

SELF-OWNERSHIP, WORLD-OWNERSHIP, AND INITIAL ACQUISITION

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1. Introduction

G.A. COHEN'S WORK *Self-Ownership, Freedom, and Equality*¹ is a highly regarded and widely influential critique of Robert Nozick's canonical libertarian work *Anarchy, State, and Utopia*.² Since much contemporary libertarian theory is indebted to Nozick, a successful dismantling of Nozick's theory would seem to pose quite a threat to libertarianism more generally. But as Nozick himself said, "There is room for words on subjects other than last words."³ Indeed, one of the chief virtues of Nozick's work is its open exploratory approach. So, just as Nozick provides a starting point for the exploration of libertarianism, Cohen forces the libertarian theorist to confront difficult challenges, which sometimes result in the reaffirmation of a position, sometimes in revision. This eventually spawns a deeper and stronger theory. It is a modest step towards this lofty goal that this paper attempts. To orient the debate, I begin by briefly sketching Nozick's familiar Entitlement Theory of Justice. I then present and respond to Cohen's criticism at three stages. The first is the self-ownership stage, where Cohen does not attempt to refute the thesis of self-ownership, but instead attempts to cast doubt on it, in

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¹G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995).

²Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

³*Ibid.*, xii.

hope of weakening its appeal. Nozick does not himself much discuss self-ownership in *Anarchy*, but Cohen identifies it as an underlying assumption. I argue that Cohen is not successful in weakening the appeal of the self-ownership thesis. In particular, I claim that Cohen's attempt to overturn Nozick's slavery argument does not succeed. The second stage concerns the status of world-ownership prior to initial acquisition⁴, which is the subject of stage three. Cohen argues for an alternative joint-ownership view of the world in stage two, and argues, at stage three, that Nozick's proviso on acquisition cannot be met. In reply, I claim that the joint-ownership view of the world fails, and departing from Nozick, I go on to defend a no-proviso account of initial acquisition. My conclusion is, with Nozick, that extensive inequality of condition is unavoidable, or avoidable only on pain of violating people's rights to themselves and to things. I reach this conclusion by establishing the primacy of the self-ownership thesis, an initially unowned world, and that no proviso restricts initial acquisition.

2. Nozick's Entitlement Theory

Anarchy famously opens announcing that "individuals have rights, and there are things no person or group may do to them (without violating their rights)."⁵ It is important to note that *Anarchy* does not offer (and does not claim to offer) any precise or substantial treatment of the moral basis of rights. However, once the self-ownership assumption is unearthed, Nozick *does* seem to have a moral basis for rights, specifically negative rights. The self-ownership thesis claims that because individuals morally own themselves, they own their talents and what they produce from them. Consequently, nobody is permitted to interfere with one's person or property, which gives rise to a right against the initiation of force and thereby a right to private property. Importantly, there is no right *to* goods, as this would violate others' right against being compelled to provide such goods. The self-ownership thesis is what underlies Nozick's 'side constraints'.⁶

In addition to side constraints, the Entitlement Theory identifies three areas requiring principles of justice. The subject of the Entitlement Theory is holdings, broadly defined as income or goods that are produced or transferred. The first principle covers the acquisition of holdings: "how unheld things may come to be held, the things that may come to be held by

⁴'Acquisition' and 'appropriation' seem to be used interchangeably in this debate and I will follow that practice here.

⁵*Ibid.*, ix.

⁶See 28–35 of *Anarchy*. Nozick's side constraints limit individuals from using force against one another, leaving the monopoly on force to the state, which can only use force to protect the rights of individuals, not redistribute their holdings.

these processes,” hence ‘the principle of justice in acquisition.’⁷ The second principle specifies how holdings may be transferred: ‘the principle of justice in transfer.’ Lastly, there is the principle of justice in rectification. This principle dictates what is called for when holdings are generated that contravene either of the first two principles just enumerated. Included under this principle are acts of fraud, violence, theft, and other instances of harm.

3. Self-Ownership

Following Cohen’s helpful summary of Nozick’s anti-egalitarian argument offered at the end of chapter four of *Self-Ownership*, the first part of the argument—the self-ownership stage—looks like this:

- I. No one is to any degree the slave of anyone else. Therefore
- II. No one is owned, in whole or in part, by anyone else. Therefore
- III. Each person is owned by himself. Therefore
- IV. Each person must be free to do as he pleases, if he does not harm anyone else: he is not required to help anyone else.⁸

Propositions I to III establish the claim that we own ourselves, since to say otherwise is to say that someone else owns us, which is tantamount to slavery.⁹ From this claim, it then follows that each person may do as she likes, provided she does not harm others and this includes the right against being coerced into helping others. Nozick’s claim that forced taxation is equivalent to slavery leads to the inference that the rejection of self-ownership, which licenses forced taxation, also licenses slavery. In addition, the rejection restricts human autonomy, and permits treating people as mere means. Cohen’s strategy is to show that rejecting self-ownership does not lead to this result. I will concentrate only on the slavery claim.¹⁰

⁷ *Ibid.*, 150.

⁸ *Self-Ownership*, 113.

⁹ A third option, pointed out to me by David Schmidtz, is also possible here. (private correspondence) This is that people are not the types of things that can be owned. I reject this for the same reason he does, namely, that ownership has to do with having the right to say ‘no’, to exclude use. So if we do not own ourselves, then we lack the right to say ‘no’ to how people might want to use our bodies, and this is highly undesirable.

