

NATURAL RESOURCES

AND

PRIVATE PROPERTY

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INTRODUCTION

In our part of the world it is quite common to refer to objects in the external world as belonging to someone, as being their property. And property means that the individual (or group of individuals) to whom it belongs possess an exclusive right to determine what they will do with it: how and when it will be used, transferred, or even disposed of. In reality this right is both confirmed and constrained by positive law, but let us transpose ourselves to a state of affairs in which there is no political organization, hence no positive law, a state that philosophers have dubbed 'a state of nature'.¹ Before positive law confirmed such proprietary rights, there also must have been objects that people considered theirs vis-à-vis others in order to ascertain their availability. As Locke put it: '... being given for the use of Men, there must of necessity be a means *to appropriate* them some way or other before they can be of any use, or at all beneficial to any particular Man'.² And Kant observed: 'Die subjektive Bedingung der Möglichkeit des Gebrauchs überhaupt ist der Besitz',³ to which he added that this could only be provisional until the owner had entered into a state of law with others.⁴ Locke did not set this condition, though he advised a compact to protect one's property,⁵ whereas Hobbes thought only a sovereign could resolve the issue.⁶ So one might ask whether private property is possible at all in a state of nature.

My thesis will be that we fully own ourselves as well as the extra-personal objects we have justifiably acquired, and that exclusive rights can protect this private property if and when these rights are widely acknowledged. Particularly, my focus will be on ownership of natural resources in a state of nature. To justify these rights I shall argue for full liberal ownership, albeit under a moral constraint on how they are employed, and concerning extra-personal natural resources on how they are acquired. I shall maintain that private property is neces-

¹ I deliberately say 'a' state of nature, because they can and have been differently conceived of. Hobbes recognized only one such state, but in Locke there are various possibilities, varying from the worst possible to a well-ordered society without legitimate government.

² Locke, *Two Treatises of Government*, 2005, 286-7 (II§26) (original italics).

³ Kant, *Metaphysische Anfangsgründe der Rechtslehre*, 1998, 53 (AA245).

⁴ Kant, *Metaphysische Anfangsgründe der Rechtslehre*, 1998, 63-5 (AA255-7).

⁵ Locke, *Two Treatises of Government*, 2005, 323 (II§85).

⁶ Hobbes, *Leviathan*, 1985, 227-8 (Chapter 17).

sary for an efficacious use of natural resources, above all those that are scarce, and hence rule out speculative ownership. Presuming the moral aim of allowing each and every human being a reasonable chance to subsist in a world that does not naturally warrant this condition, and natural resources being supportive to that aim, we purportedly ought to do whatever enhances the availability of extra-personal resources to those who require their use.

A blend of labour and materials constitutes many tangible objects, and even if we were to assume that we own ourselves, hence the product of our labour so that nothing stands in the way of freely transferring that product, this cannot be so easily asserted about its substantial components.⁷ All materials originate in natural resources to which no one holds title of ownership. That, however, is just a conception of it; one might as well say that all of humanity, or the inhabitants of the area where it was found collectively own it. Or it could be asserted that the individual(s) who discovered it, made it accessible, mixed their labour with it, in short enhanced, or even created its value, are its rightful owners. So there seem to be various options, out of which a choice must be made in order to establish who may be considered the rightful owner of any extra-personal object. And thus far, we have only assumed self-ownership, our body and its powers constituting a natural resource in its own right.

Ownership implies possession of a bundle of rights, rather than a single exclusive right, because a right of use can be distinguished from a right of transfer, which could be further differentiated in a right of alienation and a right of bequest. And many more rights are conceivable. As Feser has put it:

[A]ny 'property right' to something is really a bundle of rights: the right to use something (perhaps in certain ways but not in others, perhaps for a certain period of time), the right to sell or lease it, and so forth. *Full* ownership of something entails having all of these rights; having only some of these rights entails having (one of a number of degrees of) *partial* ownership.⁸

So even in a state of nature ownership can be conceived as less than all-inclusive – full liberal ownership – provided that ownership can be justified at all. According to the full liberal ownership view 'ownership is a very specific bundle of rights, which gives fairly complete control over the use of, transfer of, and income generated by the object owned (so that state

⁷ A restriction to tangible objects as opposed to e.g. a professorial chair is necessary in order to be able to focus upon natural resources.

⁸ Feser, 'There is no Such Thing as an Unjust Initial Acquisition', 2005, 69.

taxation and regulation are illegitimate)'.⁹ Hence, it is private property that we are referring to, not collective ownership by the members of a society, as socialists would have it.¹⁰

No doubt, there is something to say for collective goods, if only there were a proper justification for some form of political organization. I shall take it that only full, deliberate, and informed consent constitutes a proper justification, implying that no extant government is legitimate.¹¹ This is effectively Locke's view, which I shall employ to remain in a state of nature without any government, hence without authority and positive law.¹² My main reason for doing so is that there seems to be no satisfactory way to reconcile the individual autonomy I favour with the authority of the state, other than by unanimous direct democracy, which is hampered by practical obstacles.¹³ Furthermore, I find it indigestible that moral principles should govern one group of people as disjoint from another, other than by the former's explicit endorsement and the latter's unequivocal rejection of such principles. Sure, Rawls thinks we can do without such explicitness, conclude our fundamental agreements behind a veil of ignorance, and amend them by reflective equilibrium, but he is not overly optimistic. Why should our representatives behind the veil not think of themselves as potentially successful entrepreneurs, rather than as probable losers in the competition for natural resources? It is a game-theoretic choice, but if my decision has three different outcomes under three different circumstances, I might as well opt for a strategy that does not maximize the minimum possible outcome.¹⁴ Yet he comes close to a possible solution to bridging the gap between personal autonomy and state or statelike authority by means of a virtual contract that could be endorsed by (almost) everyone.

Coming close, however, is insufficient and therefore I shall retain the position of philosophical anarchism, the stance that

⁹ Peter Vallentyne in his review of Christman, *The Myth of Property*, 1994, in *Mind*, New Series, Vol. 104, No. 415, 1995, 622-4.

¹⁰ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 104.

¹¹ For a more extensive discussion I refer to Simmons, *On the Edge of Anarchy*, 1995. The consent mentioned, however, is restricted to the formation of society itself, not to the political decisions taken once it has been formed, for then majority rule reigns; see Locke, *Two Treatises of Government*, 2005, 332 (II§98).

¹² In Locke's view individuals can live under an illegitimate government and thereby remain in the state of nature.

¹³ Wolff, *In Defense of Anarchism*, 1976, 18-9, 22-7.

¹⁴ Rawls, *A Theory of Justice*, 1999, 132-4.

political organization – if necessary at all – is justifiable only when the individuals involved have consented to its instatement. It is the most extreme form of individualism, which I propose to stand up for as far as I can. Let me see how far I can get, assuming a primarily Lockean perspective, but starting out with Hobbes who will return regularly.

In Hobbes's conception of the state of nature ownership is inconceivable because everyone is entitled to everything that is available; self-preservation has pride of place.¹⁵ But Locke had a different view: he held that God had created both the external world, and us, so that He owned His creation. In His abstention we can be said to own ourselves, while everything else is there for us to freely use. And though he contended that it had been given to all of mankind, each of us may appropriate what is necessary for their preservation.¹⁶ On the continent, Kant appeared to have similar views, though he left God out of the picture and denied that we could own ourselves.¹⁷ Moreover, he argued that we are obliged to leave the state of nature to establish our property.¹⁸ Like Kant, J.S. Mill did affirm sovereignty over ourselves,¹⁹ which is not necessarily equivalent to self-ownership. He was largely silent on property in external objects. In our day and age we find Nozick as the first to pick up on Lockean rights of self-ownership and appropriation of external natural resources.²⁰ He defended the claim on self-ownership as much as the one on appropriation of external resources, albeit, similar to Locke, not unconditionally. The moral issue is, of course, how not to worsen the situation of others by appropriating natural resources that may be of use to them. Moreover, the question may be put forth whether external natural resources are originally up for grabs, as he supposed. Also, not everyone appears to find it self-evident that we fully own ourselves.

On the one side we find libertarians similar to Nozick, who hold on to self-ownership and a certain degree of freedom in the appropriation of external natural resources. Left-wing libertarians like Steiner argue for our being entitled to an equal

¹⁵ Hobbes, *Leviathan*, 1985, 188 (Chapter 13), 189 (Chapter 14), though the law of nature prescribes equality, proportionality, or lot, depending upon the possibility of division and common use (212-3, Chapter 15); 189 (Chapter 14).

¹⁶ Locke, *Two Treatises of Government*, 2005, 270-1 (II§6), 285-8 (II§25-7).

¹⁷ Kant, *Metaphysische Anfangsgründe der Rechtslehre*, 1998, 70 (AA270). But he did recognize sovereignty (*sui iuris*).

¹⁸ Kant, *Metaphysische Anfangsgründe der Rechtslehre*, 1998, 77-8 (AA267).

¹⁹ Mill, 'On Liberty', 2002, 31.

²⁰ Nozick, *Anarchy, State, and Utopia*, 2003.

share in the world's riches, or at least the means of production, albeit not those in ourselves.²¹ But so-called 'anarcho-libertarians' like Childs and Rothbard will have nothing to do with such egalitarianism and defend wholly free appropriation in addition to full self-ownership.²² And so do libertarians like Feser, Mack, Sanders, and Schmidtz, though Mack advocates a proviso on how we use our property vis-à-vis others.²³ Yet other libertarians like Gauthier and Narveson steer a middle course in that they recognize that other people's situation may – normatively – not be worsened by an appropriation if and only if it is our intention to cooperate with them.²⁴ Self-ownership is again taken for granted, but Ryan argues that its meaning may vary with the intention of the speaker and that some consider property as trivial.²⁵

Obviously, socialists like Cohen do not agree with either of these contentions, although he finds it impossible to refute the thesis of self-ownership and argues for exogenous constraint in the extent of its exercise.²⁶ With regard to external natural resources he pleads for collective possession of the means of production, and with Raz he argues for the promotion of personal autonomy by providing collective goods.²⁷ The liberal Rawls judges the initial distribution of our powers and social circumstances morally arbitrary.²⁸ It doesn't mean that he wants these to be redistributed, if that were possible at all, but rather to render them advantageous to the least-advantaged in society. Arthur seeks to find a just regime of property rights and ends up with the Rawlsian scheme.²⁹ But in a state of nature without legitimate government there is no such thing as a scheme to render any particular form of property just or unjust.

²¹ Steiner, 'The Natural Right to the Means of Production', 1977, 'The Structure of Compossible Rights', 1977, and 'Justice and Entitlement', 1983.

²² Childs, 'The Invisible Hand Strikes Back', 1977, and Rothbard, 'Robert Nozick and the Immaculate Conception of the State', 1977.

²³ Feser, 'There is no Such Thing as an Unjust Initial Acquisition', 2005; Mack, 'Self-ownership and the Right of Property', 1990; Sanders, 'Justice and the Initial Acquisition of Property', 1987; Schmidtz, 'When Is Original Appropriation Required?', 1990; and Mack, 'The Self-Ownership Proviso', 1995.

²⁴ Gauthier, *Morals by Agreement*, 2006; Narveson, *The Libertarian Idea*, 2001.

²⁵ Ryan, 'Self-Ownership, Autonomy, and Property Rights', 1994.

²⁶ Cohen, *Self-ownership, Freedom, and Equality*, 2001.

²⁷ Raz, *The Morality of Freedom*, 1988.

²⁸ Rawls, *A Theory of Justice*, 1999, and *Political Liberalism*, 2005.

²⁹ Arthur, 'Resource Acquisition and Harm', 1987.

Having provided a concise review of the state of the issue in the extant literature and the task before me let me sketch the line of argument in this paper, which will consist of three chapters, subdivided in sections, followed by conclusions and a suggestion for further research.

In chapter I, I shall consider the thesis of self-ownership in order to establish that at least our own body and the powers it harbours are our own to control. It is hardly imaginable that we should be morally obliged to share it with others, if only from a practical point of view.³⁰ Quite another issue is whether the proceeds of these powers ought to be rendered beneficial to others. For the most part we do so by providing products and services to whoever is willing to procure them, but there will probably always be individuals who are genuinely incapable of taking part in processes of free exchange between consenting adults. That is the group to be targeted for support, provided that all human life is to be preserved – a contestable thesis in its own right –, and not those who were only less well-endowed than others. I do realize that our powers are in part due to our natural endowments and favourable social circumstances but, if we act upon these, that translates into an ability to be of greater service to others with whom we inhabit the planet. Therefore, no further obligations ensue from them and consequently we do our own ourselves.

In chapter II, I shall discuss world-ownership, the basic question of which is who, if anyone, owned the world's resources before human beings appropriated them. It will soon appear that the answer is unadorned: nobody did, because neither equal shares in those unowned resources nor collective ownership by mankind entire are sustainable theses from a practical point of view. So the remaining issue is how to put initially unowned resources to the highest yield for humanity, either by active distribution or by allowing the most productive among us to exploit them. My thesis will be the latter, which is not to say that appropriation is without constraints. Moreover, in the state of nature without government there is no authority to enforce the distribution. First of all it obviously requires an investment to make the resource available. Further, it ought to be made effectively available in its worked-up form to enable its use by those who will. Then no one will have reason to complain. In fact, nobody ought to be

³⁰ Though it is of course practically possible to transfer body parts from one person to another or endorse serfdom and slavery, I shall take these to be immoral actions unless voluntarily engaged into.

worse off by the existence of others, except by them taking up space and requiring other resources.

