GVD proposed to prevent Lazy's usurpation. The substantive effect of GVD's distribution rule is not to reduce exploitation and abuse but to give advantage to people with one *kind* of interest (commercial interests) over people with all other kinds of interests. Although Hippie wants as little land worked as possible, nearly all the land is worked, and he has to work it. Crazy gets most of the consumption and leisure, simply because she is more willing to convert resources into consumption. Therefore, a rule that distributes resources based on people's willingness to work with them eliminates neither abuse nor exploitation; it merely changes who has the opportunity to exploit whom.

E. Beyond two-person examples

This subsection extends the Crazy-Lazy example slightly, and then moves away from two-person examples. Suppose another agent, Society, asserts sovereignty over Lazy and Crazy's island. Society extends membership to Crazy and Lazy, but because they are only two individuals among many, their votes are not decisive. Society decides employment

⁴⁶⁰ Other outcomes are possible in this case. Hippie might farm only two units of land and leave the other two in reserve. That trade is abusive but not necessarily exploitive, but it is only necessary to examine an example of exploitation not all the possible cases.

⁴⁶¹ Van Donselaar *The Benefit of Another's Pains: Parasitism, Scarcity, Basic Income*, pp. 125-128; Van Donselaar "The Stake and Exploitation.", pp. 98-99.

is the only toil worthy of being called “work” and of establishing claim to external assets, effectively forcing Crazy and Lazy to work for Society. Crazy’s and Lazy’s jobs make a net contribution to Society. They consume more than they did working alone, but they are less happy. Lazy misses his leisure time; Crazy misses doing her own work. Society commits Donselaarian exploitation against Crazy and Lazy: Society is better off and they are worse off than either group would have been in the absence of the other.

Imagine a colonial power forcing hunter-gatherers in West Africa to bid against private firms for land. Suppose firms bid for land, not because they want it, but because they know the natives can’t pay for it without abandoning their lifestyle and accepting jobs. This is Donselaarian usurpation. Suppose firms have an independent interest in the land, but the bidding system nevertheless forces natives to accept jobs than make the natives worse off and the firms better off. This is Donselaarian usury.

Is this situation implausible in the modern world? Imagine the more powerful group in a democratic society denying basic income to workers, not because recipients are guilty of usurpation, but because the more advantaged benefit if the poor have no choice but to accept the available employment opportunities and the going wages. This scenario is not necessarily what GVD envisions, but it is a power his distribution rules allow. As long as access to resources is conditional on performing services for others, the conditions can harm those who prefer direct access to resources.

Is it implausible to think that there might be millions of low-level workers who would trade the 60 or 80 hours a month they currently spend working to pay their rent for the opportunity to build and own a home, even if it were a log cabin? If there are any such people, and if the rest of society benefits from the work they do to pay their rent, the rest of

society commits Donselaarian exploitation against them—an instance of exploitation that would not be possible if people were entitled to housing without a work obligation.

The pre-trade starting point of an individual in an industrialized society with a work obligation is thousands of dollars below the starting point of an individual who has access to her own resources. In PVP's and GVD's *Crazy-Lazy* examples, both participants start with unconditional access to all the resources they need without having to follow anyone's orders. This fact alone does not prevent Donselaarian exploitation, but it does give them the power to say no to exploitation if they would rather live their own way. A work obligation gives individuals no power to reject exploitative offers.

4. Conclusion

This chapter has not examined what kind of distribution of property would exist in a society dedicated to eliminating Donselaarian exploitation and abuse of rights, except to show that there is little reason to believe that it needs to be one without labor-free income. If the poor and the propertyless are the most vulnerable to exploitation, basic income can help protect them.

The goal of this chapter is not to refute the principles of Donselaarian exploitation and abuse of rights but to question their application. If GVD's theory is the examination of those two principles, this chapter could be considered merely a further development. But if Donselaarian theory is a foundational argument for the exploitation objection to basic income and Stakeholding (as GVD's work is largely presented), this chapter can be considered a refutation. GVD's conclusions against labor-free income and for a social

obligation to work cannot be derived from his two principles without the implausible assumption that independent interests in external assets are synonymous with interests in accepting employment. If that assumption is dropped the responsibility to work can cause the exploitation it is proposed to cure.

In attempting to derive an obligation to accept employment from the more basic principle of independent interests, van Donselaar has assumed away any factors that make independent interests different from interests in employment. I suspect a belief in a moral duty to contribute underlies this attempt, and I turn my attention there in the next chapter.

Figure 1, Land used by Crazy: Alone, Crazy works all 4 units of land (signified by vertical stripes).

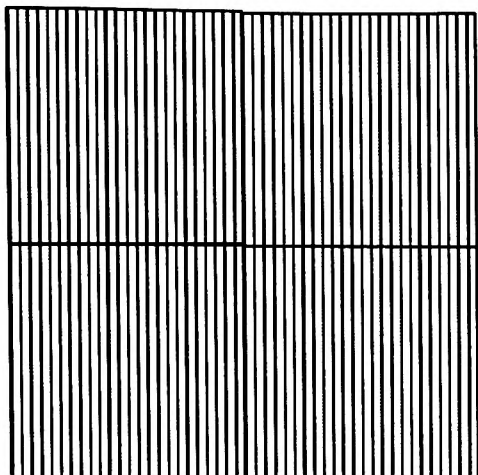


Figure 2, Land used by Lazy (or Hippie): Alone, Lazy (or Hippie) works only 1 unit of land (signified by horizontal stripes) and leaves 3 units vacant. To Hippie the vacant land is a valuable nature reserve; to Lazy it is just unused.