¹⁰ Eric Mack has made compelling points with regard to Cohen’s critique of Nozick on autonomy and using people as means in Eric Mack, “Self-Ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-Ownership Thesis,” *Politics, Philosophy & Economics*: 1 (2002): 264–66. His comments on autonomy, which dispute that autonomy (in the strong sense) is a value libertarians are committed to, bears on my discussion in section five on pursuing vs. protecting projects. On using people as means, Mack,

In support of IV, Cohen outlines Nozick's argument utilizing the idea of non-contractual obligations as equivalent to slavery in order to ground the self-ownership thesis. The argument runs as follows:

- (1) If X is non-contractually obliged to do A for Y, then Y has a right of disposal over X's labour of the sort that a slave-owner has.
- (2) If Y has a right of disposal over X's labour of the sort that a slave-owner has, then X is, *pro tanto*, Y's slave
- (3) It is morally intolerable for anyone to be, in any, degree, another's slave. Therefore.
- (4) It is morally intolerable for X to be non-contractually obligated to do A for Y.¹¹

The argument is valid, but Cohen argues that it is not sound based on criticisms of (1) and (3). Cohen attacks (3) by asking us to consider the brief imprisonment of an innocent person—similar enough yet different to slavery—which is meant to bring out a more favourable evaluation of partial-slavery. “There is a massive *normative* difference,” Cohen claims, between brief detention and life-long imprisonment.¹² And as with this difference, a similar claim holds with limited doses of forced labour *vis-à-vis* “the life-long forced labour that characterizes a slave.”¹³ In other words, it may not be morally intolerable to be a slave in some degree, especially if there is good reason for it, as in the imprisonment case there may be, for example, if it is necessary to maintain social order.

I do not find this move convincing. To begin with, we may admit that there is a massive normative difference between brief and life-long imprisonment, but nevertheless maintain that the brief imprisonment of an innocent person is *still* normatively wrong, and likewise maintain that partial-slavery is still wrong. In other words, the normative difference does not efface the normative judgment. A countervailing circumstance may permit brief imprisonment of an innocent person, as in the case of social unrest, but then Cohen needs to identify a similar circumstance that would persuade Nozick to allow partial-slavery. And, since Nozick prizes liberty above all, circumstances that compromise liberty are unlikely to move him. A second point is that Cohen's analogy is weak. The brief imprisonment of an innocent person, on one occasion, for good reasons, is not a major moral blip.

recognizing the myriad interpretations of Kant's maxim, provides a libertarian interpretation of it, weakening Cohen's critique of Nozick's invocation of the maxim.

¹¹*Self-Ownership*, 230–31.

¹²*Ibid.*, 231. Emphasis original.

¹³*Ibid.*

However, our judgment is likely to change if instead the innocent person is repeatedly imprisoned, briefly, for his *entire* life. After all, this is what actually happens with coercive taxation; on Nozick's view, it is life-long partial enslavement.

I move now to Cohen's criticism of premise (1). Following Joseph Raz, Cohen argues that "when X is non-contractually obligated to Y , it does not follow that anyone has a slave-owner-like right to dispose over X 's labour."¹⁴ Cohen summons the example of someone having an obligation to their ailing mother to make this point. A series of objections and replies then ensue. First, there is the objection that the mother example is not of the right sort because the obligation is not enforceable. To this Cohen replies that even if the state enforces the obligation, there is still no slave-owner-like right over someone, to which the objector says that someone is sufficiently like a slave even if there are no slave-holder rights. Further, the objector might say that the state could not have the right to dispose over some of her labour, if it did not have the right to dispose over all of it, as slavery requires. But Cohen is not moved by this; he holds that neither the socialist state nor Nozick's state has a "right to decide whether or not some will serve others."¹⁵ So, he claims, the objection is irrelevant. In any case, Cohen responds that Nozick himself is vulnerable to the line of reasoning above because "(a) citizens of his minimal state are obliged to pay tax to support its police force, and (b) Nozick believes that contractually based full slavery is possible, and should therefore also regard less comprehensive types of contract as instituting partial slavery."¹⁶

I begin with the enforcement objection. Cohen says that just because the state has the right or obligation to transfer some of one's earnings to help the needy, that doesn't mean the state has a right to dispose over one's labour. But this is false, the state, on the current assumption, has the right to determine how much one makes from labouring, which is no different than having a right to dispose over one's labour or talents.¹⁷ Suppose that taxing income was not enough to help the needy. Then presumably the state would have the right to dispose over one's labour or talents in order to help the needy. For if the duty arises from the special need of non-contractual help, then the state is obligated to fulfil this need in whatever way necessary and

¹⁴Ibid.

¹⁵Ibid., 234.

¹⁶Ibid., 231n.

¹⁷Tibor Machan gives a similar argument to the one I present here. See his "Self-Ownership and the Lockean Proviso," in *The Promise of Liberty* (Lanham, MD: Lexington Press, 2009), 283–88.

that is tantamount to being a slave-owner.¹⁸ For instance, a slave-owner presumably puts his slave to whatever task needs accomplishing; whatever it is, it is up to the owner to tell the slave what to do. In the case of the socialist state, the putative task that needs accomplishing is helping the needy. Now, there are many ways of accomplishing this, so by analogy, to the extent that this is a legitimate duty of the state to enforce, the state is obligated to use someone insofar as it is necessary to enforce that duty. This might mean coercive taxation, or it might mean forcing people to work certain jobs: Stalinism. This is the “comprehensive right” that “betokens slavery” to which Cohen’s imagined interlocutor objects.¹⁹ Granted, the socialist constitution requires the state to tax redistributively, but this is just a means; the end is to help the needy. Moreover, Cohen seems to confuse rights as they pertain to the state with rights pertaining to individuals. In this way, the socialist state does have a right to decide whether some help others or not. But Nozick’s state does not have any ‘rights,’ since rights belong only to individuals.²⁰ The state does not have the right to decide what individuals do or don’t do (provided they are not harming others) because individuals have a right against state interference.