In chapter III, I shall make an attempt to demonstrate how cooperation between individuals may commence by mutually recognizing each other's property. Here is where I hope to make an original contribution to the debate, if not in the foregoing. Recent work by Gauthier will be my guide, though I shall decline the seemingly ever-present assumption of the pre-existence of societies. Rather, I intend to set out with individuals in the Hobbesian state of nature and develop a network of people who judge it to be in their interest to maximize utility over a lifetime instead of by occasional hit-and-run tactics. This requires that I begin by explicating a view of what motivates people to action, and why they might wish to escape the raw state of nature as depicted by Hobbes. Locke's is more attractive because it recognizes property rights and can be realized without invoking authorities to enforce the necessary moral constraints. Also, I shall discuss the possible effects of society formation and of outsiders, i.e., those who do not recognize rightfully acquired property.

Finally, I hope to be able to draw some conclusions out of the material presented, the major ones being: 1) that we ought to be regarded as authoritative within our own private moral space, consisting of our body and powers, the external objects in our possession, and that we therefore own these factors of production, as well as what we create by deploying them; 2) that extra-personal natural resources – normatively – may be exploited by whoever is most capable of doing so, whereas cooperation requires we do not prejudicially affect each other's situation; 3) that mutual recognition of individuals having (conditional) property rights can be achieved by one-to-one agreements, further extending into a network of co-operators who are disposed to abide by their promise to preserve these moral constraints.

I. SELF-OWNERSHIP

This chapter will be dedicated to the thesis that we fully own ourselves, both in the sense of being in control of our body and its powers, as well as of being entitled to the proceeds thereof. That thesis seems in line with Locke's position, which I shall concisely expound, but with modern day libertarians I shall go further than he did. My plea for the thesis rests on the contention that by making apposite use of their body and its powers the better endowed among us will be of greater service to the people they share the planet with than by constraining them. Nevertheless, it has been argued that these people do not deserve to be 'more equal than others' to use Orwell's famous phrase, while every human being is entitled to either autonomy or at least a share in the yield of their 'luckier' fellows. Contra those contentions my reply will be that we are merely equal in our being human, that we are autonomous in how we use our body and its powers, and that everyone is free to procure what has been produced by others and is offered on the market where its price is determined as if by invisible hand.

First I shall elucidate the stance for self-ownership, then discuss which objections it could give rise to, mostly in terms of a wider conception of autonomy being affected than I take to be defensible, but focusing on harm to others generally, and finally I shall look at the kinds of need that arguably call for constraining self-ownership or levying taxes to equalize the natural distribution of powers and the consequences of one's social position.

1. The stance

In this section I shall clarify what is meant by self-ownership, i.e., full liberal ownership of our body and its powers, to be used to achieve our purposes, albeit not aggressively against others. But it will appear that this stance is not entirely self-evident.

In Hobbes's conception of the state of nature ownership was inconceivable and therefore people cannot be said to own themselves. Without a common power, he wrote, '[i]t is consequent, that there be no Propriety, no Dominion, no *Mine* and *Thine* distinct; but onely that to be every mans that he can get; and for so long, as he can keep it'.¹ So grab what you can take and hold on to it for as long as you can; whatever is yours today may well be someone else's tomorrow.

¹ Hobbes, *Leviathan*, 1985, 188 (Chap.13).

Moreover, '[i]t followeth, that in such a condition, every man has a Right to every thing; even to one anothers body',² whereas 'has a right' signifies no more than 'to be at "liberty to do, or to forbear"'.³ The only way to escape that unruly condition is to instate a sovereign with absolute power to ordain and enforce what he deems necessary to keep the peace.⁴ Or so Hobbes thought, but in chapter III I shall try and follow a different route.

By contrast, Locke seems to have asserted that we fully own ourselves and are subject to no earthly authority, for 'every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his'.⁵ Moreover, he said, the 'State all Men are naturally in [is] a *State of perfect Freedom* to order their Actions, and dispose of their possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man'.⁶ So instead of having mere liberties, Locke attributed natural rights to human beings. They are 'natural' because they precede any convention or positive law, and they are 'rights' since they may be claimed against all other human beings.⁷

Instead of everybody's life nigh inevitably being '...solitary, poore, nasty, brutish, and short',⁸ as Hobbes predicted it to be without a common power, Locke held that 'no one ought to harm another in his Life, Health, Liberty, or Possessions',⁹ a moral principle applicable in the state of nature. We could object, though, that Locke conditioned it by saying that it applied to '[m]en living together according to reason',¹⁰ which is precisely what Hobbes expected them not to do because of their passions.¹¹ But Locke, too, recognized 'Inconveniencies' in the state of nature, for which he judged 'Civil Government

² Hobbes, *Leviathan*, 1985, 190 (Chap.14).

³ Hobbes, *Leviathan*, 1985, 189 (Chap.14).

⁴ Hobbes, *Leviathan*, 1985, 227-8 (Chapter 17).

⁵ Locke, *Two Treatises of Government*, 2005, 287 (II§27) (original italics).

⁶ Locke, *Two Treatises of Government*, 2005, 269 (II§4) (original italics).

⁷ Steiner, 'The Natural Right to the Means of Production', 1977, 41, defines natural rights as non-contractual and non-conventional; they are universal and inalienable, accruing to human beings or, more generally, moral agents. See also Gaus and Lomasky, 'Are Property Rights Problematic?', 1990, 486.

⁸ Hobbes, *Leviathan*, 1985, 186 (Chapter 13).

⁹ Locke, *Two Treatises of Government*, 2005, 271 (II§6).

¹⁰ Locke, *Two Treatises of Government*, 2005, 280 (II§19) (original italics).

¹¹ Hobbes, *Leviathan*, 1985, 139-40 (Chapter 8), 160-1 (Chapter 11).

[to be] the proper Remedy',¹² rather than a Hobbesian sovereign. He relied on a consensual decision to form a commonwealth.¹³ Without such consent individuals will remain in a state of nature. But once a commonwealth has been formed, it is to be governed by majority rule, or so he reasoned with arguments.¹⁴

Only some natural rights are transferable to a commonwealth, said Locke, and certainly not those that individuals do not possess themselves: 'no Man can, by agreement, pass over to another that which he hath not in himself, a power over his own Life'.¹⁵ Therefore, no legislative power can 'have a right to destroy, enslave, or designedly to impoverish the Subjects'.¹⁶ Nozick, following up on Locke's reasoning, and being far less theologically inspired, had no qualms about slavery and suicide,¹⁷ and Narveson asserts the libertarian thesis that 'a right to our persons as our property is the sole fundamental right there is'.¹⁸ To the latter statement may be added that 'people, any and all of them, are the fundamental owners of their *own* bodies and of no one else's'.¹⁹ Arneson similarly asserts:

Construed in a libertarian spirit, self-ownership asserts that each person fully owns herself and may do with herself whatever she likes so long as she does not thereby harm others. This entitlement includes the right of each person to destroy herself or waste her own life. As such, this same entitlement strictly forbids restriction of a person's freedom for her own good.²⁰

Modern day libertarians thus go even further in what may be properly called 'the thesis of self-ownership', an extension which I wholeheartedly support.

But although Locke certainly did recognize property, both in ourselves and in external objects, the adverb 'fully' must be viewed in context. Rather than full liberal ownership rights, Locke probably meant a kind of leasehold, 'an adequate interpretation [of which] begins with the general principle that human beings have only those rights in themselves [...] that are required to enable them to achieve the purposes

¹² Locke, *Two Treatises of Government*, 2005, 276 (II§13).

¹³ Locke, *Two Treatises of Government*, 2005, 282 (II§21), 350 (II§124).

¹⁴ Locke, *Two Treatises of Government*, 2005, 331 (II§95).

¹⁵ Locke, *Two Treatises of Government*, 2005, 285 (II§24) (original italics).

¹⁶ Locke, *Two Treatises of Government*, 2005, 357 (II§135).

¹⁷ Nozick, *Anarchy, State, and Utopia*, 2003, 58.

¹⁸ Narveson, *The Libertarian Idea*, 2001, 66 (italics omitted).

¹⁹ Narveson, *The Libertarian Idea*, 2001, 68 (original italics).

²⁰ Arneson, 'The Shape of Lockean Rights', 2005, 277.

for which God established the world and created them'.²¹ This suggests that 'any talk of self-ownership is parasitic on whatever conception of proprietorship the speaker has in mind'.²² So we have to be careful what we mean by talking of self-ownership; instead of doing what we please, it might mean that we have a duty to please others, whether divine or human.²³ However, in my perspective there are no obligations other than those issuing from property rights. That for some people property is a mere means to an end, hence subject to redistribution, our personal powers not excluded,²⁴ is a view they are entitled to, but it is not mine. So my conception of proprietorship is that we fully own ourselves, including the proceeds thereof. Only individuals decide what to do with their bodies and the powers these harbour, and to what end.

Accordingly, libertarians like Mack and Narveson define self-ownership in terms of virtually unconstrained authority and control. The former asserts that 'to be a self-owner is to possess moral authority over one's personal constitution – i.e., over those features, components, or aspects of one's personal existence the rational goal of which is the advancement of one's life-defining purposes'.²⁵ The latter says that 'we have entities over which the person is to have control, and which others must gain permission to act upon or with if their use of them is to be morally permissible'.²⁶ Waldron, hardly a libertarian, verbalizes Nozick's conception of self-ownership: 'To say that I own myself is to say that nobody but me has the right to dispose of me or to direct my actions. *I have rights to do these things [...] and those rights are exclusive of anyone else's privilege in this regard, for they are correlative to others' duties to refrain from interfering with what, in this sense, I own*'.²⁷ And although Nozick did not explicitly define self-ownership in this way, it surely is what he meant when he rhetorically depicted people selling shares in themselves:

They partition the rights that until that time each person alone possessed over himself into a long list of discrete rights. These include the right to decide which occupation he would have a try at making a living in, the right to determine what type of clothing he would wear, he right to determine whom

²¹ Ryan, 'Self-Ownership, Autonomy, and Property Rights', 1994, 243.

²² Ryan, 'Self-Ownership, Autonomy, and Property Rights', 1994, 254.

²³ Ryan, 'Self-Ownership, Autonomy, and Property Rights', 1994, 257.

²⁴ Ryan, 'Self-Ownership, Autonomy, and Property Rights', 1994, 255-6.

²⁵ Mack, 'Self-Ownership and the Right of Property', 1990, 522.

²⁶ Narveson, *The Libertarian Idea*, 2001, 67.

²⁷ Waldron, *The Right to Private Property*, 2002, 398 (original italics).

of those willing to marry him he would marry, the right to determine where he would live, the right to determine whether he would smoke marijuana, the right to decide which books he would read of all those others [who] were willing to write and publish, and so on. Some of this vast array of rights these people continue to hold for themselves, as before. The others they place on the market; they sell separate shares of ownership in these particular rights over themselves.²⁸

Still, this way of putting it leaves it open that individuals do not have every possible right to dispose over themselves. It depends on the rights they had before they sold them off. But I shall maintain that we have every conceivable right over our body and its powers, save to use them aggressively against others.

The socialist Cohen articulated the thesis of self-ownership as saying:

that each person is the morally rightful owner of his 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.²⁹

He does not define what he understands to be a person, but I shall take that to denote a human being, capable of rationally deciding on their purposes in life and the methods to achieve these rather than to uncritically follow their natural impulses. More important is what he means by 'powers' but yet again he fails to provide a definition, though he apparently refers to our capabilities to perform actions that are relevant to what we desire to achieve. That is consistent with Hobbes, defining '[t]he Power of a Man, (to take it Universally,) [as] his present means, to obtain some future apparent good'.³⁰ Locke, however, uses the word 'power' rather as 'a right': the power 'to do whatsoever he thinks fit for the preservation of himself and others within the permission of the *Law of Nature*'.³¹ Narveson suggests the word 'powers' in relation to positive liberty: 'you have the positive liberty to do x if you have the power to do x'.³² And Mack, too, uses 'powers' when speaking of a person's 'capacities to affect the extra-personal environment in accord with her purposes'.³³ And that seems to me a suitable definition.

²⁸ Nozick, *Anarchy, State, and Utopia*, 2003, 282.

²⁹ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 67 (original italics).

³⁰ Hobbes, *Leviathan*, 1985, 150 (Chapter 10) (original italics).

³¹ Locke, *Two Treatises of Government*, 2005, 352 (II§128) (original italics).

³² Narveson, *The Libertarian Idea*, 2001, 31.

³³ Mack, 'The Self-Ownership Proviso', 1995, 186.

The self in 'self-ownership', explains Cohen, is not a separate entity but the whole person, comprising both the body and its powers to act upon a rationally chosen purpose. It 'has a purely reflexive significance. It signifies that what owns and what is owned are one and the same, namely, the whole person'.³⁴ The condition not to deploy our powers aggressively against others is fully in accordance with Nozick's claim – allegedly issuing from Kant's categorical imperative that persons ought to be treated as ends and not merely as means – that '[i]ndividuals are inviolable',³⁵ and clearly also with Locke's 'no harm' principle, as mentioned above.

So there we are: to libertarians and at least one socialist the concept of self-ownership refers to the whole person, comprising both the body and its powers, which we may use as we please to achieve our purposes, but on one condition: no aggression against others. The moral duty not to deploy one's powers aggressively against others necessarily follows from our having property rights. But is it sufficient to prevent harm to others? That question I shall consider in the next section, and in chapter III I shall return to the subject of our having natural rights.