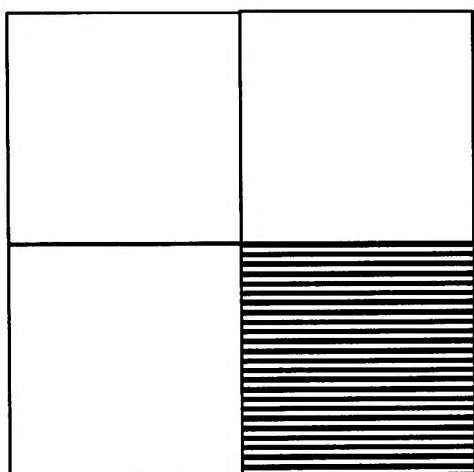


Figure 3: Resource equality without trade: If Crazy is on the island with Lazy (or Hippie), and the resources were split between them, Crazy would work two units. Lazy (or Hippie) would work one leaving the other vacant.

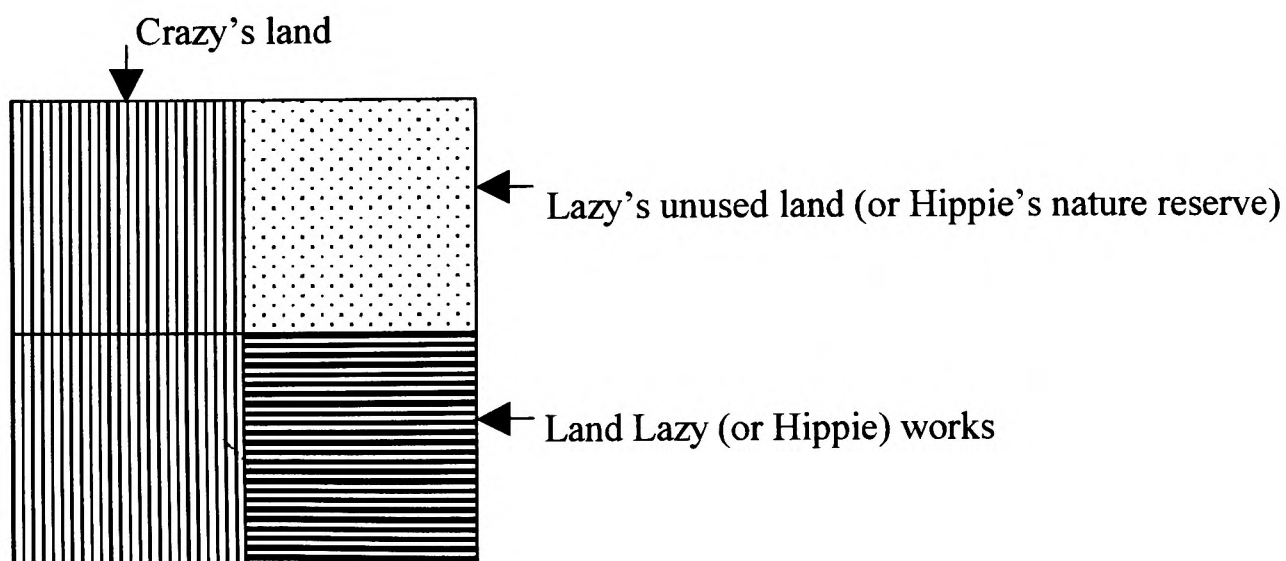


Figure 4, Land distributed according to individuals' willingness to work with it: Lazy (or Hippie) works and asserts ownership over 1 unit of land; Crazy works and owns 3 units.

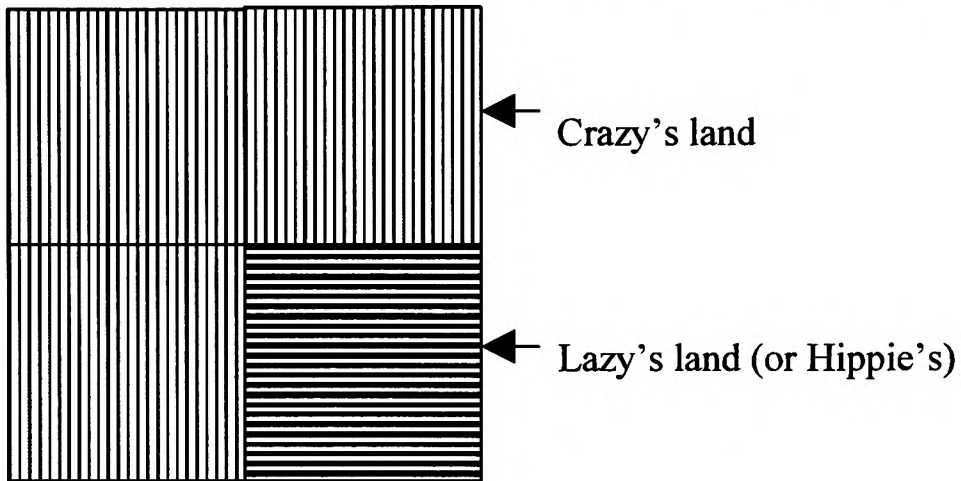
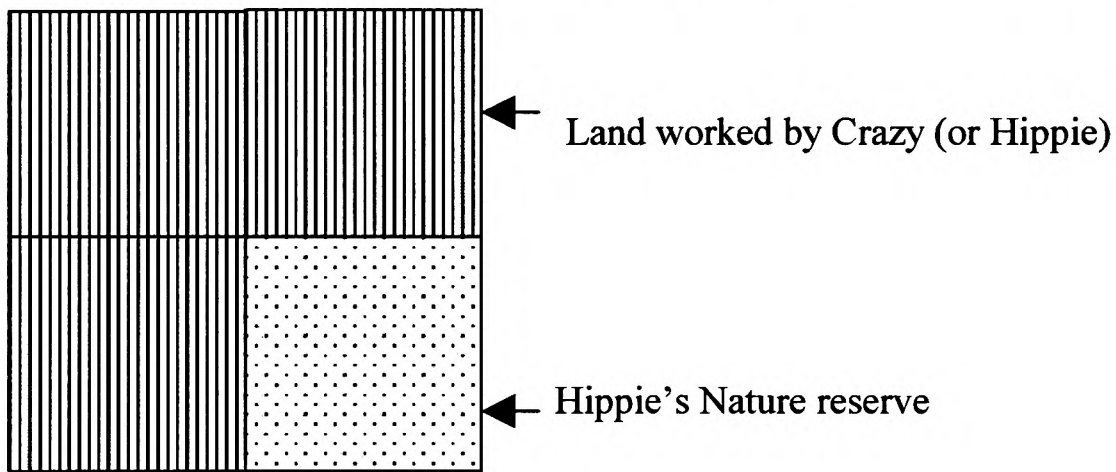


Figure 5, One possible distribution of land as the result of a deal between Crazy and Hippie: Crazy (or Hippie) works 3 units of land, 1 unit is left vacant as a nature reserve.