I now move to points (a) and (b). Since Nozick allows that citizens in his minimal state will be obliged to pay taxes for a police force, Cohen says Nozick must distinguish between paying tax to give the needy welfare payments and paying tax to ensure the needy have police protection. Both cases look like slavery, on the current view, so how might they differ? The first point to make, which Cohen does, is that the principle of self-ownership clearly separates the two “through a complicated argument to do with self-defence,” and this licenses taxation for police protection, but not welfare payments.²¹ However, this will not do to show that there is a difference in kind between the two cases with respect to slavery. A point Nozick can make is that his minimal state, again ‘through a complicated argument,’ arises via an ‘invisible hand’ process, which does not violate anyone’s rights in the process, and consequently justifies coercive taxation for police protection because it has this desired genesis.²² Indeed, the whole first part of *Anarchy*, which Cohen does not discuss, is devoted to this explanation. Coercive taxation for welfare payments does not enter into Nozick’s minimal state because it would

¹⁸I do not attribute this to Cohen, but I think it a logical extension of his view.

¹⁹*Self-Ownership*, 234.

²⁰For explicit mention of this in Nozick see *Anarchy*, 118.

²¹*Self-Ownership*, 235.

²²*Anarchy*, 118–19. Nozick’s minimal state arises through voluntary transactions that citizens make in the interest of protecting themselves through the use of private protection agencies. The story goes that eventually one of these agencies would gain a monopoly on force, but without using force itself to get there.

not arise without violating people's rights. So, Cohen at least needs to say why Nozick's explanation is wrong for his criticism to be relevant here.²³

On Nozick's own countenancing of voluntary slavery, Cohen says that "Nozick needs to distinguish between contractual obligations, which do not, in general, constitute slavery, and non-contractual obligations, which, so he says do."²⁴ Cohen continues, "He [Nozick] would not say that what the contemplated person enters is not slavery because he enters it voluntarily."²⁵ I think the point to make here is that, *pace* Nozick, it is not clear that voluntary slavery is *still* slavery. It matters, for instance, how slavery comes about. Part of being a slave is that one is born into it, or one becomes involuntarily enslaved by another. In fact, it is because of this *involuntary* character that slavery is a moral abomination. So, the point against Cohen is: if entered into voluntarily, the contractual obligation that follows is not slavery at all, but if it isn't voluntary, then non-contractual obligations count as slavery. In other words, we might say that involuntariness is a necessary condition for slavery. Cohen might think this a mere semantic point; there is no substantial difference in condition between a voluntary slave and a involuntary one. But our moral judgment makes the difference. We say that the voluntary slave made a very poor life choice, whereas the involuntary slave is unjustly oppressed, and this is so because she did not choose to be a slave.

4. World-Ownership

Having defended the self-ownership thesis, I must now turn to the issue of world-ownership. This issue arises because Cohen points out that in order to justify inequality "people must have rights not over themselves but over external things,"²⁶ which requires the further premise:

V. The external world, in its native state, is not owned, in whole or in part, by anyone.²⁷

At this point, Cohen's strategy is to grant the self-ownership thesis, but reconcile it with equality by adopting an egalitarian approach to natural

²³Of course, there has been much *libertarian* criticism of Nozick's story about the minimal state, but I do not address that debate in this paper. See Randy E. Barnett, "Whither Anarchy? Has Robert Nozick Justified the State?" *The Journal of Libertarian Studies* 1, no. 1, 1977: 15–21.

²⁴*Self-Ownership*, 236.

²⁵*Ibid.*

²⁶*Ibid.*, 113.

²⁷*Ibid.*, 114.

resources.²⁸ His strategy is to reject the supposed implausible libertarian thesis that the world is morally unowned prior to acquisition. Here Cohen considers joint-ownership of the world with a veto for all, which licenses the aforementioned egalitarian approach to natural resources. Even though, ultimately, Cohen concedes that this approach fails²⁹ because it renders self-ownership merely formal, he argues that this is also the case with self-ownership on a libertarian reading. Accordingly, Cohen tries to expose weakness in the power of self-ownership and consider an alternative to V that is egalitarian. To combat this move, I must confront the claim that libertarian self-ownership is merely formal. I will argue that there is a substantial difference between self-ownership in a jointly-owned world and a natively unowned world, and this difference points in favour of the latter. Thus, V is preserved and self-ownership remains unscathed. Cohen's main argument here is his 'Able and Infirm argument', to which I now turn.

In a jointly-owned world of two self-owning people, Able and Infirm, we are to query what agreement would be made and what, in particular, the increased ability of Able would get him in the way of resources. There are five possible scenarios, but I will only focus on the most interesting one in which "Able can produce a surplus," and "can vary its size, so that Able and Infirm will bargain not only...over who gets how much, but also over how much will be produced."³⁰ Cohen argues that Able's ability would not enable him a greater share of the surplus because, while he holds two necessary conditions of production, they are not sufficient, since Infirm holds the further necessary condition of relaxing his veto. Able gets nothing extra for being of superior ability, but only if exercising his talent is bothersome. Hence, Able and Infirm will agree on the equal distribution of surplus, and self-ownership will not thereby begat inequality.