2. Harm

Although it is certainly possible to harm others by not making available to them what they might require, I shall distinguish what they desire to possess from what they need, as well as an active sense of harming from a passive one. It is up to the individuals themselves to acquire what they desire, with or without the voluntary assistance of others, but a moral line ought to be drawn for those who are genuinely incapable of making a living for themselves. I'm not even going to try and establish what exactly that means, since there probably are a variety of such lines below which we cannot leave them to their (too) meagre devices. Sometimes an individual judges where to draw the line, sometimes a group of people, though never under duress. Active harming cannot be justified; passive harming is quite another matter and often boils down to drawing the line just mentioned. Or so I shall argue below, and in the next section with regard to need.

According to Raz, J.S. Mill was the first to have articulated a harm principle, asserting 'that the only purpose for which

³⁴ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 69.

³⁵ Nozick, *Anarchy, State, and Utopia*, 2003, 31.

the law may use its coercive power is to prevent harm'.³⁶ The latter seems to have endorsed the thesis of self-ownership, as he asserted: 'Over himself, over his own body and mind, the individual is sovereign'.³⁷ He wrote that in his essay on 'Civil, or Social Liberty: the nature and limits of the power which can be legitimately exercised by society over the individual'.³⁸ Actually, Mill mentioned on the object of his essay that he intended to assert 'one very simple principle', namely that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.³⁹

In a comment on Mill's essay, Ten writes: 'We know from Mill's other remarks that conduct does not harm others simply because they dislike or abhor it and are thereby distressed by it',⁴⁰ whereas Mill also ruled out interference from others 'so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong'.⁴¹

As I argued elsewhere concerning the issue what exactly in others we may not harm, the general consensus seems to be: their interests. And indeed Mill wrote:

As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general will or will not be promoted by interfering with it, becomes open to discussion. But there is no room for entertaining any such questions when a person's conduct affects the interests of no person but himself, or needs not affect them unless they like (all persons concerned being of full age, and the ordinary amount of understanding). In all such cases there should be perfect freedom, legal and social, to do the action and stand the consequences.⁴²

But such a moral obligation not to harm others may be given a narrow interpretation – invading someone's private moral space – and a wider one.

A person's rights over herself include rights over her talents and energies. Talents and energies are at least largely "world-interactive powers", i.e., capacities to affect her extra-personal environment in accord with her purposes. But such world-interactive powers are essentially relational. The

³⁶ Raz, *The Morality of Freedom*, 1988, 400.

³⁷ Mill, 'On Liberty', 2002, 31.

³⁸ Mill, 'On Liberty', 2002, 23.

³⁹ Mill, 'On Liberty', 2002, 30.

⁴⁰ Ten, 'Mill's Defence of Liberty', 2002, 215.

⁴¹ Mill, 'On Liberty', 2002, 33.

⁴² Mill, 'On Liberty', 2002, 90.

presence of an extra-personal environment open to being affected by those powers is an essential element of their existence. For this reason, an agent's rightfully held world-interactive powers can be negated by non-invasive means as well as by invasive ones.⁴³

Indeed, we can harm others by denying them access to those objects in the external world that they need to exercise their world-interactive powers upon. However, this conception of self-ownership and not harming others seems to come close to assigning persons positive rights to those objects and this is not what Mack has in mind.

Borrowing an example from Cohen, Mack refutes the claim that all non-access to external objects renders self-ownership useless, much like the possession of a corkscrew is to someone who cannot avail of bottles.⁴⁴ He does affirm that self-ownership can be rendered nugatory, but he does not imply that the external object ought to be possessed. In Feser's view, Mack could have strengthened the argument, whereas Cohen's analogy is unjustified. Self-owned powers may atrophy when not used whereas a corkscrew remains indefinitely capable of uncorking bottles. Also, our endowment with powers is not the result of a choice; we just have them, whereas a choice to procure a corkscrew without any possibility to use it is simply a waste of resources.⁴⁵ However, I am not sure whether the argument is really strengthened here, because powers that atrophy by lack of use can also be viewed as a waste of resources. On the other hand, why would it obligate others not to let my powers go waste? Maybe I should go out and look for something to employ my powers. But then again, I may choose not to, as we must with part of our powers anyway because we simply do not have enough time to employ them all to the full.⁴⁶

⁴³ Mack, 'The Self-Ownership Proviso', 1995, 186.

⁴⁴ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 98; Mack, 'The Self-Ownership Proviso', 1995, 201-2.

⁴⁵ Feser, 'There is no Such Thing as an Unjust Initial Acquisition', 2005, 75-6.

⁴⁶ Gauthier, *Morals by Agreement*, 2006, 334f. Responding to Marx's Utopia, he asserts: 'It should be evident that [every form of life being equally and fully accessible to everyone] is quite impossible. Even if we suppose material scarcity entirely overcome, there would remain scarcity in the forms of human fulfilment. No human being is capable of realizing in herself, all of the possible modes of human activity. She cannot be a concert pianist in the morning, a nuclear physicist in the afternoon, a neuro-surgeon in the evening, and a novelist after dinner, because the talents and efforts needed for each of these activities make up the core of a whole life, leaving no room for others' (334); 'Scarcity is the humanly necessary evil' (335).

We seem to run into a difference between 'denying access to' and 'providing with'. Rather than actively taking measures to provide others with what they (might) need, Mack argues for my not making others worse off than they would have been, had I not existed or shared this particular episode with them, other things being equal.⁴⁷ And that rules out any unsolicited use of my powers by others, for had I not existed, my powers would not have been there either. At the same time, my use of my powers should not make them worse off, to which Gauthier adds: 'except where this is necessary to avoid worsening one's own position'.⁴⁸ In the latter's reasoning we have acquired our personal powers without worsening anyone's situation (unless we consider pregnancy and giving birth as worsening the situation of the mother) so that the proviso is satisfied. Not using those powers will worsen my own situation while using them may better it. Others using my powers will better their situation but worsen mine, which is prohibited by the proviso. My using another's powers may better my situation but will certainly worsen theirs; a clear breach of the proviso.⁴⁹ Gauthier argues that Locke's proviso (to leave enough and as good for others when taking possession of a natural resource) cannot have been directed at our powers since that 'would simply fail to define persons for the purposes of bargaining – or the market'.⁵⁰ Therefore, we are all exclusively entitled to our powers, at least *vis-à-vis* the ones with whom we wish to cooperate or trade.

By contrast, Raz's interpretation of harm is that '[r]oughly speaking, one harms another when one's action makes the other person worse off than he was, or is entitled to be, in a way which affects his future well-being'.⁵¹ And since he advocates personal autonomy, he further asserts: 'It is a mistake to think that the harm principle recognizes only the duty of governments to prevent loss of autonomy. Sometimes failing to improve the situation of another is harming him'.⁵² Ignoring the intricacies of 'being entitled to be', what precisely amounts to well-being, and the role of governments, it seems clear that Raz takes Mill's intentions, and certainly those of most libertarians, a sizable step further by urging us – sometimes – to actively promote another's autonomy,

⁴⁷ Mack, 'The Self-Ownership Proviso', 1995, 193.

⁴⁸ Gauthier, *Morals by Agreement*, 2006, 203.

⁴⁹ Gauthier, *Morals by Agreement*, 2006, 209-10.

⁵⁰ Gauthier, *Morals by Agreement*, 2006, 202-3.

⁵¹ Raz, *The Morality of Freedom*, 1988, 414.

⁵² Raz, *The Morality of Freedom*, 1988, 415-6.

rather than merely protecting them from unwarranted intervention and allowing them access to the extra-personal world. It is an option, all right, but it raises new questions, just like the issue of freedom as autonomy.

The notion of freedom as autonomy directly appeals to the concept of self-ownership. Mill wrote: 'The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it'.⁵³ And approvingly quoting Feinberg, Gray writes: 'I am autonomous if I rule me, and no one else rules I', because it brings out the dual aspect of autonomous agency: 'an autonomous agent acts freely and has freedom of will'.⁵⁴ For both Hobbes and Locke, by contrast, autonomy had little meaning. In the former's philosophy 'persons [...] never have more freedom of action than a stream coursing unimpeded down its bed', and 'Locke has no positive interest in the human will' other than to be directed by 'reason, by the "candle of the Lord", and by the laws of nature'.⁵⁵ But Raz asserts: 'The ruling idea behind the ideal of personal autonomy is that people should make their own lives. The autonomous person is a (part) author of his own life'.⁵⁶ He implies more than self-ownership, but that assertion contravenes our right to non-interference.

In Nozick's perception an individual is surrounded by some sort of hyperplane that 'circumscribes an area in moral space around [that] individual'.⁵⁷ These boundaries are never to be crossed by others without the individual's permission. They act as side-constraints for individual action that may impinge on another's boundaries. Within these boundaries the individual is autonomous in the narrowest meaning of the word, for they may lack either any developed powers or the objects upon which to exert these powers. (One might even query the inviolability of individuals under all conceivable circumstances.⁵⁸ For example – conceiving of those boundaries as moral rights –, one could assert that 'any moral right, however sacred, gives way if the consequences of upholding it in

⁵³ Mill, 'On Liberty', 2002, 33.

⁵⁴ Gray, 'Mill's Conception of Happiness', 2002, 197.

⁵⁵ Ryan, 'Self-Ownership, Autonomy, and Property Rights', 1994, 249.

⁵⁶ Raz, *The Morality of Freedom*, 1988, 369.

⁵⁷ Nozick, *Anarchy, State, and Utopia*, 2003, 54.

⁵⁸ Narveson, *The Libertarian Idea*, 2001, 54-5.

a particular case are sufficiently bad'.⁵⁹ But I shall not elaborate on that query here.)

In an exceptionally wide conception of autonomy Cohen is right in asserting that 'the primary commitment of [Nozick's] philosophy is not to liberty but to the thesis of self-ownership',⁶⁰ if liberty is to be conceived as autonomy. The word 'autonomy' is not included in the index of Nozick's book, and neither is 'self-ownership', but he does seem to take the latter as the abilities to lead one's own life, without being aggressed to, paternalistically or otherwise.⁶¹ And while self-ownership is a necessary condition, it is clearly insufficient for a wider conception of autonomy.⁶² The emphasis in Nozick's philosophy is on negative liberty, characterized by 'the absence of factors that would prevent you from doing x'.⁶³ But that does not suffice for rational self-direction, which is arguably what autonomy amounts to.⁶⁴ Similar to Raz, Cohen insists that '[h]ow much freedom I have depends on the number and nature of my options [which] in turn depends *both* on the rules of the game *and* on the assets of the players'.⁶⁵ But Raz adds that 'some options one is better off not having', and demands 'an adequate range of options' without specifying what is adequate, other than saying that they be valuable.⁶⁶ Nevertheless, someone ought to provide these options and determine which are valuable.

Relevant for our discussion is that according to Cohen the rules ought not to be the sole determinant of the outcome of the game (of free exchange between consenting adults), i.e., a distribution of available resources (or assets).⁶⁷ So even if the initial distribution was just by whatever moral standard and the process (the game) was equally acceptable, the outcome may still be criticized as being not according to that moral standard. And that would be true because participants sometimes have a myopic view of the consequences of their

⁵⁹ Arneson, 'The Shape of Lockean Rights', 2005, 279. This is a point more extensively argued for by Jarvis Thomson, 'Some Ruminations on Rights', 1983, 130-47.

⁶⁰ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 67.

⁶¹ Nozick, *Anarchy, State, and Utopia*, 2003, 34

⁶² Cohen, *Self-ownership, Freedom, and Equality*, 2001, 237.

⁶³ Narveson, *The Libertarian Idea*, 2001, 22-3.

⁶⁴ Gray, 'Mill's Conception of Happiness', 2002, 194-5.

⁶⁵ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 54 (original italics).

⁶⁶ Raz, *The Morality of Freedom*, 1988, 410-2.

⁶⁷ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 54.

transactions.⁶⁸ But isn't that demanding too much of, e.g., the spectators of a sports game who merely want to watch the game without asking themselves whether any of the players receives an excessive compensation as a result of it?

Take for instance the case of sportsman Wilt Chamberlain, put forward by Nozick, and commented upon by Cohen. To begin with, this is not a fair representation of the real world. Idols like Chamberlain are only partly paid out of the access fees, so it is not normally the case that a million of his fans pay an additional 25 cents to watch him play.⁶⁹ In reality there is a market for watching games in which the club offers tickets at varying prices and supporters accept or decline the offer. To selected players the club offers a place in the team against a compensation, which the parties negotiate about and perhaps come to an agreement. So the club has an inflow of funds from ticket sales and an outflow of funds to compensate the players. But it has more costs and more income; the premises must be maintained and most of its additional income is obtained from advertising, radio and television broadcasts, and from working up pupils who can later be transferred to other clubs or made to play for lower wages. In such cases supporters can hardly be asked to consider the upshot of their paying an access fee to watch the game. All they want is watch the game, which very indirectly leads to some players receiving inordinate wages.

To be sure, Cohen does not advocate some redistribution of self-owned powers; he even holds that the thesis of self-ownership is irrefutable.⁷⁰ So his criticism is more directed at the distribution of extra-personal resources, which I intend to reflect upon later. Nevertheless, 'it is, in [his] opinion, a considerable objection to the thesis of self-ownership that no one should fare worse than others do because of bad brute luck', for no luck is bruter than that of how one is born, raised and circumstanced'.⁷¹ On this score he seems to agree with Rawls who refers to 'the contingencies of nature and social circumstance'.⁷² Like Rawls, Cohen contends that justice requires us to act on those facts, but where Rawls surmises a solution in how institutions deal with these facts,⁷³ Cohen

⁶⁸ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 23.