Chapter 12: On Duty

This chapter considers the duty objection as an internal critique of the argument for basic income presented in Part Two of this thesis; that is, within the context of the greatest equal freedom for all. It may be true that persons could and should receive compensation for accepting a smaller share of society's resources, but it could be argued that this compensation cannot be taken in a form that would allow the recipient to get out of the duty to contribute to the project. Anyone who benefits (or willingly benefits) from the social project benefits at the expense of others, and thereby seeks a privilege or a freedom denied to others. This kind of reasoning is explicit in White's theory of justice as fair reciprocity.⁴⁶² It seems to exist in Rawls, who argues for a duty to contribute up to some reasonable minimum⁴⁶³ or possibly to one's productive potential,⁴⁶⁴ but the source of his duty is less clear.⁴⁶⁵ If everyone has such a duty, basic income is inconsistent with the greatest equal freedom for all, because it allows some people to shirk duties that must be performed by others. Therefore, everyone has an enforceable duty to contribute, meaning that the government or a democratic ruling coalition should be empowered to enforce a contributory obligation.

The duty objection clearly opposes the theory of ECSO freedom presented in Part One of this thesis. If there is an enforceable duty of active contribution, either the power to

⁴⁶² White *The Civic Minimum*.

⁴⁶³ Rawls *Justice as Fairness: A Restatement*.

⁴⁶⁴ Cohen (2000). *If You're an Egalitarian, How Come You're So Rich?* Cambridge, MA: Harvard University Press.

⁴⁶⁵ Meckled-Garcia (2002). "Why Work Harder? Equality, Social Duty and the Market." *Political Studies* 50 (4): 779-793.

refuse is unimportant, or some other important value outweighs it in a particular situation. Under this objection a basic income might be unnecessary to sustain the most important freedom, or might even be detrimental to it. Redistribution toward the propertyless should be conditional on a fulfilling lifetime (or long-term) commitment to working to help reproduce the benefits of social cooperation, usually through accepting employment.⁴⁶⁶ Part One did not propose ECSO freedom or any one value as the overriding value that trumps all others, but status freedom is an extremely important value and arguments for limiting it must be seriously scrutinized. If the rest of society makes access to resources conditional on social participation, it effectively sets the goals for cooperation, the terms of cooperation, and the rewards for cooperation. Without the power to say no, individuals don't control any aspect of the transaction; there is nothing left that can qualify it as voluntary. What could ground a duty strong enough to override a commitment to ECSO freedom? What are the limits on government's power to force individuals to fulfill duties? Are any of these duties strong enough to override the commitment to basic income argued for in previous chapters?

Section 1 considers the case for the duty in the context of the property theory laid out in Chapter 10, arguing that the connection between duty and social contribution is much weaker if property is understood in that context. The propertyless passively contribute to the welfare of others by accepting the smallest share of natural resources and the external assets produced by previous generations. The connection between duty and labor market participation has to rely on a duty to contribute *actively*. Section 2 examines interdependence as justification for a duty to contribute actively. Section 3 argues that interdependence alone cannot ground a duty to contribute actively, but duty requires also that there is no way to personalize the reward for contribution. Section 4 considers the

⁴⁶⁶ Social participation primarily means accepting employment, but it is often extended to include childcare and approved voluntary activities.

limits on duties implied by the need to minimize the impact of an emergency on individuals.

This Chapter concludes that there are three important limits to the power to enforce an active duty. First, enforcement of the duty must be necessary. There must be no way to internalize the rewards for performing the duty in such a way that the goals will be achieved without force. Second, the duties must be applied as equally as possible to all people. That is, everyone who is capable performs the same or an equivalent duty for the same reward. Third, if enforceable duties of active contribution are justified, society is in an emergency situation, and the group imposing the duty has the responsibility to minimize the impact of the emergency on everyone. That is, the duty should make minimum interference with every individual's ECSO freedom, and society has a strong responsibility to get out of the emergency as quickly as possible. The chapter concludes that these limits on enforceable duties make it impossible for the argument from duty to support a responsibility for labor market participation. It can only justify time-limited national service that is as onerous on the rich as it is on the propertyless.

1. Property and passive contribution

One potential source of misunderstanding between my argument for basic income and the objection from duty is that they are based on different property theories. Consider an argument for redistributive taxation (or any taxation) based on a duty to make a contribution to the welfare of others or to the community as a whole. The owners have a natural right to their property (say, through Lockean appropriation), and taxation interferes

with that right, but that interference is justified by the duty to contribute to a social project or to help the propertyless. Under this justification for redistribution, it is natural to say that the recipients of such benefits have a like duty to contribute to the social product. A Rawlsian justification produces a similar outlook. The distribution of property is considered to be the distribution of benefits of social cooperation, and therefore, a claim on that distribution is naturally conditional on participation in the reproduction of those benefits.