Two points made by Tom Palmer may be inserted here before I go on to focus on what Cohen considers a more serious objection. The first is Cohen's confusion that Infirm's veto is sufficient to ensure that Able's superior ability will not affect the distribution of the final product. Palmer points out that since, in the case under consideration, the amount produced is not fixed, Able may "vary [his] expenditure of labor in return for varying product."³¹ Infirm's veto ensures that he will not get *less* than is necessary for

²⁸This move is also made by so-called left-libertarians. See Michael Otsuka, *Libertarianism without Inequality* (Oxford: Clarendon Press, 2005).

²⁹For this reason, Cohen also submits that egalitarians should expunge the self-ownership thesis.

³⁰*Self-Ownership*, 95.

³¹Tom G. Palmer, "G.A. Cohen on Self-Ownership, Property, and Equality," *Critical Review* 12, no. 3 (Summer 1998): 236.

his sustenance, but there is no reason to assume that any surplus production would be shared equally. The second point is that Cohen does not take seriously the possibility that Able could “let (part of) his talent decay” in order to bargain for an unequal share.³² Cohen ponders whether such a threat would be effective assuming everyone is rational. But as Palmer points out “Able’s threatened refusal to work is a highly credible strategy” because there is no reason for him to work for the surplus, if he can bargain to get an unequal amount of it.³³

The more fundamental objection Cohen considers is that self-ownership in a jointly-owned world renders self-ownership merely formal: “What is the point of my owning myself if I can do nothing without the agreement of others?”³⁴ In the case of Able and Infirm, it seems that as long as both exercise their veto often enough, neither person will independently be able to do much of anything in their world. The situation is made even worse in a world with more people, since now one must ask not just one person, but every person before doing *anything* with *any* part of the world. Cohen’s preliminary response is that “economics isn’t everything.”³⁵ There are things we care about other than the production and distribution of goods. But, Cohen quickly realizes that this will not do because everything we do in the world requires *some* space and, as long as it is jointly-owned, we must ask permission to do everything.

This leads Cohen to argue that Nozick’s self-ownership is also open to this charge. Because of this, Nozick could not then argue that self-ownership requires inequality of condition; the Able/Infirm argument shows otherwise. Palmer’s two points cast considerable doubt on the claim that the Able/Infirm argument establishes equality in a world of self-owners, but I must still confront the challenge that Nozick’s self-ownership is also merely formal. To make his case, Cohen resurrects Nozick’s discussion of voluntary exchange where Nozick considers proletariat Z who must sell his labour to a capitalist or die. To make the parallel to the Able/Infirm case, we may assume that it is a two-person world, even though Nozick does not make this assumption.³⁶ Here the situation of Able and Z is compared. Able has self-ownership, but cannot do anything without the permission of Infirm. Similarly, Z has self-ownership, but cannot do anything without the permission of the capitalist, since the capitalist, by stipulation, owns everything. Thus, Cohen concludes that in each case self-ownership is merely

³²*Self-Ownership*, 97.

³³“G.A. Cohen on Self-Ownership, Property, and Equality,” 239.

³⁴*Self-Ownership*, 98.

³⁵*Ibid.*

³⁶For Nozick’s discussion see *Anarchy*, 262–65.

formal, so the Nozickean has no point against the view of a jointly-owned world of self-owners.

Cohen mentions, in a footnote, a challenge to the parallel just drawn from Jan Narveson in *The Libertarian Idea*³⁷, and a defence of the parallel from Grant Brown, which Cohen cites approvingly.³⁸ Narveson's challenge amounts to a request for relevant details in the two-person world examples that bear on the judgment we are likely to make, that is, whether the two examples are indeed so similar. Brown then responds that Narveson has not met Cohen's theoretical challenge that the limited two person world presents. What to make of all this? I believe the right response is to grant Cohen his theoretical challenge; Z's self-ownership is just as compromised as Able's. However, we must now ask what this is supposed to show, especially in relation to what is likely to obtain in the real world. One way of doing this is to instructively alter the examples by adding more persons to the respective worlds. In the Z and capitalist world, every person added increases the options open to Z. For, now there will not be only one capitalist, but many, and Z will have the option of self-employment, access to charitable people, and so on. Here we are expanding a disjunction; the more disjuncts, the easier it is to satisfy. In stark contrast, in the Able/Infirm world, every person added *decreases* the options open to Able, since now he must not only ask permission from Infirm to use part of the world, but also ask *every* other person. Here we are expanding a conjunction, and every conjunct makes it more difficult to satisfy. The reason why we judge the Able/Infirm world undesirable is because in a real world scenario where joint-ownership obtains, we really would have to ask everyone's permission before doing anything. Yet, in a real world scenario where joint-ownership does not obtain, namely under capitalism, it is highly implausible that we would be in a situation like Z's. In fact, much of the desirability of capitalism arises from the unlikelihood that it would lead to such a situation. So, all Cohen has shown is that capitalism is not desirable in a two person world in which one person owns everything. But why should that matter? Cohen may care little about what obtains in the real world, but perhaps he should.

I conclude this section by reiterating V, that 'the external world, in its native state, is not owned, in whole or in part, by anyone.' In order to defend this claim, I argued that Cohen is not successful in his attempt to reconcile self-ownership with equality in natural resources, *i.e.* the external world. I also defended what is claimed to be mere formal self-ownership in Nozick's theory from the objection that this self-ownership is no different from self-ownership in a jointly-owned world. On the contrary, it is substantially

³⁷Jan Narveson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1988).