⁶⁹ Although this is how Nozick, *Anarchy, State, and Utopia*, 2003, 161-3, presented it.

⁷⁰ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 230.

⁷¹ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 229.

⁷² Rawls, *A Theory of Justice*, 1999, 156.

⁷³ Rawls, *A Theory of Justice*, 1999, 87.

seeks remedy in a reduction or suspension of self-ownership rights: 'We can all benefit in terms of autonomy if none of us has the right to do certain things'.⁷⁴ In other words: instead of our having the right to do whatever we appear to be capable of, as always under the condition of not harming others, he advocates that we be exogenously restrained from pursuing some of these possibilities in order to enable others to engage in their more limited range of options.

It is hard to see how restricted self-ownership for all could enhance the autonomy of some. One would think that putting all available powers to work is in everyone's interest, hence to be promoted. Not acting upon one of your talents can hardly be beneficial to someone else. Conceivably, other persons might benefit either by redirecting the exercise of your talents from a purportedly self-regarding purpose to a more social one, or by redistributing the material proceeds of your talents to those who require it, directly or indirectly. The latter appears to be favoured by Cohen, for extensively referring to Raz, he emphasizes collective goods.⁷⁵ More relevant for our purpose here, however, is that both Cohen and Raz give pride of place to personal autonomy, if need be to the detriment of those who were 'luckier' in terms of the genetic draw and/or social circumstances. They thus appear to conceive of autonomy as positive liberty, but now including the wherewithal to act upon one's choices. Obviously, that is a choice, which can only be justified when 'luck' is the correct designator. In my view, however, the distribution of personal endowments and social circumstances is simply a fact of life, the application of which can be both beneficial and detrimental to others as well as to ourselves. As Mackie puts it: 'We surely want to leave it open to people to make what they can of their lives. But then it is inevitable that some will do better for themselves than others'.⁷⁶ Moreover, giving pride of place to personal autonomy is equivalent to setting a goal for (a group of) individuals, and this contravenes the rights-based morality that libertarians favour. All that is required is that individuals do not violate the rights of others in making their own choices on how to act.⁷⁷

Therefore, not providing everyone with the wherewithal to attain personal autonomy does not actively harm individual

⁷⁴ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 237.

⁷⁵ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 237-8.

⁷⁶ Mackie, 'Can There Be a Right-Based Moral Theory?', 1984, 174.

⁷⁷ Arneson, 'The Shape of Lockean Rights', 2005, 258, and more particularly Nozick, *Anarchy, State, and Utopia*, 2003, 28-30.

interests. People are free to employ their powers toward any purpose they choose, if only they do not actively harm others in the pursuit of their interests. In a wider conception of harm this includes being denied access to resources, which could be made available without harming their possessor. So we are left with the question of need.

3. Need

We may have to draw a line below which nobody should fall in their means of living. In this section I shall discuss three conceivable grounds for active assistance: genuine need versus surpluses, as mentioned by Locke; political autonomy, as argued for by Rawls; and, finally, desert in any of its guises.

Starting off with the first of these conceivable grounds, Locke unequivocally asserts that we have a duty toward fellow human beings if they cannot adequately take care of themselves while we have surpluses.

As *Justice* gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so *Charity* gives every Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise; and a Man can no more justly make use of another's necessity, to force him to become his Vassal, by withholding that Relief, God requires him to afford to the wants of his Brother, than he that has more strength can seize upon a weaker, master him to his Obedience, and with a Dagger at his Throat offer him Death or Slavery.⁷⁸

Obviously, a moral duty to charity is not the same as political institutions that force us to hand over part of the yield of our labour to other people. And that is what most other philosophers argue for. Sterba tends to go even further than that in asserting: '... the poor should have the liberty not to be interfered with in taking from [the surplus possessions of] the rich what they require to meet their basic needs'.⁷⁹ Apparently, he thereby leaves it to individual assessment whether one is poor or has surplus possessions.

Rawls seeks a solution in institutionalization, but does not plead for individuals to achieve personal autonomy. He wants political autonomy, the second conceivable ground for active assistance:

In order to fulfill their political role, citizens are viewed as having the intellectual and moral powers appropriate to that role, such as the capacity for a sense of political justice given by a liberal conception and a capacity to form, follow, and revise their individual doctrines of the good, and capable also of

⁷⁸ Locke, *Two Treatises of Government*, 2005, 170 (I§42).

⁷⁹ Sterba, *The Triumph of Practice over Theory in Ethics*, 2005, 48.

the political virtues necessary for them to cooperate in maintaining a just political society.⁸⁰

In his recently revised opus magnum *A Theory of Justice* he asserts that 'acting autonomously is acting from principles that we would consent to as free and equal rational beings, and that we are to understand in this way'.⁸¹ Therefore:

The basic idea [of political autonomy] is that in virtue of their two moral powers (a capacity for a sense of justice and for a conception of the good) and powers of reason (of judgement, thought, and inference connected with these powers), persons are free. Their having these powers to the requisite minimum degree to be fully cooperating members of society makes persons equal.⁸²

He further distinguishes between rational and full autonomy, the former being basic to citizenship, for:

Someone who has not developed and cannot exercise the moral powers to the minimum requisite degree cannot be a normal and fully cooperating member of society over a complete life. From this it follows that as citizens' representatives the parties [in the original position] adopt principles that guarantee conditions securing for those powers their adequate development and full exercise.⁸³

Only after these principles have been adopted and said conditions are guaranteed can citizens achieve full autonomy who then act 'from principles that specify the fair terms of cooperation they would give to themselves when fairly represented as free and equal persons'.⁸⁴

To avoid misunderstanding, he adds: '[t]his full autonomy of political life must be distinguished from the ethical values of autonomy and individuality, which may apply to the whole of life, both social and individual, as expressed by the comprehensive liberalism of Kant and Mill'.⁸⁵ So apparently his conception of autonomy is less far reaching than that of Raz and Cohen. Nevertheless, the wherewithal to guarantee said conditions must be found somewhere. And, indeed, Rawls's final reading of his two principles of justice expresses that '[e]ach person is to have an equal right to the most extensive system of equal basic liberties compatible with a similar system of liberty for all', whereas the relevant (to us) part of second principle states that '[s]ocial and economic inequali-

⁸⁰ Rawls, *Political Liberalism*, 2005, xlv.

⁸¹ Rawls, *A Theory of Justice*, 1999, 453.

⁸² Rawls, *Political Liberalism*, 2005, 19.

⁸³ Rawls, *Political Liberalism*, 2005, 74.

⁸⁴ Rawls, *Political Liberalism*, 2005, 77.

⁸⁵ Rawls, *Political Liberalism*, 2005, 78.

ties are to be arranged so that they are [...] to the greatest benefit of the least advantaged'.⁸⁶

In the first principle I surmise a similarity with Cohen's suggestion to constrain the exercise of some of our options in order to enable others to exercise their limited ones. That is because a liberty denotes a lack of constraint to do something; as Rawls puts it: 'The general description of a liberty [...] has the following form: this or that person (or persons) is free (or not free) from this or that constraint (or set of constraints) to do (or not to do) so and so'.⁸⁷ Therefore, it can be said that 'persons are at liberty to do something when they are free from certain constraints either to do it or not to do it and when their doing it or not doing it is protected from interference by other persons'.⁸⁸ So under a constitution that warrants equal basic liberties for all one would reasonably expect certain liberties to be protected from interference by others while further liberties are not. Though non-protection is not identical to constraint, Rawls's second principle makes it clear that social and economic inequalities, hence inequalities in power, are only acceptable where they work out to the greatest benefit of the least advantaged in society. So rather than constraining the exercise of some powers, Rawls seeks to render their exercise beneficial to the least advantaged.

Nevertheless, some persons may not be able to make the most of their warranted basic liberties. That, however, is a fact of life that even Rawls cannot make good:

[L]iberty and the worth of liberty are distinguished as follows: liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups depends upon their capacity to advance their ends within the framework the system defines. Freedom as equal liberty is the same for all; the question of compensating for a less than equal liberty does not arise. But the worth of liberty is not the same for everyone. Some have greater authority and wealth, and therefore greater means to achieve their aims. The lesser worth of liberty is, however, compensated for, since the capacity of the less fortunate members of society to achieve their aims would be even less were they not to accept the existing inequalities whenever the difference principle is satisfied. But compensating

⁸⁶ Rawls, *A Theory of Justice*, 1999, 266. In *Political Liberalism*, 2005, 5-6, he modifies these principles such that 'right' is replaced by 'claim', 'the most extensive system' by 'a fully adequate scheme', while adding rights to liberties, and 'compatible with a similar system of liberty for all' by 'which scheme is compatible with the same scheme for all', while in the second principle he adds 'of society' to members. I'm not sure which is the most recent version of these principles, since the original year of publication of *Political Liberalism* is 1993, whereas the second (revised) edition of *A Theory of Justice* was first published in 1999.

⁸⁷ Rawls, *A Theory of Justice*, 1999, 177.

⁸⁸ Rawls, *A Theory of Justice*, 1999, 177.

for the lesser worth of freedom is not to be confused with making good an unequal liberty. Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This defines the end of social justice.⁸⁹

One observable difference with Cohen, then, is that Rawls is clearer in how to fund the promotion of options for the least advantaged in any society, namely by rendering those more privileged citizens beneficial to their poorer fellows.

It is entirely conceivable that such benefits proceed from, e.g., the creation of jobs by entrepreneurs and then no one's right to self-ownership is violated. (The implicit assumption is, of course, that entrepreneurs have more powers and bring to bear – unprotected from interference – more than the equal basic liberties.) But that is purportedly no longer true when the yield of powers exercised by those entrepreneurs is taxed in order to benefit the least advantaged.

Both Locke and Nozick hold that we own what we create by investing our labour into something. We have quoted the former's statement to that effect, whereas Nozick considered '[t]axation of earnings from labor [...] on a par with forced labor',⁹⁰ implying that in his view individuals are the rightful owners of their creations. Apart from the material component in such creations, to which I shall turn later, it would appear that the entrepreneurs aforementioned thus possess the jobs they created, as well as the values they yield. And if that is true, taxation cannot be justified, unless the values yielded are separable from the products themselves. Perhaps the latter yield superior values in what Rawls calls 'a well-ordered society'⁹¹ than in 'the best anarchic situation one reasonably could hope for',⁹² but that remains to be proven. Since I am not aware of any such proof in the extant literature, I cannot but assume that the only reason for redistributive measures is a moral one, i.e., that persons would be equally entitled to a certain minimum standard of living. It would require this moral judgement to prevail over one that asserts a right to self-ownership. I am sympathetic to such prevalence, albeit not by coercion.

Nevertheless, some philosophers go even further in their presumption of moral equality. Christman, for instance, does affirm self-ownership,⁹³ though merely in terms of control, for

⁸⁹ Rawls, *A Theory of Justice*, 1999, 179.

⁹⁰ Nozick *Anarchy, State, and Utopia*, 2003, 169.

⁹¹ Rawls, *Political Liberalism*, 2005, 35-40.

⁹² Nozick *Anarchy, State, and Utopia*, 2003, 5.

⁹³ Christman, *The Myth of Property*, 1994, 148-54.

he suggests that 'individuals would be allowed to exercise their talents freely, but all the profit from this exercise would be redistributed on a per capita egalitarian basis'.⁹⁴ So even though self-ownership is to be protected from interference, its yield must be considered as public income ownership, to which all members of society have an equal claim. The state is to make legal arrangements for this massive redistribution, which is equivalent to the appropriation of individual powers, although one is free (not) to exercise these. Obviously, this is taking the notion of human equality to the limit, reducing our motivation to contribute to the social product to a fraction of what it would be in the state of nature.⁹⁵ It constitutes a paradise for free riders that eludes my sense of justice, more particularly when such a system would be imposed. Still, one could imagine a small-scale community freely adopt it.

Rawls conceives of society as 'a fair system of cooperation over time, from one generation to the next'.⁹⁶ But if this conception of cooperation involves 'terms that each participant may reasonably accept, provided that everyone else likewise accepts them',⁹⁷ how are we to delineate that society as disjoint from the rest of mankind? Extant states are the result of historical processes in which consent played no role. True nation states might be different because of their inhabitants's relative homogeneity, but they hardly exist.⁹⁸ Therefore, societies of the kind Rawls envisioned are imaginary, and what remains is an ideal, much like Christman, Cohen, and Raz presented the contours of an ideal society, inevitably with political organization, since they invoke either exogenously imposed restraints or governmental prescripts. The difficulty,

⁹⁴ Christman, *The Myth of Property*, 1994, 157.

⁹⁵ Nozick *Anarchy, State, and Utopia*, 2003, 183-9, argues that it is an outrageous suggestion that the sum of individual products in the state of nature would be only a fraction of what it would be under conditions of cooperation, then called 'the social product'. And since we cannot expect people to enter into cooperation to retain less than they had in the state of nature, the object of distributive justice must be limited to the additional gain that results from cooperation, if at all. Would instead the object be the whole social product, individuals would lose the incentive to make any contribution, since they would receive $1/n$ of the social product anyway, where n is the size of the population. Any contribution they would make leaves them with only $1/n$ th of it for themselves. Since we do have a workable theory of marginal contribution, the issue of distributive justice dissolves into thin air.

⁹⁶ Rawls, *Political Liberalism*, 2005, 2005, 15.

⁹⁷ Rawls, *Political Liberalism*, 2005, 16.