The justification for “redistributive” taxation in Chapter 10 does not involve a duty to promote anyone else’s welfare or the social product. People pay taxes out of self-interest. They pay taxes for the same reason that they pay the purchase price for the goods they consume, because they want the property the payment buys. A person pays a tax so that others will have reason to treat unowned external assets as if they were his property. Conversely, the justification for a net recipient of basic income consuming services provided by others is that she takes ownership of fewer external assets than everyone else when no one else has any more natural claim to unowned external assets. In this way, the basic income recipient contributes passively to social cooperation, even if she does not actively participate in it. By assuming the smallest share of natural resources and the products of previous generations she leaves more available to reward others. This discussion does not imply that there will necessarily be anyone who chooses not to participate. If the rewards to providing services are sufficiently enticing, everyone might actively participate in social cooperation. The duty objection to basic income is that it makes it possible for people to refuse to participate; the duty is supposed to be strong enough that people should not be allowed the power to refuse.

Suppose a group of castaways on an island want to create a joint product called modern industrial society. Gilligan wants no part of it. He simply wants to produce on his

own. The others take a portion of the island's natural resources and devote them to this collective project, reducing everyone's private share of property. Everyone who actively contributes to the social product receives a reward, and Gilligan receives less than everyone else because he has not sought those rewards, but he receives services from the joint project because they have devoted a relatively large share of resources to their project, leaving less for Gilligan to devote to his project. Gradually, everyone but Gilligan decides to devote more and more resources to the collective project, further reducing Gilligan's share of productive resources in exchange for compensation in cash which he can use to buy services or finished goods from everyone else. Eventually they reduce Gilligan's share of resources until he owns nothing, and Gilligan receive services from the cooperative project in exchange for being forced to live with the property-rights regime that has given more to everyone else and has made it impossible for Gilligan to produce on his own outside of the cooperative project. How has Gilligan come under an obligation to contribute? He has given up the opportunity to pursue his own project. Why is he under the obligation now *also* to contribute actively to the social project?

Given the possibility of passive contribution, proponents of the duty objection to basic income have two options. (1) They can draw a strong distinction between active and passive contribution and explain why active contribution is essential. (2) They can establish that positive rewards are not enough to ensure that duties will be fulfilled consistently with equal freedom, requiring an enforceable duty to contribute. This chapter focuses on the second of these arguments.

Passive contribution can go a long way toward freeing individuals from active duty. In industrial societies by far the greatest portion of economic activity is devoted to producing luxuries or things that people clearly have no moral duty to produce. Yet, most

people are very motivated to obtain these things, and are willing to work hard under the existing rewards system to attain them. Because so much time and so many resources are devoted to these nonessential items, they seem capable of providing ample reward for the people who do the activities that can be reasonably argued to be moral duties such as caring for the sick, maintaining infrastructure, ensuring the availability of basic necessities, and so on. If these activities are under-rewarded, it could be because the production of luxuries is over-rewarded, not necessarily because too much is devoted to the poor and the propertyless.

One could argue that the production of nonessential items indirectly contributes to the fulfillment of duties because it provides reward, but this is also a *passive* contribution. Although people who work in nonessential industries actively work, they do not actively contribute to the industries in which people have a duty to contribute. Under the social duty view of taxation, they could be said to actively contribute through any kind of work. But under the theory of property discussed in Chapter 10, the justification for taxation is the purchase of a larger share of external assets, not a duty to contribute. Net taxpayers have voluntarily taken on an obligation that would exist even if there were no duties to make a social contribution, and they cannot claim any more than passive credit if some of those taxes are used to reward others for fulfilling duties.

But it is equally true that if no one did the nonessential activities and there were no natural resources with which to reward people who perform duties, the duties would still need to be done. Call this the argument from interdependence.

2. Interdependence

Much of the argument in the previous chapters assumed, tacitly or explicitly, that most people are capable of economic independence. That is, given enough of the right kind of resources and the right knowledge, they are capable of meeting all or most of their own needs. On the basis of that assumption, I argued against giving society the legal right to block a person from doing so (by assigning property rights to others) unless it gives her sufficient unconditional compensation to maintain her ECSO freedom and to make it in her interest to support the property rights of others. But, if that assumption does not hold, what are the implications for this theory?

The other possibility is that people are interdependent. People cannot meet their own needs alone and are all dependent on some form of social cooperation for survival and thriving.

Example 1, rowboat above the falls: A rowboat is caught in a swift current above a high falls. Unless everyone on board rows at full strength the boat will go over the falls and everyone on board will surely die.

This is an example of an extreme state of physical interdependence. Everyone's life depends on the success of the cooperative project. It is difficult to argue against the contention that everyone has an enforceable duty to contribute to the cooperative project under these conditions. Moral interdependence is also conceivable. For example, everyone is equally under a moral duty to care for the orphan child. Everyone's life as a moral human

being depends on that project. I will not examine the grounds of moral interdependence or discuss it further, because everything I say about physical interdependence can be applied to moral interdependence as well.

I want to distinguish between economic and emotional interdependence. One of the more important emotional needs of humans is interpersonal interaction with other people. In this sense most of us are interdependent. But purely interpersonal interaction can be separated from economic cooperation, the production and exchange of goods and services, and I will argue that the question at hand deals solely with economic interaction. Society can no more claim that an individual is obliged to make an economic contribution because she is dependent on interpersonal interaction than the individual can reply that her contribution to interpersonal interaction satisfies her contribution toward economic interdependence. Therefore, the question of emotional interdependence is off the table, and the question of a duty depends on economic interdependence. Are people interdependent on social cooperation for the production of goods and services?

Empirically, it is not too contentious that a person with enough resources and knowledge can meet many of her needs on her own. There are historical accounts of marooned individuals living alone on islands for several years without help from anyone.⁴⁶⁷ In colonial America the vast majority of European settlers were subsistence farmers who obtained only a very small part of their consumption through trade. Henry David Thoreau claimed to have demonstrated that living on one's own takes far less effort than participating in an industrial economy.⁴⁶⁸ Some tropical areas have enough available sources of food and pleasant enough climates that it takes very little productive effort to secure a person's subsistence.

⁴⁶⁷ Severin (2003). *In Search of Robinson Crusoe*. New York: Perseus Publishing.

⁴⁶⁸ Thoreau (1971). *Walden*. Princeton: Princeton University Press.