³⁸*Self-Ownership*, 101n.

different because, in any real world scenario, self-ownership under capitalism is far more robust than in the jointly-owned world, and consequently, the jointly-owned world ought to be rejected.

5. Initial Acquisition

With IV and V intact, we can now infer a further premise, which says that:

VI. Each person may gather to himself unlimited quantities of natural resources if he does not thereby harm anyone.³⁹

The first clause specifies what the acquisition principle allows. The ‘if he does not thereby harm anyone’ clause is the controversial element, which brings up that thorny issue the ‘Lockean Proviso.’ In Cohen’s words, it “requires a view about what it means to harm somebody by appropriating an unowned natural resource.”⁴⁰ This is the crucial element in Nozick’s principle of justice in acquisition. Briefly, Nozick’s proviso says that an acquisition harms somebody if and only if it makes them worse off than they would have been had the acquisition not happened and the resource had been left in common use. Cohen argues that there is no way of meeting this proviso, since we can always compare the harmed person’s situation with what would have happened had the resources not been appropriated, especially in a scenario where resources are held in common. Furthermore, there is no way to go from ownership in one’s person to ownership in things. At this point in my defence of Nozick, having been persuaded in the main by Cohen’s (and many others’) critique of the Lockean Proviso, I depart from the proviso element in Nozick’s principle of acquisition and argue for the principle *with no such proviso*.⁴¹ My argument will consist of defending Narveson’s response to Cohen, in which he argues for the no-proviso principle of acquisition, from Cohen’s rejoinder that, to my knowledge, has gone hitherto unanswered.⁴² In

³⁹Ibid., 114.

⁴⁰Ibid.

⁴¹For libertarian critiques of the Lockean proviso, see Murray Rothbard, “Robert Nozick and the Immaculate Conception of the State,” *Journal of Libertarian Studies* 1, no. 1: 52; Anthony de Jasay, *Against Politics* (London, Routledge, 1997), 172–91; and Hans-Hermann Hoppe, *The Ethics and Economics of Private Property* (Auburn, AL: Ludwig von Mises Institute, 2006), 410. The key point made by all theorists is that the Lockean proviso is incompatible with the Lockean principle of homesteading, since any acquisition necessarily worsens others’ opportunities for homesteading.

⁴²For the clearest exposition of Narveson’s no-proviso view see his “Property Rights: Original Acquisitions and Lockean Provisos,” in *Respecting Persons in Theory and Practice* (Lanham, MD: Rowman & Littlefield, 2002), 111–29.

this way, I hope to avoid the difficulties associated with Nozick's proviso, but still maintain VI and therefore a version of Nozick's principle of acquisition.

Narveson's argument for no-proviso rests on the idea that "ownership...consists entirely in (negative) rights to act, as limited only by the like rights of others."⁴³ This is more or less what Nozick calls 'side constraints'; that is, negative rights, meaning rights against interference, but not rights to things. So, if ownership consists in rights to act, but nobody is doing anything with natural resources, it follows that nobody owns them, at least on the assumption that they are as yet untouched. Next, Narveson specifies what he means by interference; it "is necessarily historical."⁴⁴ Interference is only possible where someone is doing something and then someone else comes along and *interferes* with whatever was going on prior. How does this relate to initial acquisition? Well, setting aside the case where two people arrive at something simultaneously, it is most often the case that somebody gets there first, and once this has been established, anybody that trammels on this first person is *interfering* with the principle of liberty, which says that "people may do whatever they please, subject only to the restriction that they must not thereby aggress against others."⁴⁵⁴⁶ Thus, on the no-proviso view, VI is transformed into 'each person may gather to himself unlimited quantities of natural resources as long as she gets there first.' In this way, the proviso is really just the liberty principle: we are at liberty to act, so long as we do not impede another's liberty to act.

Cohen, in his critique of Narveson, distinguishes between Narveson's no-proviso argument and his liberty argument where "the no-proviso argument says that nature is up for grabs, [and] the liberty argument tells us

⁴³Jan Narveson, "Libertarianism vs. Marxism: Reflections on G.A. Cohen's 'Self-Ownership, Freedom, and Equality,'" *The Journal of Ethics* 2, no.1 (1998): 10.

⁴⁴*Ibid.*, 11.

⁴⁵*Ibid.*, 11.

⁴⁶Narveson has argued persuasively that rather than being the foundation of the liberty principle, the self-ownership idea is just another way of stating the liberty principle: "To act is to *use oneself* in some way—to put oneself into motion in some direction or other. Being at liberty means that one acts as one's own self directs, rather than as some other self directs; it therefore means that one *uses oneself* as one directs. The moral thesis of self-ownership asserts that this liberty is rightful. But if one wants to claim that people "by nature" *own themselves*, then one is simply proclaiming their general freedom to do as they please—which is exactly the libertarian principle itself, neither more nor less. The libertarian principle may be unfounded, but it cannot coherently be said to be founded *on* self-ownership, for to say that is to say that it is founded on itself." See Narveson, "Property and Rights," *Social Philosophy and Policy* 27 (1): 103–105.

how it may rightly be grabbed.”⁴⁷ Cohen’s stepwise presentation of the no-proviso argument looks like this:

1. Ownership consists entirely in rights to do things.
2. No one has done or is doing anything with “natural stuff,” N.
3. No one has any ownership rights in N.
4. No one has any “fundamental rights” (Narveson, p. 7) in N.
5. No proviso restricts anyone’s legitimate appropriation of N.⁴⁸

Cohen grants that (3) is sufficiently like (4) so that (5) can be inferred from the premises taken jointly. Thus, he focuses his criticism on the inference from (1) to (3). In particular, he claims that (3) only follows from (1) and (2) “on the transparently absurd principle (call it the *nothing-doing* principle) that no one who has not ϕ ed or is not ϕ ing has any right to ϕ .”⁴⁹ Cohen does not say why this principle is absurd, but he seems to mean that there are plenty of cases where we have a right to something that we have not interacted with in any way, like when we receive an inheritance perhaps. In order to clear up some of the confusion I offer this rehashing of the no-proviso argument:

1. Ownership consists entirely in rights to do X with a thing(s) N.
2. If someone has (fundamental) ownership rights in N, then someone has done or is doing something with N.
3. No one has done or is doing anything with “natural stuff” N.
4. No one has any (fundamental) ownership rights in N.
5. No proviso restricts anyone’s legitimate appropriation of N.

(1) is the same as in the previous formulation, but I have made it more explicit by stating that ownership is the right to do something with some object(s). (2) is the ‘nothing-doing principle’ expressed as a conditional. In the case where ownership arises through initial acquisition, which is what is under discussion, (2) holds, else how could somebody own something without having done *anything* with it at *any* time?⁵⁰ Where (2) does not hold is

⁴⁷G.A. Cohen, “Once More into the Breach of Self-Ownership: Reply to Narveson and Brenkert,” *The Journal of Ethics* 2, no. 1 (1998), 59.

⁴⁸Ibid. Emphasis original.

⁴⁹Ibid.

⁵⁰It is conceptually possible, of course, that one has a right to things one has not interacted with. The joint-ownership view discussed earlier claims just this. But, aside from the problems I’ve already raised with that view, it is also difficult to justify

in the case of transfer; here ownership is conferred by the transfer, so in this case, one need not have done or be doing anything with the object. But we are not now discussing the transfer principle.⁵¹ Continuing, (3) is what was formerly (2) and is true *ex hypothesi*. From this, (4) follows by *modus tollens* on (2) and (3), and (5) follows from (4). So, contra Cohen, the no-proviso argument grounds the claim that nature is, as it were, ‘up for grabs.’ Moreover, if there is no proviso restricting appropriation *and* ownership consists entirely in rights to do X with a thing N, then trammelling on someone’s appropriation *does* violate their rights just in case someone has legitimately appropriated. We now must consider Cohen’s discussion of Narveson’s liberty argument to see how this may occur. Cohen’s critique of the liberty argument concentrates on two of Narveson’s inferences:

- (i) If someone is continuing with a project that he has initiated, and in which he uses unappropriated natural stuff, then liberty endows him with a plenary right of noninterference with that project.
- (ii) To secure that right of noninterference with such projects, there must be rights to acquire, keep, and transfer private property.⁵²

To argue against (ii), Cohen remarks that “I cannot swim, securely, in the virgin pond, unless others are forbidden to interfere with my swimming. It scarcely follows that, to be safe from interference, I must own the water through which I glide.”⁵³ The point made here is that ownership is not a necessary condition of being able to do *everything* in the world.

I argue that Cohen’s swimming example does not work. It is true, one need not own the water to be able to swim through it, but it must be the case that others do not own or have a legitimate claim on it, otherwise they could rightfully interfere with one’s swimming in it. So, the real condition is that ‘I cannot swim, securely, in the virgin pond, unless others do not own it,’ which is just to say that they have no right to interfere. And, if others do not own it, then insofar as someone initiates use before anyone else, on my view (and Narveson’s), they have claimed ownership: they interfere with no one.

compossible rights on this view. For example, if *A* has a right to exclude *B* from using *X*, but *B* has the same right to exclude *B* (because of joint-ownership), there is no coherent sense in which either has a right. For a detailed account of this defect see Narveson, “Property and Rights,” 108.

⁵¹These remarks do not serve as a full defence of the nothing-doing principle, but only a clarification of it. For myself, I take the principle as self-evident, not seeing any obvious challenge to it. Cohen also says little of what is wrong with it. Therefore, I tentatively offer the clarification in hopes that it at least strengthens the principle itself.

⁵²“Once More into the Breach of Self-Ownership: Reply to Narveson and Brenkert,” 60.

⁵³*Ibid.*, 61.

Indeed, on the assumption that they arrive first, nobody is even *there* to be interfered with. de Jasay puts the point thus:

[I]f a prospective owner *can* in fact perform it [some action], taking first possession of a thing is a feasible act of his that is *admissible* if it is *not a tort* (in this case not trespass) and violates no right; but this is the case by definition, *i.e.*, by the thing being identified as “unowned.”⁵⁴

Now, if *ex hypothesi* the world is unowned, one person is swimming in the pond, *and then* someone else tries to interfere, the issue of ownership arises, and the question is who owns it: the first person or the second? I think our judgment ought to follow the judgment we make in everyday cases where this sort of thing happens. If two people both lay claim to a seat in a movie theatre, but one clearly got there first, then the second person has no claim.⁵⁵ Cohen goes on to say that “what needs protection, for projects to be possible, is control over activity itself, not, in the general case, private ownership of physical areas.”⁵⁶ This contradicts what Cohen says with respect to joint-ownership over the world, where he avers that *all* human activity takes place in space and so the right to use the space, *i.e.* ownership, is required. This does not, as yet, show that private ownership is the only possible solution, but since joint-ownership has already been shown to be lacking, few options remain. But while assumed initial joint-ownership will not do for the reasons already canvassed, joint-ownership itself is not problematic. Simultaneous arrivors at some piece of property may negotiate and decide to own the land jointly. There is nothing in the view being advocated here to disallow that. However, we still need to know why some jointly-owned piece of land belongs to group *X* rather than group *Y*. And here the first occupancy principle remains relevant and plausible.