⁹⁸ Tamir, *Liberal Nationalism*, 1993, tries to reconcile nationalism with liberalism. For the idea that the state is a particular form political organization, see Morris, *An Essay on the Modern State*, 2002.

however, is how to justify a transfer from the state of nature to anything like a society with a legitimate governmental authority without violating individual self-ownership.⁹⁹ If our capability to take responsibility for our actions has any worth, we cannot let others – the government – determine what we shall do or shall refrain from doing, at least not without our consent.

Proceeding to the third conceivable ground for active support, we could ask whether desert has a role to play in how we look upon the distribution of natural assets. Vlastos lists a number of well-known maxims of distributive justice, i.e., 'to each according to his need [...] his worth [...] his merit [...] his work [...] and to the agreement he made'.¹⁰⁰ Nozick adds his own maxim, now including the 'from' aspect: 'From each as they choose, to each as they are chosen'.¹⁰¹ They all refer to the distribution of holdings in extra-personal assets, but this is often affected by people's powers. So we might ask whether some equalization is justifiable in the latter, simply because no one deserves to be better off than others in that respect. Nozick argued extensively against attempts to justify compensatory measures under the banner of equality: 'Many "arguments" for equality merely *assert* that differences between persons are arbitrary and must be justified'.¹⁰² But moral arbitrariness is no reason for equalization or compensation and even if it were, who is to judge by which criterion to do so? And, given a chosen maxim, who needs, is worth, or merits what? Such decisions seem equally arbitrary.

The original Latin meaning of *deservire* is 'serve well' and it seems to me that this properly expresses that individuals who use their powers may be of greater service to others than those who do not. So whether or not they earned the powers they happen to possess, their worth is co-determined by how they positively affect others. And that is precisely what markets are supposed to bring about. Adding the 'from' aspect to distributive maxims, as Nozick did, is important because if people are to be compensated for having below average powers, those above average will have to fund it. But people cannot be separated from their powers and therefore

⁹⁹ In Locke's perspective states and their governments can only be justified if they have come into being by all citizens's full and informed consent. See Simmons, *On the Edge of Anarchy*, 1995, and Wolff, *In Defense of Anarchism*, 1976.

¹⁰⁰ Vlastos, 'Justice and Equality', 1984, 44.

¹⁰¹ Nozick *Anarchy, State, and Utopia*, 2003, 160 (italics omitted).

¹⁰² Nozick *Anarchy, State, and Utopia*, 2003, 223 (original italics).

only two methods are open to even out the differences: 1) people are proscribed the use of some of their powers, which is what Cohen seems to suggest, as we have seen earlier, and which is a very unproductive approach; or 2) to find compensation in the proceeds people generate by using their powers. Both methods run into the same problems as we have encountered in the previous section.

Therefore, in the absence of legitimate authority we must make do with moral principles and, if only for that reason, we do best to remain with classical liberalism, which '[i]n virtue of its endorsement of self-ownership [...] operates with a strong presumption against any doctrine that asserts or implies that some people have natural rights to the products of other people's efforts and endeavours'.¹⁰³ And no individual has such rights.

Conclusions

The notion of self-ownership is meant to carve out a private moral space in which the possessor of the powers in question is sovereign. I discussed autonomy as a goal to be pursued and concluded that it must be limited to exercising the powers we possess upon the means that happen to be available. We do not harm others when they do not avail of everything they desire to possess and we do not provide them with it. Active harm is unjustifiable, but passive harm is an inexorable feature of the human condition. Genuine need ought to move us to assistance, though the difficulty is where to draw the line and who will do it, if not ourselves. Locke and libertarians generally rely on charity. Others try to rig institutions to do the beneficent work, or they argue that we deserve something. But neither can be justified in a Lockean state of nature, which we leave by consent only. We are and remain the exclusive owners of our body and its powers.

¹⁰³ Mack, 'Self-Ownership and the Right of Property', 1990, 524.

II. WORLD-OWNERSHIP

Borrowing the shorthand from Cohen, I shall dedicate this chapter to the ownership of extra-personal natural resources. The first question is whether those resources were owned by anyone before human beings appropriated them. 'To appropriate' means 'to take for one's own use without permission', which typically means that the object taken was owned. But in this chapter I shall argue that the resources were originally unowned, because the alternatives – common property and equal sharing – are unfeasible. Nonetheless, the alternatives have been defended in the past and in the present, next to moral systems that benefit particular groups. My position is that downright appropriation by an individual or group of individuals who are ready to invest in working up the resource is most efficacious. By their action the resource becomes available to whoever wants to procure it. I shall commence, however, with a short note on liberties and rights.

Earlier we have seen that in Hobbes's vision we only have liberties, since everyone having a right to everything boils down to having no right at all. As Gaus and Lomasky put it: 'Where only liberties obtain, everything and everyone is fair game'.¹ So how did Locke justify the move from liberties to rights, or rather, how can we?

To be able to call something 'my property' I need to make sure that no one else uses it without my permission. Instead of being at liberty to use it like everyone else, I must somehow acquire a claim right against all others that makes my use of it exclusive.² But why would the others allow me that claim right? After all, I acquire something – exclusivity – and they lose something – a liberty to use it. That situation, however, can only obtain in a so-called 'state of nature', because in the actual world, where practically everything is privately or publicly owned, there can be but a transfer of ownership from one party to another; exclusivity remains, and no liberties are lost. So the question reduces to one of acquisition in the state of nature, provided nobody owned anything beside themselves in that state.³ These two issues will occupy me in this chapter. But let us first see how Locke used the notion of rights.

¹ Gaus and Lomasky, 'Are Property Rights Problematic?', 1990, 485.

² Schmidtz, 'The Institution of Property', 1994, 42-3.

³ Otherwise, they would all have a claim-right against everyone else; see Waldron, *The Right to Private Property*, 2002, 153, who dubbed that situation 'negative communism'.

Locke sometimes seems to mean 'liberty' when he writes 'right', e.g., where an individual's appropriation 'excludes the common right of other Men', while in the same paragraph he says 'no Man but he can have a right to what [his labour] is once joyned to'.⁴ But despite the common right, he concurs with Hobbes in the extra-personal world being up for grabs, though he sets a moral limit to it: appropriation requires there being 'enough and as good left in common for others',⁵ and no one may 'ingross as much as he will [but only] [a]s much as any one can make use of to any advantage of life before it spoils; so much he may by his labour fix a property in'.⁶ So take what you need by mixing your labour with it, don't waste it, and leave enough and as good for others. I'll return to the third of these provisos in due course, but for now I conclude that Locke justified the move from liberties to claim rights by setting limits to appropriation from the common stock, as well as by specifying how appropriation is to take place.

1. Original ownership

In this section my focus will be on the question who, if anyone, owned the extra-personal world before humans started to appropriate parts of it. I shall argue that it was merely there, to be used by anyone who required its riches. But with the appearance of humans the issue of fair distribution arose. In the next section I shall argue that efficacy should prevail over fairness of distribution, in the interest of everyone.

Regarding extra-personal natural resources considerations are less straightforward than they were in the case of self-ownership. That my arm belongs to me is indubitable even if someone would claim to have a right to use it. But the earth and its riches are not attached to anyone, and one could as well claim that it belongs to everyone as that it belongs to no one. As Cohen puts it: 'There is no comparable presumptive normative tie between any person and any part or portion of the external world'.⁷ And he refers to the factual truth that his arm is his and the normative claim that he should have exclusive disposal over it, where he concedes that the former is a *prima facie* plausible basis for the latter, denying that such is the case between himself and the external world. Of course he is right but it doesn't tell us anything about who, if

⁴ Locke, *Two Treatises of Government*, 2005, 287-8 (II§27).

⁵ Locke, *Two Treatises of Government*, 2005, 287-8 (II§27).

⁶ Locke, *Two Treatises of Government*, 2005, 292 (II§35).

⁷ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 71.

anyone, owns the external world, or at least did so originally before parts of it were appropriated. For 'it is [a] necessary truth that no object can be made from nothing, and hence that all titles to manufactured or freely transferred goods must derive from titles to natural and previously unowned objects'.⁸ At some point in time someone must have performed an initial acquisition of an unowned natural resource. This is also how Nozick referred to it.⁹ But was it unowned? I shall argue that it was, if only for practical reasons.

Locke did not think so, for he considered the earth and its fruits common property of mankind.¹⁰ Against his contemporary Filmer, who apparently contended that the biblical Adam and his heirs were the sole beneficiaries of God's bestowal, Locke asserted that:

God, who hath given the world to Men in common, hath also given them reason to make use of it to the best advantage of Life, and convenience. The Earth, and all that is therein, is given to Men for the Support and Comfort of their being. And though all the fruits it naturally produces, and Beasts it feeds, belong to Mankind in common, as they are produced by the spontaneous hand of Nature; and no body has originally a private Dominion, exclusive of the rest of Mankind, in any of them, as they are thus in their natural state.¹¹

God having made Man, and planted in him, as in all other Animals, a strong desire of Self-preservation, and furnishes the World with things fit for Food and Rayment and other Necessaries of Life, Subservient to his design, that Man should live and abide for some time upon the Face of the Earth, and not that so curious and wonderful a piece of Workmanship by its own Negligence, or want of Necessaries, should perish again, presently after a few moments continuance.¹²

But his is a theological argument because both Filmer and he considered those natural resources as God given, whereas for all we know they (and we) are just here because conditions are as they are. There is no reason to presume any purpose behind it, let alone that anyone was meant to own anything outside themselves in nature.¹³ Moreover, human beings are relative latecomers in evolution, so why should they suddenly have become the owners of all those resources, not just on earth – why be so modest? –, but in the solar system or the

⁸ Steiner, 'Justice and Entitlement', 1983, 381.

⁹ Nozick, *Anarchy, State, and Utopia*, 2003, 175.

¹⁰ As Schmidtz, 'The Institution of Property', 1994, 43n5, remarks, it can be argued that 'holding the earth in common does not imply that we own it'. Indeed it doesn't, since it remains God property as its maker, but I shall take it that Locke meant that we could act as if we did commonly own it.

¹¹ Locke, *Two Treatises of Government*, 2005, 286 (II§26).

¹² Locke, *Two Treatises of Government*, 2005, 204-5 (I§86).

¹³ Narveson, *The Libertarian Idea*, 2001, 91, 93.

universe?¹⁴ This obvious truism lacks force, however, since human beings are the only ones who are capable of taking enduring possession of something without actually occupying it, which is why Kant discerned 'Vernunftbesitz' and 'intelligibeler Besitz [oder aber] Besitz ohne Inhabung'.¹⁵ Many other animals can be said to have a territory in so far they are able to defend it against intruders, but they cannot 'own' anything elsewhere.

Apparently Kant was not sure whether the latter form is possible for humans – 'wenn ein solcher möglich ist' – and in the case of landownership he reasoned that the earth's surface is originally the collective property of all human beings,¹⁶ whereas appropriation is necessarily a one-sided act, which eventually ought to be justified by all others with whom one stands in a practical relationship.

Der Wille [...], die Sache (mithin auch ein bestimmter abgeteilter Platz auf Erden) soll mein sein, d.i. die Zueignung [...] kann in einer ursprünglichen Erwerbung nicht anders als einseitig [...] sein. [...] Derselbe Wille aber kann doch eine äußere Erwerbung nicht anders berechtigen, als nur sofern er in einem *a priori* vereinigten (d.i. durch die Vereinigung der Willkür Aller, die in ein praktisches Verhältnis gegeneinander kommen können) absolut gebietenden Willen enthalten ist.¹⁷

My interpretation is that the others are those with whom one is obliged to form a state of law to settle mutual relationships of which property is just one. By implication it would seem that one lives where one appropriates.

Be that as it may, the important thing is collective ownership, which seems an attractive assumption, albeit merely on moral grounds. There is no reason to believe that anyone has actually bestowed the earth upon us. Still, from a practical point of view, there are serious objections against collective ownership or 'original communism'.¹⁸

In response to those who favour collective ownership over private property, Nozick writes: 'Those believing in collective property, for example those believing that a group of persons living in an area jointly own the territory, or its mineral resources, also must provide a theory of how such property rights arise'.¹⁹ Cohen provides arguments why a constitution with joint ownership would be better for the infirm people in

¹⁴ Feser, 'There is no Such Thing as an Unjust Initial Acquisition', 2005, 60.

¹⁵ Kant, *Metaphysische Anfangsgründe der Rechtslehre*, 1998, 53 (AA245).

¹⁶ Kant, *Metaphysische Anfangsgründe der Rechtslehre*, 1998, 77 (AA267).

¹⁷ Kant, *Metaphysische Anfangsgründe der Rechtslehre*, 1998, 72-3 (AA263).

¹⁸ Waldron, *The Right to Private Property*, 2002, 148-57.

¹⁹ Nozick, *Anarchy, State, and Utopia*, 2003, 178.

a group or society,²⁰ but he doesn't make clear why the group as a whole would be entitled to ownership rather than humanity entire. Besides, in case of collective ownership no one can do anything without the approval of all others, which is a formidable obstacle,²¹ especially when the others are the rest of mankind.²² Such a constitution would render self-ownership merely formal, since it has no practical import.