However, people who attempt to live on their own might be dependent on some social project to keep their environment safe and habitable, or they will probably eventually run into a problem they cannot handle on their own, such as the need for medical care. For example, assume the human habitat is surrounded by water that must be held back by dykes requiring constant maintenance, or that it only has drinkable water because someone maintains a well. If so, Thoreau can produce his own food and build his own home, but not without consuming the efforts of the people who maintain the dykes and the wells. People are interdependent to some extent, but given enough of the right resources, that extent could be very small—hardly enough to justify a fulltime commitment to the labor force.

An argument for a more significant duty might be made on the premise that there are not enough resources to go around for everyone to live an independent life simultaneously. Therefore, everyone is dependent on a system of social production. Call this the population emergency argument. For example, there is not enough land on Gilligan's Island for all seven castaways to produce their own food on a private plot of land, but there is more than enough land on the island to produce food for everyone, if most of them work together and take advantage of the economies of scale that cooperation makes possible. There is just enough land that any one person can produce on her own, but giving her the amount of land she requires to do so will force the other six castaways to work together. If this situation exists, one person may be capable of providing for her own needs given enough natural resources, but she cannot get enough natural resources unless she takes a disproportionately large share. Even if she provides for all of her own needs under those conditions, she is in a way dependent on other people continuing to participate in the social project.

The empirical case for the population emergency is reasonable. Necessity might have been one reason why human beings populated most of the habitable areas of the Earth when the population was much lower than it is now. Today's population is made possible by technology that is dependent on large-scale production, and it is unlikely that the billions of people who live on the planet today could all survive without the economies of scale that cooperation makes possible. Therefore, even if we are all capable of meeting our own needs outside of some system of cooperation, given the current population we cannot all do so simultaneously.

3. Does interdependence necessarily imply an active duty to contribute?

If interdependence exists, it is tempting to conclude without further argument that society is under no obligation to create economic independence artificially. It is even tempting to conclude that society is under an obligation *not* to create it artificially, because to do so would make it possible for people to shirk a duty that interdependence naturally imposes on individuals. But I will argue the conclusion that interdependence necessarily implies a duty to actively contribute is too quick.

The simple interdependence-based argument can be countered with passive contribution.

Example 2, the well: Everyone will die of thirst unless one of the seven stranded castaways on Gilligan's Island digs a well. Mr. Howell is glad to do so in exchange for a larger share of land, natural resources, and external assets left by previous generations.

There is no reason why everyone must share in the digging of the well or that everyone must actively do some kind of work for the person who digs the well as long as Mr. Howell is willing to dig the well for the reward available. Everyone else passively contributes to digging the well by accepting a smaller share of property rights in external assets, and there is no necessary reason why this work has to be shared. Everyone consumes Mr. Howell's service without actively providing a service for him, but he is well paid. If everyone equally enjoys the rewards society sets for digging, everyone will contribute equally, if some people enjoy those rewards more than others, it is possible that everyone is better off if those who enjoy those rewards more contribute more and those don't who contribute less.

This conclusion does not imply that there are no equity issues in the island's search for a digger. Suppose that, although everyone needs a well, everyone has a pretty good idea that if they offer no reward to the digger, Mr. Howell will eventually dig the well either out of a sense of social responsibility or because he is less able to live with the pains of extreme thirst than everyone else. There is an equity issue if everyone else tries to get away without rewarding Mr. Howell, but the issue is one of adequate reward, not necessarily one of active participation. Putting everyone under an obligation to help is not necessarily the only or the best solution for Mr. Howell. Even if Mr. Howell is underpaid, it is not necessarily better for him if everyone else stops passively contributing (by stopping his pay) and starts

actively contributing (by all pitching in together to dig the well). This may be the outcome he wants least.

The assertion of a duty to contribute actively may be based on a misspecification of the situation. If the well example was achieved through a basic income, Mr. Howell would own a large share of property. He would pay taxes for redistribution to the other castaways, who would use those taxes to buy water from him. Mr. Howell might think that a contributive obligation would mean that he would keep his property, and his well business, and everyone else would have to work for their basic income by accepting jobs as his servants. But of course, this policy would mean that Mr. Howell would get to keep his disproportionately large share of land without providing any service for others in exchange for it. If everyone contributes the same as Mr. Howell, everyone has claim to much more than the basic income.

The rowboat on the falls example and the well example are similar in many of the ways that would seem to ground a duty. In each case, the project is vitally important, and it is a public good that will benefit everyone whether they contribute or not. The important difference between them is in the possibility of creating a private reward for the person who performs the duty. In the well example, society has external assets available that can be used to reward the person who performs the necessary function. In the lifeboat example, the reward for rowing to shore is the same as the reward for sitting in the boat while everyone else rows to shore. These examples show that the mere existence of some amount of interdependence does not necessarily imply a duty to actively contribute to a social project. A duty of active contribution requires both interdependence and insufficient personalized rewards. This argument establishes the first limit on enforceable active duties: the enforcement must be necessary in the sense that it is not possible to achieve the goal

through private rewards. This much greatly reduces the argument for a duty to participate in a market economy, in which a very large amount of the activity is focused on producing private goods and private rewards.

4. The responsibility to minimize the impact of the emergency

If the duty to actively contribute to a social project is based on social necessity, it is not only important to limit enforcement to necessity but also to minimize the impact of duties on individuals as much as possible. Minimization has three ramifications.

A. The responsibility to put people outside the social project if possible

One problem with a social duty is that people often disagree about what social duties are, or how to deal with interdependence.

Example 3, the lifeboat: Gilligan and Skipper find themselves in a lifeboat on a calm ocean. Skipper believes that their only hope for survival is to row to an island beyond the horizon to the east. Gilligan believes that their only hope for survival is to sit still and let the current take them to an island over the horizon to the west.