Turning his attention to inference (i), Cohen uses the monk example to show that absolute rights of liberty are *not* required for projects to be protected. The monk example concerns the project of keeping oneself alive where Cohen reasons “to pursue that project, I must eat, and, therefore, I must have a right to eat. But this does not mean that I must have a right to

⁵⁴de Jasay, *Against Politics*, 173. Emphasis original.

⁵⁵The example gets admittedly more difficult when it is changed to a life or death situation, as is the case when someone appropriates the only pond in a desert world of two people. I accept this as a weak point in libertarian theory, but I think it mitigated by the fact that it is unlikely to arise in the real world. I also think moral theory, that is, theory not having to do with the monopoly on force, can give us a judgment on this state of affairs that satisfies the relevant intuition, without having altered the libertarian view of property.

⁵⁶“Once More into the Breach of Self-Ownership: Reply to Narveson and Brenkert,” 61.

private property in food.”⁵⁷ We are then to consider a monastery that endows one of its monks with the right to eat as much communal food as he likes, but he does not thereby have a private property right in the food, and this accomplishes his project of staying alive. To test how strong the monk’s right to eat must be, Cohen alters the example to include a starving beggar who wanders into the refectory, and this is supposed to show that the monk’s right to eat is only conditional, since the beggar too has a right to eat and not giving him some food would *interfere* with his right to eat.⁵⁸

If this example seems persuasive, it is because Cohen has seriously misunderstood what libertarians mean when they say someone has a right to something. The relevant right of the monk in virtue of his ‘staying alive’ project is *not* the right to eat, but the right to procure, own food (or trade, be given food from someone else, inherit, etc.), and eat said food. This right, again, is a *negative* right to act—free from interference. Thus, to say someone has a right to eat might mean one of two things: the negative right to eat, that is, to gather food and eat it, free from interference; or the positive right to eat, which is being guaranteed food so that one may eat it. Once this is sorted out, Cohen’s example of the beggar fails. Cohen queries “if the monk treats the food he is eating as his own private property, and succeeds in repelling the beggar’s advance, does *he* interfere with the *beggar’s* eating project?”⁵⁹ No, because the beggar’s eating project only allows him the right to procure and own food, *not* the right to interfere with others’ possession and consumption of food. Intuitively we want to say that the monk no longer has a right to the food because the beggar is starving. But, if both are starving and the monk finds the food first, then how is that adjudicated? As I have been arguing, the first occupancy principle is the only reasonable solution—at least for establishing ownership rights. It is a separate issue whether the monk *should* give the beggar some food, in the non-enforceable sense of ‘should.’⁶⁰

⁵⁷Ibid.

⁵⁸A potential difficulty looms here, which I will briefly record, but set aside. Cohen, in various places, has argued that property, in addition to expanding, also restricts liberty (in the non-moralized sense) because it requires enforcement. So, taking the current example, the beggar has his liberty restricted when the police (or church authorities) stop him from taking the monk’s food. And, so the argument goes, if libertarians claim that only rightful exercises of liberty are justified (*i.e.* stealing is an illegitimate liberty), this seems to beg the question in favour of property. For Cohen’s discussion see his *Self-Ownership*, 56. For a response see Narveson, “The Right to Liberty is Incompatible with the Right to Equality,” in *Are Liberty and Equality Compatible?* Eds. Jan Narveson and James Sterba (Cambridge, Cambridge University Press, 2010), 170–73.

⁵⁹“Once More into the Breach of Self-Ownership: Reply to Narveson and Brenkert,” 62. Emphasis original.

⁶⁰See footnote 46.

Cohen then goes on to argue that Narveson cannot clearly distinguish interference from prevention, and this is a problem if Narveson is for private property, which prevents, but against interference, which allegedly doesn't. For Cohen this amounts to "protecting only the liberty to pursue existing projects," which "is absurdly narrow: it means focussing just on the projects in which people are at any given time already engaged."⁶¹ Toward sorting out the complexity between interference and prevention, I offer the following response to this question of Cohen: "But why should someone who cares about liberty care only about those activities that are already in train?"⁶² Answer: because liberty only establishes the right to *pursue* existing projects *not* guarantee the realization of the projects themselves. Pursuing a project is just carrying out a set of steps with certain objects. A right to negative liberty ensures that the steps and the objects used in the steps are free from interference. Taking something that someone only intends to use does not interfere with their current use of the object (since they do not have it) and it does not interfere with a step being carried out (since they are not doing anything, only thinking about doing something). If I prevent someone from using an object they intend to use for a project, I do not prevent them from carrying out that project. They have a right not to the object I have taken, but only to the narrow enterprise of *pursuing* their project, which for most purposes, we may assume, is still possible, *only in some other way*. This may sound like it requires a proviso. However, since the right only applies to pursuing projects, not objects, we may say that even if all the world has been appropriated, the late-comers have a limitation on what projects they may pursue (perhaps only undesirable ones), but they can nonetheless pursue them. After all, we are all constantly prevented from pursuing *some* projects. For instance, suppose I'm at the Laundromat and I intend on putting my laundry in *that* machine, but alas somebody gets there before me! I may be frustrated, but I don't have a claim against this person on behalf of my liberty. This is not to say that we ought not to care about future projects, only that future projects cannot be protected without infringing upon the peaceful pursuits of others. The simple answer, then, is that protecting the liberty to future projects is impossible; doors constantly close on potential projects, but happily other doors continue to open.⁶³

⁶¹Ibid., 63.