However, Cohen ripostes, Nozick's view also renders self-ownership nugatory,²³ for an individual without property in the external world can do nothing but sell their labour to those who have. I don't think that is quite correct, however, since ownership is not a necessary condition to work with external objects; one could for instance acquire an exclusive right of use by hiring it. Moreover, in the modern world services have become an increasingly greater part of the volume of transactions,²⁴ and to supply a service no more is required than one's own capacities. So in many cases there will be the option of self-employment. But even in a worst case, someone with just their own powers will have to convince no more than one other individual to hire their labour, whereas under joint ownership they must necessarily convince everyone.²⁵

The alternative to collective ownership requiring each and everyone's permission to use part of the common property is to parcel it out to all rightful claimants. So-called 'left-libertarians' like Steiner grant self-ownership while claiming that everyone is entitled to an equal share in the external world or at least the means of production, if that distinction

²⁰ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 94-7. His reasoning is that infirm people possessing a proportionate part of the means of production, which healthy people require to subsist themselves, will stand a better chance of convincing those healthy people to provide for them too.

²¹ Narveson, *The Libertarian Idea*, 2001, 71-3.

²² Waldron, *The Right to Private Property*, 2002, 152, considers it 'a plausible and attractive version of the consent theory of property' that once 'men settled down into communities, it became possible for them to make conventional arrangements for the division of the resources in their vicinity which would be binding at least between the members of each community', whereas 'we might imagine a further set of agreements by which the different communities would agree to recognize one another's dominion over the resources in their respective vicinities and to abide by one another's conventional property rules'. Admittedly, this is a practical approach, but it is not fundamentally different from an individual appropriating a resource who then concludes an agreement with their neighbours to acknowledge each other's property. But recognition by the neighbours does not answer the question why it would be justified to appropriate.

²³ Cohen, *Self-ownership, Freedom, and Equality*, 2001, 99-101.

²⁴ Reich, *The Work of Nations*, 1992, 95, referring to the United States.

²⁵ Narveson, *The Libertarian Idea*, 2001, 71.

can be made.²⁶ The obvious problem of his conception of justice as equal shares is that neither the extent of the available resources nor of humanity is known to us. Oil, diamonds, and uranium now count as such but they didn't to the first humanoids, if that is where we should begin. And even today we do not know exactly how many human beings the planet harbours nor the volume of resources we haven't found or are aware of yet, let alone their value. Perhaps we could devise a system in which every living human being was allocated an equal share in whatever resources there are and will be found. But with a still growing population our individual share would constantly decline while it would increase in case we found fresh reserves or new types of resources. Should we opt for an alternative system in which shares are not allocated to new human beings but only by transfer from one generation to the next, some individuals will get nothing at all, e.g. when either or both of their parents are unknown, when they die before their parents do, or when their parents have consumed their share.

What such a distributive system would require is an accurate, complete account of individuals and resources. It would demand each and every individual to have direct access to the system to avoid intermediaries to hold power over those individuals and they should be aware of what it means to them; indigenous people in the Amazon basin have a totally different interest in natural resources than the average European. And finders of fresh resources would not be inclined to inform the system, although it might help to declare that unreported reserves may not be traded if that in itself does not give rise to manipulation. Despite numerous practical problems such a distributive system is theoretically conceivable. But is it right in the sense that people who have done nothing to make the resource available and create its value would be entitled to a share in it? I don't think so. There is no sensible reason to suppose that I should become a co-owner of a pig in Papua New-Guinea just because the people there have grown one and neither is there to let Papuans have a share in the materials that eventually became my house. But perhaps I misconstrue the notion of equal shares by allowing everyone a proportional share in everything. The alternative would be to let everyone have an equivalent share in all there is. That, however, would make things even more com-

²⁶ Steiner, 'The Natural Right to the Means of Production', 1977, 49. Nozick, *Anarchy, State, and Utopia*, 2003, 162-3, gives an example of personal property being transferred into productive property under a socialist regime.

plicated, for then we must take account of values that are both unequal to different persons and change over time.²⁷

Particularly vexing is the question what must be done with the shares of future individuals; will the former lay waste until the latter are born and ready to take possession or will the property remain in the commons, subject to 'the tragedies of the commons'?²⁸ Typically, authors refer to landownership, but what about natural resources the applicability of which has been established only recently? Should ancient Greeks posthumously be entitled to a share in carbon compounds? And what if future generations decide to have no use for it?

The whole idea of equal sharing is too impractical to be seriously considered, and the same judgement applies to collective ownership, so we cannot but conclude that we are to look out for a different and more practical way to resolve our moral concern how to utilize the world's natural resources.

A conceivable though merely theoretical alternative might be that all external natural resources were laid in the hands of a global agency that administers those resources on behalf of all of us. Anyone who is interested in acquiring a resource for productive or personal use may then procure it from the agency at the going price. If such prices were established by some sort of auction they would reflect the value buyers had attributed to the resource at that point in time. As said, this is mere theory and nigh impossible to put to practice, above all in a state of nature. Moreover, why should we desire such a bureaucratic machinery and what would they do with the proceeds?

To wrap up, neither collective ownership nor equal sharing are feasible options, leaving the extra-personal world up for grabs.

2. Initial acquisition

If external natural resources would be common property, there is obviously no issue of initial acquisition; merely transfer from that general state to a particular state of ownership would have to be considered. And if they were not common property or eligible for equal sharing, they must have been up for grabs.²⁹ So what remains is the question how to justify initial acquisition from the unowned state they were in. In

²⁷ See Mack, 'Self-Ownership and the Right of Property', 1990, 520-2, who argues for the agent-relativity of values.

²⁸ Sanders, 'Justice and the Initial Acquisition of Property', 1987, 380-4.

²⁹ Feser, 'There is no Such Thing as an Unjust Initial Acquisition', 2005, 58-9.

this section I shall argue for historical entitlement, albeit not unconstrained: without investment appropriation cannot be justified, while resources must become available to others who wish to procure them, unless appropriators properly employ them for their own purposes.

Locke, assuming initial common property of extra-personal natural resources and self-ownership, reasoned that mixing our labour with a natural resource is a preliminary to justify its appropriation.

Though the Earth, and all inferior creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it that is his own, and thereby makes it his *Property*. It being by him removed from the common State Nature placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other Men. For this *Labour* being the unquestionable property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough and as good left in common for others.³⁰

[S]ubduing or cultivating the Earth, and having Dominion, we see are joyned together. The one gave Title to the other. So that God, by commanding to subdue, gave Authority so far to *appropriate*. And the Condition of Humane Life, which requires labour and Materials to work on, necessarily introduces *private Possessions*.³¹

And, as mentioned above, he specifies further limitations to how much may be taken from the common stock.

Like Locke, Nozick expounded an historical entitlement theory of distributive justice, consisting procedures for initial acquisition, transfer, and rectification. The general idea is:

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

The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution.³²

He contrasts these principles of distributive justice with those that call attention to end results, such as current time-slice principles, which 'hold that the justice of a distribution is de-

³⁰ Locke, *Two Treatises of Government*, 2005, 287-8 (II§27).

³¹ Locke, *Two Treatises of Government*, 2005, 292 (II§35).

³² Nozick, *Anarchy, State, and Utopia*, 2003, 151.

termined by how things are distributed (who has what) as judged by some *structural* principle(s) of just distribution'.³³

It is not my intention to elaborate on distributive justice in this paper, so I shall focus on the first step, as did Nozick, who more or less followed Locke in what he took to be a just principle of acquisition. But Locke's premise of common ownership is not really necessary, let alone that those resources be God given; the earth and its fruits might just as well be simply there, unowned, hence up for grabs. On the other hand, by bringing God into the picture Locke could refer to a divine benefactor and His supposed commands, whereas in a world that is just there we must reason without external authority. Thus, says Sanders, if we ascribe a high value to the preservation of mankind through the preservation of individuals and we admit that this requires some use of natural resources we would have a good starting point.³⁴ And Nozick indeed sets off with 'unheld things'.³⁵

Responding to Locke's criterion of adding one's labour to a natural resource, he wonders: 'why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't?' and he mentions an example of spilling a can of tomato juice into the sea, asking whether that would render him the owner of the sea.³⁶ He deplores that no system exists to confer ownership of things based upon the value one has added to it. But taking value added nonetheless as the criterion to justify ownership, he judges that '[i]t will be implausible to view improving an object as giving full ownership to it, if the stock of unowned objects that might be improved is limited' [...,because] [t]he crucial point is whether appropriation of an unowned object worsens the situation of others'.³⁷ When things are scarce, individuals may have to compete to obtain it, the successful result of which will be to the detriment of others who fail to do so.

Purportedly, the situation of others is prejudicially affected by eliminating an opportunity to improve their situation or by their being no longer at liberty to use what they could before. Should the first be prohibited, hardly any appropriation would be possible, for if I appropriate a plot of land, another is no longer at liberty to do so unless they persuade me into transferring it to them. Therefore, Nozick settles for the weaker

³³ Nozick, *Anarchy, State, and Utopia*, 2003, 153 (original italics).

³⁴ Sanders, 'Justice and the Initial Acquisition of Property', 1987, 374.

³⁵ Nozick, *Anarchy, State, and Utopia*, 2003, 150.

³⁶ Nozick, *Anarchy, State, and Utopia*, 2003, 174-5.

³⁷ Nozick, *Anarchy, State, and Utopia*, 2003, 175.

requirement to avoid that they can no longer use as they 'could' before.³⁸ But that requirement is not unequivocal; does he mean 'use as they did' or 'use as they might'? In the first case one could argue that appropriation of the resource by one of the extant users (or an outsider) is morally an act of theft, because all those users can be said to have acquired a right of use by custom.³⁹ Hence, it is not an initial acquisition. The second interpretation reduces to the more stringent requirement, for if they only might have used it, all they lose is an opportunity. So the verb 'could' should be replaced by 'did', which should be further qualified by adding 'lastingly' to make his statement unequivocal.

If, then, the issue is not that others are deprived of an opportunity to improve their situation, and neither that they can no longer use what they did before, why should anyone have to be compensated, and for what? Nozick asserts:

Someone whose appropriation otherwise would violate the [Lockean] proviso still may appropriate provided he compensates the others so that their situation is not thereby worsened; unless he does compensate these others, his appropriation will violate the proviso of the principle of justice in acquisition and will be an illegitimate one.⁴⁰

And to judge whether this is the case, we need to know how precisely the situation of others is worsened, which requires a baseline, a question needing more detailed investigation than he was able to give it.⁴¹

For Locke the baseline seems to have been the status quo ante, since he merely asserted that an appropriator should leave 'enough and as good left in common for others'. But what exactly does that mean? Who are the others for whom we must leave enough and as good, how much is enough, and what is the meaning of 'as good'? If others are all the human beings that will ever live, no one can take more than an infinitesimal share in what there is. If the 'Conveniency of Life'⁴² is the measure of what is enough, does he mean life now, in the past, in the future, and which level of convenience are we talking about? And if 'as good' must be taken in the sense of 'as valuable', then it will differ from person to

³⁸ Nozick, *Anarchy, State, and Utopia*, 2003, 176.

³⁹ Feser, 'There is no Such Thing as an Unjust Initial Acquisition', 2005, 67-8.

⁴⁰ Nozick, *Anarchy, State, and Utopia*, 2003, 178.

⁴¹ Nozick, *Anarchy, State, and Utopia*, 2003, 177.

⁴² Locke, *Two Treatises of Government*, 2005, 292 (II§36).

person, even when they are contemporaries.⁴³ Locke doesn't elaborate.

Therefore, Sanders argues that Locke's proviso is entirely self-defeating and advocates initial acquisition at the earliest possible point in time, since it would seem to generate more and better resources for others than ever before. And that is because it is better to use a resource once someone has application for it than to let it lay waste. Whether a resource is actually improved or not – it may be ruined or depleted – it is always best to utilize it when someone sees an advantage in investing in it than to let it lie in wait for the sake of so-called 'fairness'. No one of sound mind will invest without having productive purposes and the individuals who did not make the investment may have lost an opportunity to do so – if that is what they had in mind after all – but they gained an opportunity to procure whatever products the investor now brings to the market.⁴⁴

But a different, more appropriate interpretation of Locke's proviso is that he had in mind not just enough and as good for today's others but for those of the future as well. 'What possible argument could at the same time require that the present generation have scruples about leaving enough and as good for one another, while shrugging off such concern for future generations'?⁴⁵ And Locke wrote about land appropriation: 'he who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind'.⁴⁶ The proviso is not logically impossible to satisfy if we acknowledge that appropriation is a positive-sum game rather than a zero-sum game.⁴⁷ That is because first appropriators begin a process of resource creation, the result of which is that they leave others with more than there was before. Even if natural resources were common, it would in most cases be better to privatize them than to leave them for everyone to freely use. Schmidtz provides some telling examples to demonstrate this proposition.⁴⁸ His conclusion is unequivocal: 'when resources are not scarce, the Lockean Proviso *permits* appropriation; when resources are scarce, the Proviso *requires* appropriation'.⁴⁹ The rationale for the latter is that scarce resources

⁴³ Sanders, 'Justice and the Initial Acquisition of Property', 1987, 376-8.

⁴⁴ Sanders, 'Justice and the Initial Acquisition of Property', 1987, 393.

⁴⁵ Sanders, 'Justice and the Initial Acquisition of Property', 1987, 377.

⁴⁶ Locke, *Two Treatises of Government*, 2005, 294 (II§37).

⁴⁷ Schmidtz, 'The Institution of Property', 1994, 45-6.

⁴⁸ Schmidtz, 'The Institution of Property', 1994, 46-50.

⁴⁹ Schmidtz, 'The Institution of Property', 1994, 61 (emphasis mine).

tend to be depleted, since no one is encouraged to care for the future, whereas privatization comes with an investment to enable future yields.