This example involves a fundamental disagreement about the goals of the joint project. Yet, forcing one person to *participate* in the project is not the major issue. The major issue is whose project to pursue. If Skipper takes control of the boat, he will take the

boat to the east, even if he has to do all the rowing himself. If he turns out to be wrong, it will be small consolation to Gilligan if Skipper is able to say, "At least I didn't force you to actively participate in my project of rowing to the east." Gilligan will be much more concerned with his imminent death than the small amount of effort he saved. If Skipper turns out to be right, Gilligan will thank him profusely for using force. Gilligan will apologize much more for suggesting an alternative that would have led to death for both of them and much less for his failure to help row. They should try to come to an agreement, but if they cannot do so, the circumstances necessary for a just agreement do not exist, and the stronger one will force his will on the weaker.

Example 4, lifeboat and dinghy: Gilligan, Skipper, and the Professor find themselves in a large lifeboat. They have the same disagreement as in example 3; the Professor sides with Skipper, making a majority. Tied to the lifeboat is a small dinghy suitable for only one person. If Gilligan goes west on the dinghy, it will become more difficult for the others to reach the island they believe to be to the east.

In this case, it is possible to split up and each party to pursue their own goal. If so, it is difficult to make the case for a duty to participate in a joint project no matter how large the majority in favor of it. It shows an extreme lack of concern for Gilligan's self-determination to refuse to allow him to pursue his own goal. The principle here is that the ruling coalition has a responsibility to avoid forcing individuals to participate in their project if it is possible not to.

This principle begins to weaken the case for a social duty based on a population emergency. There are many different ways that groups can reach the economies of scale necessary to deal with the shortage of resources, with different methods of production and different rules for fair cooperation. Even if there is a population emergency, it is not necessarily true that society needs one big nation-wide project with a given type of contributory obligation, a given set of goals, and a given set of rewards. Society might then have the responsibility to make resources available to smaller groups to pursue their own goals. If society imposes a contributory obligation for an overall joint project, it limits groups' abilities to achieve the necessary economies of scale in their own way. Doing so could effectively force individuals to pursue goals that aren't inherently connected to the population emergency.

B. The responsibility to get out of the emergency as quickly as possible

Example 5, lifeboat with two goals: Gilligan, the Skipper, and the Professor find themselves in a lifeboat on a calm ocean. Gilligan wants to row to the nearest island, which is known to be just over the horizon to the west. Skipper and the Professor want to row to another more prosperous island much farther away to the east. Skipper and the Professor make a majority decision about where the boat will go, but Gilligan refuses to row.

This example features disagreement about the goals of the joint project, but not about the most fundamental goal of the project. All three are willing to row to safety, but not everyone wants to limit the joint project to reaching safety as soon as possible. Skipper and the Professor have two arguments for forcing Gilligan to row. All three will benefit from reaching the more prosperous island, and rowing remains a necessity no matter which destination they choose. But they are poor arguments. Gilligan has considered the benefits and decided that for him, they are not worth the cost. Rowing remains a necessity, but rowing east is not a necessity. Any amount of rowing to the east takes Gilligan farther from his goal of reaching the western island. This argument implies the principle: if an enforceable duty is justified by necessity, those imposing the duty have the responsibility of getting out of the emergency as soon as possible and/or minimizing the effects of the emergency as much as possible. If this principle is violated, the argument that the duty derives from necessity is lost.

Example 6, lifeboat without effort to get out of emergency: Gilligan, the Skipper, and the Professor find themselves in a lifeboat on a calm ocean. Gilligan wants to row to the nearest island. Skipper and the Professor do not want to row all the way up to any island. They want to row near enough to islands so that they can trade with islanders, but will never land on an island and none of the three will ever be able to get off. All will need to keep rowing forever, because Skipper and the Professor believe this is the best most prosperous lifestyle for everyone.

Clearly Skipper and the Professor have violated a responsibility to get out of the emergency situation. Rowing is no longer a social necessity, but a private goal that not everyone shares

and that cannot ground a duty of active contribution.

The principle that those imposing the duty have the responsibility to get out of the emergency as soon as possible greatly reduces the power of the population emergency argument. Suppose the ruling coalition in society introduces mandatory social participation because the population is so high that dividing resources equally will not give any individual enough to provide for her own needs, making some form of social cooperation essential. If they do so, they have taken on the responsibility of getting out of the population emergency as soon as possible. Anyone who is forced to participate is at liberty to say, “I will contribute while the emergency lasts, as long as you commit yourselves to getting out of the emergency as soon as possible.” This argument gives the ruling coalition two choices, it can either drop the population-emergency argument or it can take on population reduction as a major social objective.

Suppose the ruling coalition responds, “We don’t *want* to get the size of the population down. The size of the population is sustainable given the productivity of our society.” If so, they have given up the claim that the size of the population is an emergency that compels participation. The size of the population has become a chosen goal that not everyone shares, and thus it is not one that can ground an obligation for the active participation of everyone. They can keep the population large and growing if they want it to, but if the reason the population is large and growing is that they want it to grow, they can no longer point to the size of the population as grounds for a duty to contribute. Keeping the population level high (while allowing people the power to refuse) might entail creating independence artificially by giving dissenters an income greater than a proportionate share of the value of natural resources or the products of past generations.⁴⁶⁹

⁴⁶⁹ As argued in Chapter 10, this arrangement does not mean that net recipients will have a disproportionate share of external assets or income. Anyone who refuses to seek social rewards for work still receives less than

The desire to procreate is a strong human value and one of the key things that people want to be free to do, but it cannot trump all other values. If procreation necessarily leads to starvation, it must be limited. Given the arguments for the importance of effective control self-ownership in Part One of this thesis, a right to appropriation should also be limited if it necessarily leads to unfreedom. But procreation does not necessarily lead to unfreedom, if the population emergency argument for a duty to actively contribute is abandoned.

Suppose there are a few places in the world with pleasant climates and abundant food that can be easily gathered with a minimum of toil. People could have chosen to practice birth control so that everyone could live in such a place if they wanted to. Society could choose to reduce its population to that level again within several generations. If we choose not to, it ought to be because our life is better for everyone than that society. If the rewards we give to workers are so poor that we have to force the poor to work, I find it difficult to believe our society is better than that one.