⁶²Ibid.

⁶³David Schmidtz has argued that rather than leaving late-comers worse-off, as is commonly assumed, initial appropriators actually improve the lot of everyone: "We need to realize that in the race to appropriate, the chance to be a first appropriator is not the prize. The prize is prosperity, and latecomers win big, courtesy of the toil of those who got there first." See his *Elements of Justice* (Cambridge: Cambridge University Press, 2006), 56.

6. Conclusion

Having defended VI, we can now infer VII from Cohen's reconstruction of Nozick's argument:

VII. Unequal quantities of natural resources may become, with full legitimacy, privately owned by a section of the population.⁶⁴

And VII combined with IV, which says people own themselves, yields the anti-egalitarian conclusion that:

VIII. Extensive inequality of condition is unavoidable, or avoidable only on pain of violating people's rights to themselves and to things.⁶⁵

We can now see that the transfer principle can be inferred from the self-ownership thesis itself. If someone has a right to themselves and their things, then they have a right to transfer their things to other people. Similarly, they have a right to use their body in whatever way they like, provided they do not harm others. Therefore, *this* is what allows Wilt Chamberlain, in Nozick's famous example, to collect \$250,000 from his fans in exchange for playing basketball.⁶⁶ The thesis of self-ownership licenses no-proviso acquisition, liberty *against* interference, and finally the right to do what one wants, provided it doesn't harm others, including, in this case, the right to transfer holdings.

Thus concludes the final stage of the argument. In this paper, I first gave a summary of Nozick's Entitlement Theory of Justice. Stage one of the argument concerned self-ownership, where I defended Nozick's argument that rejecting self-ownership is tantamount to slavery. In stage two, I defended the claim that the world is initially unowned. In doing so, I argued that joint-ownership cannot be combined with self-ownership and that the formal self-ownership characteristic of a jointly-owned world is not a feature of capitalism in any plausible real world scenario. Stage three took up initial acquisition. Here I abandoned Nozick's proviso and instead argued for a no-proviso view of acquisition, which required a defence of Narveson against Cohen. Lastly, and what concludes this paper, I drew the anti-egalitarian conclusion and commented on how the present argument bears on Nozick's transfer principle, which features in his famous Chamberlain argument.

⁶⁴*Self-Ownership*, 114.

⁶⁵*Ibid.*, 115.

⁶⁶Chapters 1 and 2 of Cohen's *Self-Ownership* focus on Nozick's Chamberlain argument. Unfortunately, I cannot discuss Cohen's specific criticisms here, but I take the argument just canvassed to be decisive, on the whole, with respect to the Chamberlain argument. See *Anarchy*, 160–64 for the Chamberlain argument.

References

- Barnett, Randy E. "Whither Anarchy? Has Robert Nozick Justified the State?" *The Journal of Libertarian Studies*, Vol. 1, No. 1, (1977): 15–21.
- Cohen, G.A. "Once More into the Breach of Self-Ownership: Reply to Narveson and Brenkert." *The Journal of Ethics*, Vol. 2, No. 1 (1998): 57–96.
- Cohen, G.A. *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge University Press, 1995.
- de Jasay, Anthony. *Against Politics*. London: Routledge, 1997.
- Hoppe, Hans-Hermann, *The Ethics and Economics of Private Property*. Auburn, AL: Ludwig von Mises Institute, 2006.
- Machan, Tibor. "Self-Ownership and the Lockean Proviso." In *The Promise of Liberty*. Lanham, MD: Lexington Press, 2009. 283–88.
- Mack, Eric. "Self-Ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-Ownership Thesis." *Politics, Philosophy & Economics*, 1 (2002): 237–76.
- Narveson, Jan. *The Libertarian Idea*. Philadelphia: Temple University Press, 1988.
- . "Libertarianism vs. Marxism: Reflections on G.A. Cohen's 'Self-Ownership, Freedom, and Equality'." *The Journal of Ethics* 2, no. 1 (1998): 1–26.
- . "Property and Rights." *Social Philosophy and Policy* 27 (1) (2010): 101–34.
- . "Property Rights: Original Acquisitions and Lockean Provisos." In *Respecting Persons in Theory and Practice*. Lanham, MD: Rowman & Littlefield, 2002. 111–29.
- . "The Right to Liberty is Incompatible with the Right to Equality." In *Are Liberty and Equality Compatible?* Edited by Jan Narveson and James Sterba. Cambridge: Cambridge University Press, 2010.
- Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- Otsuka, Michael. *Libertarianism without Inequality*. Oxford: Clarendon Press, 2005.
- Rothbard, Murray. "Robert Nozick and the Immaculate Conception of the State." *Journal of Libertarian Studies*, Vol. 1, No. 1, (1977): 45–57.

Palmer, Tom. "G.A. Cohen on Self-Ownership, Property, and Equality." *Critical Review* 12, No. 3 (Summer 1998): 225–51.

Schmidtz, David. *Elements of Justice*. Cambridge: Cambridge University Press, 2006.