An important question in this respect, though hardly ever brought up, is the value of the raw external resource as a proportion of the final product. Locke in his days estimated the value of wasteland as next to nil in comparison to the labour invested into it to yield produce and what is made out of that for people to consume.⁵⁰ And although he referred to 'intrinsic Value', an obsolete concept in modern economics, he may well have had a point. The production costs of most products are probably still for the greater part labour costs if we take into account that production requires tools and capital goods that are also the result of a manufacturing process in which labour plays the main role. The only way to value raw natural resources is by taking them to the market but before that can be done they must be mined or otherwise worked up. Subtracting labour costs from the market price will then give us an indication of the value of the resource in its pristine condition. But that is not a datum, for it is likely to be different next week. Market prices represent the possibilities individuals see in the resource at that point in time. Here I cannot elaborate on value theory but the – empirical – question is relevant.

It is relevant because the discussion about initial acquisition co-hinges⁵¹ on the concern that initial acquirers get the resource free of charge while others don't. Certainly, they must invest their labour to make it useful, but still, they have something to invest in and the others have nothing. Nothing? Perhaps they have invested in a different resource, external or internal, perhaps they do not want to be tied up with immovable property and remain free to go as they please, or perhaps it is not their habit to invest in anything and they prefer to wait, see, and complain. When external resources are no longer freely available, they can often be purchased or rented from someone who is the rightful owner of one. The whole point of avoiding excessive constraints is to get things going by allowing individuals to take initiatives rather than to wait till humanity has reached a unanimous agreement on what is morally justifiable, a nigh impossible goal to begin with.⁵²

⁵⁰ Locke, *Two Treatises of Government*, 2005, 296-8 (II§§39-43).

⁵¹ It also does on the quantities someone gets.

⁵² Narveson, *The Libertarian Idea*, 2001, 92.

Not all prerequisites on initial acquisition have been relinquished in the foregoing. One apparently remains: without investment, there can be no appropriation. But we might wonder whether that has anything to do with self-ownership, as is sometimes inferred.⁵³ Why, as Nozick asked, would mixing something we own with something we don't give us a right of ownership? The moral of the labour-mixing criterion seems to lie somewhere else. Sanders puts it thus:

The labor-mixing criterion derives its force from the fact that the investment of labor almost always indicates an intent to do something or produce something that is important to the laborer. In general, justice requires that we respect such projects, at least where the projects themselves do not involve injustice to others, whether intended or not. To acknowledge that a person acquires property through mixing labor with unowned resources is simply to acknowledge the injustice of interfering with projects that other people deem important, or of robbing them of the fruits of those projects.⁵⁴

The strength of the labour-mixing criterion as contrasted with others is that 'it reflects an intent to do something or produce something independent of mere propertization'.⁵⁵ And where individuals desire no more than exclude others, there is always the market, like in Nozick's case of waterholes,⁵⁶ but they will have to reckon with steeply increasing prices, which reflect growing scarcity.

Investment thus is a necessary and sufficient condition for any initial acquisition of an external resource and the only form it can take is labour.⁵⁷ To do something significant with the resource boils down to laying a claim of ownership, which is permissible only if there are no previous individuals having rights in it. An occasional draught from a river does not entitle one to ownership of that river but one does have a right of use, as long as it is unowned. Constructing a house on a

⁵³ See for instance Cohen, *Self-ownership, Freedom, and Equality*, 2001, 69-72, suggesting that Nozick does so.

⁵⁴ Sanders, 'Justice and the Initial Acquisition of Property', 1987, 396.

⁵⁵ Sanders, 'Justice and the Initial Acquisition of Property', 1987, 397.

⁵⁶ Nozick, *Anarchy, State, and Utopia*, 2003, 179-80.

⁵⁷ The point is not, therefore, that one mixes one's labour with an object, as Locke would have it, and to which Waldron, *The Right to Private Property*, 2002, 184-94, objects, but that value has been added to it. This value does not correspond with the amount of labour mixed with it; only someone who is interested in its procurement can value the object's worth in its current state. How much labour must be spent on an unowned object to be able to say that one owns it is difficult to say. A useful, though still vague, criterion would be that its value must have changed significantly. Bananas hanging from a tree in Nicaragua are worth little if nobody there living wants them, but a relatively simple transport to a supermarket in Europe adds sufficient value to cover the costs involved and make a profit.

formerly unowned plot of land, however, imparts ownership. So the investment criterion is somewhat vague in the sense that we cannot draw a clear line, which demarcates when an investment is sufficient for entitlement.⁵⁸ Someone could even contend that the criterion leaves it open whether the investment is our own or someone else's labour. I could pay others to do the work and still claim that I was the one who did something significant with the resource. But if that were true I cannot claim to own it before the work started so that the workers could claim that they invested their labour in a previously unowned object, rendering them proprietors. An apparent paradox, which can be resolved by appreciating that I commissioned them to do the work, so that they have sold me their labour.

To recapitulate: appropriation of an extra-personal natural resource by (groups of) individuals who can make proper use of it after investing labour into the resource would seem to constitute the most efficacious method to benefit from the earth's riches. It could even be called 'fair', since nobody is prejudicially affected by such qualified appropriation by those who apparently have reason to invest and enhance the value of the resource. Surely it satisfies Locke's provisos of leaving enough and as good, of not wasting it, and of investing one's labour into it. But not everyone appears to agree. Let us take a look at some objections.

3. Some objections

My aim in this section is to investigate two issues: 1) a call for compensation to those who have not (yet) had occasion to appropriate, and 2) a concern for future generations who will be able to appropriate only what is left, if anything. First in line is Arthur, who asserts that appropriators harm those who don't.

Arthur objects to such a seemingly free-for-all philosophy as I defended and claims that nobody is naturally entitled to a larger than average share,⁵⁹ whether these resources are common or unowned to begin with. He asserts that theists like Locke and non-theists like Nozick 'both agree that those who acquire larger than average shares of the resources do so out of privilege, not as a matter of right or because they are deserved'.⁶⁰ But I don't think that is true. Neither Nozick

⁵⁸ Feser, 'There is no Such Thing as an Unjust Initial Acquisition', 2005, 64-6.

⁵⁹ Arthur, 'Resource Acquisition and Harm', 1987, 344.

⁶⁰ Arthur, 'Resource Acquisition and Harm', 1987, 344.

nor Locke referred to average shares and the latter relied on individuals taking no more than they need; his provisos are probably no more than a declaration of intent to that effect, since no one can confirm whether that proviso is ever met.⁶¹

It is compensation, which Arthur strives to establish. But although that is possible, e.g., by declaring all natural resources beneath the surface to be state property,⁶² he is not satisfied. And neither am I, albeit for a different reason; the state comprises only those individuals who happen to belong to it and excludes all others who might be worsened by this state's appropriation. Wouldn't state appropriation be just as much in need of justification as private one's? We have already discussed Nozick's view on this matter. What Arthur really wants to know is whether a different system of exploiting natural resources than Nozick's capitalistic one would be more beneficial for society's worst off members. I can only hope that now he now refers to society as humanity entire.

He invites us to imagine a situation in which an 'early arriving Boone family has laid claim to the bottom land before the Smiths arrive'.⁶³ The Smiths now have no other option – 'they must' – than to farm the rocky hillside. Have they been made worse off by the Boone acquisition? Not according to Locke, as long as the Boones invest in it, do not take more than they need, hence do not waste its fruits, and leave enough and as good for others. Arthur takes the first and second proviso for granted and focuses on the last. But how is anyone to know? No one is acquainted with the full stock of arable land and its quality unless they look no further than the valley on the bottom of which the Boones appropriated. The assertion that the Smiths 'must' farm the rocky hillside can be sustained only from a myopic perspective. There are plenty of options available to them, this rocky hillside being merely one of them. They could travel to the next valley and perhaps be there first, a process that can be repeated almost indefinitely, if necessary. And they could take up another occupation than farming, such as carpentry and construct a house for the Boones. Without any further information about the situation it is hard to speculate on what options are open to them. But that is irrelevant anyway, for what Arthur wants to find out is whether someone is harmed by another's acquisition of a natural resource.

⁶¹ Schmitz, 'The Institution of Property', 1994, 44-5, mentions a number of authors who concluded to that or asserted the proviso could never be met.

⁶² Arthur, 'Resource Acquisition and Harm', 1987, 346.

⁶³ Arthur, 'Resource Acquisition and Harm', 1987, 338-9.

In reaction to Arthur's paper Narveson asserts:

[T]o talk of *making someone worse off* is surely, normally, to compare the condition he is in given the act in question with the status quo ante, and in the present case, the hypothesis is presumably that at the outset, neither Boone nor Smith owned anything at all, and then Boone arrived *first*. Boone's acquisition clearly doesn't affect Smith's antecedent position at all. Smith sets off for the wilderness having no idea what he'll find when he gets there. Suppose Smith had set off in another direction and, to his astonishment, had washed up on the shores of 1987 Manhattan. Would the many millions of people there have to be said to have "harmed" Smith for getting there first?⁶⁴

Arthur could respond by saying that the millions who now own part of Manhattan have acquired it by transfer from previous owners, who did so from yet previous owners etcetera, eventually coming to the individuals who appropriated it from nature. And, indeed, if the original appropriation was unjust, so is current ownership, fully in line with historical entitlement.⁶⁵ But, even apart from raising the question whether arriving first is sufficient for entitlement, he would want to raise the more fundamental question how a non-appropriator would fare 1) in the absence of any system allowing for the social development of resources, 2) in a society that doesn't allow for private appropriation but relies instead on communal development of land and other resources, and 3) 'in a system which provides for private ownership of resources, but which first requires compensation to non-appropriators equal to the value of the resources'.⁶⁶ Then there are baselines to choose from.

The next question is whose position we want to assess under those different systems and what their current position is. The latter Arthur takes to be the capitalist system in which the non-appropriator does not receive any direct benefit from another's appropriation, supposedly Nozick's system. The individual whose position is scrutinized is the worst-off member of that capitalist society, henceforth-called 'W'. Arguably, 'his rights are most likely violated in the appropriation process'.⁶⁷ So the question becomes: under which system will W be better off than he now is, whereby system 3) can be further subdivided into an egalitarian, a utilitarian, and a Rawlsian system of redistribution. But which rights that are most likely violated in the appropriation process are we talking about? Apparently the right not to be harmed or made worse off, al-

⁶⁴ Narveson, *The Libertarian Idea*, 2001, 88.

⁶⁵ Arthur, 'Resource Acquisition and Harm', 1987, 338.

⁶⁶ Arthur, 'Resource Acquisition and Harm', 1987, 341.

⁶⁷ Arthur, 'Resource Acquisition and Harm', 1987, 342.

though the question is whether we can be made worse off if we have no legitimate claim. Recall that in a state of nature there is no legitimate government, and 'society' is no more than how Hobbes apparently conceived of it: 'simply a group of humans who interact to some degree'.⁶⁸ Although Nozick reasoned from 'a nonstate situation in which people generally satisfy moral constraints and generally act as they ought [because] this state-of-nature situation is the best anarchic situation one reasonably could hope for',⁶⁹ this stage is yet to be achieved. He seems to have meant that people's rights be acknowledged, but first they need to be argued for, which is the objective of our reasoning thus far.

For argument's sake, let us assume that W would be entitled to an average share in their country's natural resources. Then, obviously, under a capitalist regime they would be deprived by a private appropriation because their share would be taken from them without direct compensation. That they would be better off under a system with direct compensation is equally conspicuous, especially where it explicitly strives to enhance their position. The question that must be raised, however, is whether their position in a state of nature would also be worst. It seems reasonable to assume that individuals who fail to pull their own weight in a capitalist society will be neither in a state of nature, especially the Hobbesian one.⁷⁰ But it is not self-evident at all that they are identical to the worst off in the state of nature. An individual without any marketable labour capacity – e.g. someone in a coma – would be, unquestionably, but a paraplegic would be more at a loss in the state of nature than in a capitalist society where they would be able to do some work. So on most occasions it would seem that the state of nature is harsher for the less advantaged than a capitalist society. Arthur, however, seems unable to decide.⁷¹

Thus far we haven't found an independent argument, let alone one that is workable, for the assumption that external resources would be commonly owned. Neither do we have a good argument why we would be entitled to an equal share. That leaves Arthur's argument without foundation and rightly so because those individuals who make the effort to discover and make available new resources can be said to create the

⁶⁸ Narveson, *The Libertarian Idea*, 2001, 92.

⁶⁹ Nozick, *Anarchy, State, and Utopia*, 2003, 5.

⁷⁰ Narveson, *The Libertarian Idea*, 2001, 92.

⁷¹ Arthur, 'Resource Acquisition and Harm', 1987, 342.

value *ex nihilo*.⁷² The resource was of course physically present, but unknown and unavailable to anyone, hence of no value because value is relative to how individuals assess it.⁷³ So even if Arthur would be right that everyone has an equal claim to it, that claim would amount to nothing. No ancient Greek or Roman would have put a value on uranium, had they known it existed. Of course we can always ask how someone's situation would have been today, had history taken a different course. Surely, had Constantine not decided to proclaim religious toleration in the Roman Empire in 313 AD, probably our social world would have been different. The trouble is, however: many of us who are here now would not have been then, making it nigh impossible to compare actual and counterfactual situations.⁷⁴ If not for any other reason, this is why the baseline to judge the effects of an appropriation must be the status quo ante. And no one loses more than an opportunity by another's appropriation, whereas that will be equally true for those who are yet to appear.