C. The responsibility to minimize duties to necessity

Example 7, work-ethic Utopia: Imagine a society in which everyone works 16 hours a day, seven days a week doing difficult physical labor to produce public goods, so that all share equally in the benefits of the goods. Only one member of the society objects to this work pace.

This society has at least one claim based on equal freedom to hold the dissenter to an enforceable duty. Everyone does the same work for the same reward, and is in that sense equally free, but they don't have very great freedom, or much freedom at all. To reach the maximal equal freedom they have to pare down the duty to the minimum that is genuinely necessary, even if those who refuse to do more than the minimum will benefit from public goods produced by others. This argument implies that the case for a general work obligation to fulltime participation in any economy largely devoted to producing nonessential private goods is weak.

5. Equal contribution

Example 8, the floating casino: Seven castaways are on board a Roman galleon with rows of oars below decks and a casino above. Mr. Howell is so successful in the casino that his time is more efficiently spent there. He offers to buy his way out of rowing by compensating the rowers in cash. Gilligan disagrees with the majority's decision to exempt Mr. Howell, and refuses to do his duty unless Mr. Howell does his.

The ruling coalition's claim that interdependence compels one person to participate is undermined if it exempts any capable person from participating. The underlying principle is that *forced* obligations must be shared as equally as possible. If everyone agrees to accept Mr. Howell's offer to buy his way out of the obligation, no one is forced. If they do not force Gilligan to participate, they can set whatever differential rewards and obligations they

want for people who choose to participate. However, if unequal participation is forced, it denies equal freedom for all. The ruling coalition can reply that Mr. Howell is exempt from contributing to the project because his contribution benefits the rowers. However, Gilligan can respond that he disagrees with the value of Mr. Howell's contribution, the rate of reward for his contribution, the fairness of the process by which he was selected, and so on.

This argument implies a very substantial limit on society's ability to enforce duties. The ruling coalition in society cannot force individuals to fulfill duties unless they enforce those duties as equally as possible. They would have to require everyone to do the same or similar work for the same reward or hold those with easier jobs to a longer commitment to maintain equality. It does not have to be any more equal than possible, but rather as equal as possible. This argument for equality does not mean people share equally in every instance, but it could imply that everyone has the equal probability of fulfilling the duty. For example, a rule that any person must throw a line off a bridge if she happens to be crossing the bridge when someone is drowning can be equally applied to everyone even though only a few people will actually end up crossing the bridge while a person is drowning.

6. Conclusion

Notwithstanding the arguments about passive contribution, the rowboat on the falls argument provides a reason why a government could force individuals to participate in these kinds of activities, but only within the limits of necessity, minimization, and equality. The limits imply something very different to that advocated by people who ground an

objection to basic income in a duty to make a social contribution. The usual alternative to an unconditional guarantee of financial support is the argument for a lifetime work obligation. Society takes on the responsibility to make sure that the minimum job in society is a good job, with good pay, and challenging choices, but in return individuals are expected to spend a large chunk of their lives contributing to an economy with differential rewards.⁴⁷⁰

The limits I have argued for imply that any mandatory obligation would have to take the form of limited-time national service that no one can get out of—rich or poor. It would be consistent with maximal equal freedom if all people had to spend a year or two all doing the same sort of work for some truly essential national service. It might be difficult to tell whether the service is truly essential, but at least the national service would be consistent with equal freedom. However, if people with higher earnings capacity are allowed to buy their way out of the service, the program cannot be consistent with equal freedom; it would become effectively the slavery of the untalented.

Thus, the conditions needed to justify mandatory social participation are very high, and the relatively better off might not be willing to impose these conditions on themselves. If they will not impose those conditions on themselves, they cannot impose those conditions on the propertyless, and they must rely entirely on positive rewards to elicit contribution from everyone. A work obligation in a complex economy with more and less desirable jobs forces a duty onto the less advantaged that is more onerous than the duty it forces on everyone else. Therefore, it cannot be consistent with maximal equal freedom or the preservation of status freedom.

⁴⁷⁰ Anderson "What is the Point of Equality?"; Bergmann "A Swedish-Style Welfare State or Basic Income: Which Should Have Priority?"; Rawls *A Theory of Justice*; Rawls *Political Liberalism*; Van Donselaar *The Benefit of Another's Pains: Parasitism, Scarcity, Basic Income*; Van Donselaar "The Stake and Exploitation."; White *The Civic Minimum*.

If a mandatory obligation to contribute is applied within the limits described above, it cannot be a lifetime obligation to participate in a hierarchical economy, but it would have to involve everyone doing similar work for a set number of years, after which everyone regains the right to choose or refuse participation in the complex game of an industrial economy. A national service of one, two, or even five years would take a part of a person's freedom away, but once it was over it would leave them a fully free person for the rest of their life. If this duty is imposed early in a person's life, it gives them the opportunity to get their years of unfreedom behind them and resume control of their life.

I have not argued that there is no such thing as an enforceable duty for active social participation. I have only argued that there ought to be strong limits on that ability, including (1) necessity, (2) minimization, and (3) equality. The enforceable duty must be necessary in the sense that its rewards cannot be personalized. Society must make every effort to minimize the force it applies and the affect of that force on individuals' lives. Everyone must share as equally as possible in the duty in every relevant sense. These limits imply that a duty to actively contribute does not imply a general work obligation but at most, a national service, to which all contribute equally—rich or poor, talented or untalented.

Conclusion

Chapter 13: The Greater of Two Goods

I often quote myself. It adds spice to my conversation.

-George Bernard Shaw

Return to the Big Casino. Suppose the ruling coalition endorses the protection of ECSO freedom and property rights by general agreement, and so they give you casino chips. This is it; just ordinary chips? A small, steady supply of the currency of the state that you can use to gamble or to buy food, land, sheep, or whatever you want. This is not Utopia. The basic income does not make a fundamental change in the goals or activities of the Big Casino. It does not make the Big Casino fully fair or righteous. But it does something for you. It protects you from abject poverty and propertylessness. There are no longer any people in your state who cannot afford a home or who must search for food in other people's garbage cans. No one is forced to accept the terms and goals of participation dictated by the people who control property. A few people refuse to participate at all. Some of them start alternative communities and some of them just need to get their lives together. But most people do participate. They accept the arbitrariness and the unfairness inherent to the Big Casino, but they accept it as free people, not as subjects who are effectively born into servitude. Many people still work long hours, but they do so because they have chosen this as a way to get ahead, not because they must choose it to survive. Most people agree that the benefits they get from the Big Casino make it worthwhile for them to accept the

Big Casino. For those who still dissent, the Big Casino provides more to dissenters than any other feasible system.

1. Freedom as the motivation for protection from propertylessness

Any meaningful theory of freedom needs to have a theory of which freedoms are most important to protect. Part One of the thesis argued that the most important freedom to protect is a person's status as a free individual, which it in turn defined as effective control self-ownership (ECSO freedom). That is, the effective power to make or refuse voluntary agreements with other individuals. It argued that capitalism with full liberal ownership of property does not protect ECSO freedom, because propertylessness makes a person effectively unfree. It also argued that many egalitarian theories that incorporate contributive obligations also fail to protect ECSO freedom. A person has ECSO freedom if she is not forced by economic necessity to serve a boss or a social project. If people lack ECSO freedom because laws dividing up the Earth have made them propertyless, their freedom has been taken away by the law. A healthy adult can preserve her own ECSO freedom with access to a sufficient amount of raw resources or an in-cash basic income. The preservation of ECSO freedom does not necessarily entitle a person to cash. However, Part One argues that an in-cash basic income large might be the most feasible and efficient way to preserve ECSO freedom in a modern industrial economy.

Part Two of the thesis considered the relationship between theory and freedom in the continuous sense, using the liberal notion of freedom as noninterference. It rejected Lockean and right-libertarian theories of unilateral appropriation as failing to justify property consistently with the maximal equal freedom for all. From the assumption that natural resources are unowned, it argued that there is nothing an individual can do unilaterally to make them owned but that legitimate property rights can be created by a general agreement. People attain a piece of property by paying others so that it is in their interest to treat that unowned resource as if it was their property. If property is held unequally, this provides an argument for a wealth-tax-financed basic income, in which anyone with a relatively small share is a net recipient and anyone with a relatively large share is a net payer. Because it is compensation-based, this argument provides a reason for a basic income in cash. Compensation is nearly always paid in cash to give the recipient the greatest discretion over how to use it. Conceivably, people could receive the cash compensation on top of the raw resources they received to secure their ECSO freedom, but doing so would allow people to buy their way out of the work needed to turn the raw resources into the goods they want. It might prove simpler and easier to provide the entire amount in cash.

Part Three considered replies to objections. It discussed and rejected the argument that basic income inherently involves exploitation of the industrious by the lazy and demonstrated how a work requirement can actually cause the kind of exploitation it is designed to eliminate. It conceded that there might be some duties that can override a commitment to complete ECSO freedom, and it argued that if we are to make those duties consistent with maximal equal freedom, they must be applied equally, minimally, and only when necessary and when private rewards are unavailable. This argument could make a

case for temporary national service for all, but not for a lifetime commitment to the labor force for the propertyless. Whoever would impose such a duty on others must also take on the responsibility of getting out of the situation in which that duty is necessary.

2. How big?

Parts One and Two each argued for a basic income at least large enough to do a certain task. Part One gives an argument for the basic income to be at least large enough to secure ECSO freedom. Part Two gives an argument for a basic income large enough to justify the property rights agreement—which might entail the highest sustainable basic income. Putting the two pieces together implies that the actual level should be the greater of the two. If ECSO freedom were an overriding priority, basic income would have to be at that level, even if it were unsustainable. But of course, it makes no sense to set basic income at a higher than sustainable level except in the extraordinary circumstance in which the population is dropping more quickly than the sustainability is running out. In such a case, although the current level is unsustainable given the current population, we are taking action that will make it sustainable quickly enough for us to treat that level as sustainable. Barring that occurrence, it might be tempting to fall back on the empirical argument that, given the amount of industrial activities devoted to providing for things other than needs, the possibility that the minimum level of basic income needed to secure ECSO freedom is unsustainable is very unlikely. But even if the unsustainability of the necessary level of basic income is unlikely, what should we do if that event nonetheless occurs?

The answer cannot be simply to set the daily basic income at the highest sustainable level regardless of whether it secures ECSO freedom. A lifetime basic income, too small to provide for a person's needs, provides them with little if any ECSO freedom. What is needed in that case is not lifetime basic income set at the highest yearly level, but a basic income set at the level needed to secure ECSO freedom for the highest sustainable number of years. For example, imagine we need five years of national service to make our freedom-securing basic income sustainable. We all go into national service, say from age 20 to 25, and we all receive a basic income large enough to secure our basic needs from ages 0 to 20 and 25 until death. The conditions for an enforceable duty determine the treatment of individuals between their 20th and 25th birthdays, but people exercise full ECSO freedom for the rest of their lives.

3. Equality of freedom

This thesis is written from a standpoint of concern for both freedom and equality. Equality of resources, equality of welfare, or equality of standard of living have not played a strong part, but equality of freedom has, and the concern for the greatest equal freedom has led to concern with a degree of equality of resources and standard of living. The concern is first to secure the most important freedoms for each individual, and beyond that to secure the maximal equal freedom from interference for every individual.

The concern with freedom and property rights in this thesis amounts to a message for both left and right.

If you are not on the side of the least advantaged you are on the wrong side. If you're not for making the least advantaged free, you are not really on their side.

If you are not on the side of freedom, you are on the wrong side. If you're not for the freedom of the least advantaged, you are not really on the side of freedom.

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