Indeed, those who are yet to appear are obviously not in a position to appropriate and run the risk of being left with nothing. Therefore, Rawls, speaking of justice between generations, remarks: 'Each generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation'.⁷⁵ His intention is clear enough: those currently living ought not consume whatever wealth they have accumulated, and leave their descendants with less. Generations, however, are not discrete entities, and the process of new members entering society while old ones take leave of it is continuous. But apart from that, in our framework – a state of nature – there is no society, other than humanity at large. The best we can achieve at this stage is that individuals recognize each other's possessions as being property, provided that has been justly acquired, thereby laying the proper basis for peaceful market transactions.⁷⁶ In the next chapter I shall investigate how that can be achieved without coercion or contracts. That achievement would be an advance over the previous, far less favourable circumstances

⁷² Kirzner, 'Entrepreneurship, Entitlement, and Economic Justice', 1983.

⁷³ Mack, 'Self-ownership and the Right of Property', 1990, 520-2.

⁷⁴ Mack, 'The Self-Ownership Proviso', 1995, 213.

⁷⁵ Rawls, *A Theory of Justice*, 1999, 252.

⁷⁶ Gauthier, *Morals by Agreement*, 2006, 94-5.

and the descendants of participants may, having grown up, decide to join and share in the yield.

In my view, parents are responsible for what they leave for their offspring, rather than society at large and, what is more, no further arrangements have been made, so there is no issue of maintaining collective goods. On the other hand, the stock of extra-personal natural resources could be viewed as collective goods, though by now many of them privately owned. And some of these are finite. However, once application has been found for such a resource, we may expect that alternatives be developed when its depletion becomes imminent. It is not uncommon that a range of related activities starts off once a new resource is put to work, witness the current wide scale application of carbon compounds. There is thus a large vested interest in maintaining these applications, not just for our descendants but for ourselves as well. Without guarantees, then, it would seem that the progress in our technical abilities would at least compensate for the depletion of some natural resources.

Conclusions

However attractive it may seem from a moral point of view, neither collective ownership of the world's resources nor any form of sharing them is practically feasible. In the former we must ask everyone's permission to put some of them to use, and the latter fails for administrative reasons. Moreover, why should we leave resources lay waste in wait of people yet to be born? There is no reason to assume a divine benefactor to have bestowed those resources upon humanity, as Locke supposed. Yet we can declare the preservation of mankind as being our foremost concern and act upon it. Without original ownership having been vindicated, the issue becomes how to justify initial acquisition by individuals. Locke articulated a number of provisos and Nozick followed in his wake. The way the latter specified his proviso leaves, after scrutiny, no room for compensatory measures to non-appropriators, unless the latter were robbed of what they had a right to. But Locke can be interpreted as having had a sincere concern for future generations, although at first sight his proviso seems impossible to meet. Systems that favour one group over others probably achieve what they were intended to. However, they cannot be justified, if only because the group targeted is variable, and above all because they make us act as if initial appropriation is a zero-sum game. It isn't. On the contrary, initial appropriators who are prepared to invest will create

more resources than there were before they appropriated. But investment remains an unambiguous requirement, which will also benefit future generations.

III. AFFIRMING PROPERTY RIGHTS

Provided my arguments in the foregoing are sound, there are no original owners of external natural resources, and the best way to exploit those resources is to let (groups of) individuals invest in them. And since I argued that they own their body and its powers, hence the product of their labour, it stands to reason that they become the owner of the resources as well. It does, because they will want to protect their investment, and because the resource in its pristine condition presumably had little or no value. That appropriation, subject to investment, is best followed from the expectation that thereby new and more resources become available for everyone who is willing to procure them. Furthermore, I reasoned that nobody is harmed in their interests, which is another way of saying that no one is prejudicially affected by individual claim rights to natural resources within and without ourselves, in the latter case qualified by an investment requirement.

What I have actually accomplished is an articulation of two natural rights concerning property. They are natural, because in the state of nature I set out with there are no conventions and we cannot avail of positive law. Yet they are rights, since they can be claimed against all others as purportedly being exclusive to the proprietor. In comparison to the Hobbesian state of nature, where everyone has a natural right to everything, and hence to nothing, we have made progress towards a Lockean state of nature, in which people do have property rights. And we have done so without instating a sovereign or, more generally, without political organization. That is important, given my objective to remain in a state of nature without government. But how are we to ensure our natural rights in the absence of any authority to enforce them? All we have done is provide two well-argued propositions, which oblige no one, until people have reason to acknowledge and abide by them. An independent authority enforcing property rights would provide people with such a reason, but since I want to avoid a political solution, I must come up with a moral one.¹

Arguably, one could say that this comes down to turning the tables; if individuals are autonomous beings, why should we have to prove that political authority is uncalled for? As Barnett writes:

Political reality dictates that the *practical* burden of proof falls on those who wish to make a radical change in society. Anarchists must face this burden.

¹ Kraus and Coleman, 'Morality and the theory of rational choice', 1991, 256-7.

But it is those who seek to impose a state, those who wish to justify the use of force against the individual who face the *moral* burden of proof.²

Nevertheless, in this chapter I shall try to show that coercion is unnecessary to warrant property rights. For rational beings wide acknowledgement will suffice.

Why, then, would people acknowledge the property rights I argued for? My answer is that if they accept my arguments, the individuals who do will afford themselves a just starting point for transacting with one another. I may consider it just, because they will accept those arguments as reasonable, given the fact that they strive to maximize utility for themselves, or so I shall assume. In fact, I assumed throughout that they do by attempting to preclude prejudicially affecting individuals in arguing for property rights. The importance of ensuring such rights lies in the fact that a state of nature without acknowledgement of these rights is sub-optimal in the sense that it is possible to enhance the situation of at least one person without worsening the situation of others. That is so, because the actual distribution of property could be wrong, hence not according to the propositions I argued for. Some people might utilize other's powers without their consent, and individuals might have appropriated extra-personal natural resources without an intention to invest. And then we have a wrong starting point. However, a just starting point is, although necessary, not a sufficient condition for a just outcome of their subsequent transactions. For that to come about the transaction circumstances must be perfect, which is seldom, if ever, the case in reality.

In the first section I shall discuss my conception of rationality: maximizing utility as perceived by individuals, in order to set the stage for acknowledging property rights. Then, in the second section, I shall argue that it is rational for individuals to recognize property rights as articulated, while it is equally rational for them to accept constraints on their striving to maximize utility, failing perfect circumstances. Such constraints can be qualified by the adjective 'moral', but they merely concern property rights and their exchange, whereas morality often goes further than that. People who live together regularly adopt other moral rules, which might disturb the optimum that could otherwise be achieved. And even if citizens do so by consent, they might satisfy their own sense of justice to the detriment of non-citizens. Or so I shall argue in the third section, where I shall also concisely consider the

² Barnett, 'Whither Anarchy?', 1977, 20 (original italics).

consequences of there being individuals who do not endorse natural property rights.

1. Rational choice

Several times now we have come across the injunction that we ought to refrain from worsening another's situation by our actions. But why is that so important? The hidden assumption is that everyone strives to maximize their utility, which is another way of saying that they attempt to realize situations that they value more than others. So when we worsen their situation, we frustrate an on-going attempt to maximize utility, as perceived to be inherent in those situations. In this conception of rationality individuals have preferences, based upon the value they attribute to situations, beliefs on how to realize them, and on the probability of these situations actually materializing. In this section I shall concisely discuss each of these aspects of rational choice, which I shall take to essentially motivate human behaviour.

People cannot but have preferences in what they desire to achieve by their actions. Not all their desires can be fulfilled simultaneously, and therefore they are to make choices upon beliefs of what will fulfil their desires in order of preference.³ Obviously, people can be wrong in the attribution of value, in their beliefs on how to realize them, and in their assessment of the probability of situations materializing. Each of these aspects is influenced by the presence of other individuals, but most directly by others striving to maximize their own utility, particularly when these actions frustrate another's strivings. To illustrate, consider a case presented by Mack:

Since his arrival at the previously unowned and uninhabited island, Adam has engaged in actions that, according to liberal theory, confer upon him sole dominion over all of the island. Indeed, he has so labored on the island – by building retaining walls, planting protective trees and grasses, and so on – that he has prevented the island from disappearing entirely into the sea. Now the innocent shipwrecked Zelda struggles toward the island's coast. But Adam refuses to allow Zelda to come ashore.⁴

From Adam's perspective, Zelda has nothing to complain; if he had not been there, neither would the island, and therefore Zelda 'ends up no worse off than she would have been, had Adam never existed or had he never shared this particular stage with her.⁵ Why Zelda wants to come ashore is clear enough: the ultimate utility, her life, is at stake; but what

³ Gauthier, *Morals by Agreement*, 2006, 56.

⁴ Mack, 'The Self-Ownership Proviso', 1995, 193.

⁵ Mack, 'The Self-Ownership Proviso', 1995, 193.

reason could Adam have to refuse her? Perhaps he has deliberately abandoned the company of other human beings and does not want to be stuck with one, however attractive she might be. In that case he favours solitary life over one with others, which is another way of saying that the former has more utility for him than the latter. And utility is a measure of individual preference, expressing the subjective value of a particular situation as compared to another.

Mack's example refers to purely self-regarding interests on both sides, but that is accidental. Adam could also be moved by the general interest to save islands from disappearing into the sea, although in that case he could have welcomed Zelda as a possible co-operator. The point I wish to make, however, is that individuals, conceived as maximizers of utility or value, are basically unconcerned with respect to others. And hence it is rational for them to prefer situations with more value to those with less,⁶ independent of what this means to others. Irrelevant is what affords them such value; it suffices that it moves them to action. Once they act, however, they are to make sure that it does not worsen another's situation, compared to what it would have been otherwise.

And yet, nothing suggests that desires are self-regarding only; some or most of them could well be other-regarding.⁷ Persons are conceived as independent centres of activity,⁸ but rationality does not require them to exclusively value what enhances their own situation.⁹ As Morris and Ripstein wrote: '...although the interests [...] are always the interests of a self, they need not be interests *in* oneself. Persons concerned to promote the interests of others [...] also have reasons to pursue those ends'.¹⁰ Moreover, the theory of rational choice 'treats value as a subjective and relative measure, not as an objective and absolute standard'.¹¹ This means that persons determine their values – at least to an appreciable degree¹² – independent of others, and that these are relative

⁶ Gauthier, *Morals by Agreement*, 2006, 22.

⁷ Gauthier, *Morals by Agreement*, 2006, 7.

⁸ Gauthier, *Morals by Agreement*, 2006, 9.

⁹ I cannot exclude the possibility that at the end of the day all human action is motivated by a desire to increase their own well-being.

¹⁰ Morris and Ripstein, 'Practical Reason and Preference', 2001, 1 (original italics).

¹¹ Gauthier, *Morals by Agreement*, 2006, 25.

¹² Gauthier, *Morals by Agreement*, 2006, 25, writes 'quite independently of the values of others', but that seems to me an overstatement, since people influence one another, even though in the end it is their own decision.

to their subjective judgement.¹³ Obviously, most people will want to take care of their near and dear, but there is no irrationality in taking that in a (very) wide sense. If they judge it to be of value that no one is without the means for a decent living, they simply set their preferences accordingly and act upon them. Hence, rational choice does not presuppose selfishness as the sole motivator of human behaviour.

Values are not solely derived from the material aspects of a situation. Situations may contain an aspect that is easily overlooked: utility derived from immaterial objects. Consider for instance Mack's case of Zelda being caught in a cage:

Adam, the proprietor of the island, refuses to allow Zelda to come ashore. However, Zelda inadvertently enters an offshore cage which Adam has constructed to catch (large) sea mammals. Rather than releasing her, Adam proceeds to furnish her with far more life-sustaining and satisfying conditions than she would have enjoyed had she been allowed ashore and otherwise been treated justly by Adam. (Had she not entered the cage, he would not have been able to effectively bestow his paternalist largesse.)¹⁴

Zelda is far better off in a material sense but in immaterial respect she is worse off. She may expect to stay alive (if Adam is not planning to eat her), which is a better prospect than she had while at sea, but she pays a high price, i.e., her freedom. Zelda may conclude that on balance her situation has enhanced or worsened, but Adam undeniably treats her unjustly without worsening her material situation. It is unjust because he denies her the exercise of her world-interactive powers, as argued in the first chapter. There is at least some similarity to being born in a state and, once grown up, having no say in whether or not the political 'cage' is acceptable. Of course it depends on the kind of state one is born into – dictatorships, theocracies and otherwise ideologically driven states being worst cases – but even our own democracies are hardly better. As Narveson puts it:

The democratic theory of government represents an effort to modify the inherent authoritarianism of governments to an extent that would give it some reasonable semblance of acceptability. But on the face of it, it doesn't help much, since it substitutes for the one or the few people asserting authority a mob of your fellow humans'.¹⁵

Thus interpreted Mack's case becomes a teaser for those of us who believe in political organization, thereby accepting the inevitable paternalism that comes with it. Zelda didn't have

¹³ Similar arguments are put forth by Mack, 'Self-Ownership and the Right of Property', 1990, 520-2.

¹⁴ Mack, 'Self-ownership and the Right of Property', 1995, 194.

¹⁵ Narveson, *The Libertarian Idea*, 2001, 214.

much of a choice, but neither do we, because we can only change cages.

Returning to the subject at hand – rational choice – what we have called ‘a situation’ can be depicted by the composition of someone’s holdings.¹⁶ This relationship between those holdings can be expressed by what economists call ‘a preference curve’. It shows how an individual remains indifferent between availing of variable quantities of two products, e.g. milk and butter. In the real world, of course, we are interested in more products and the curve then turns into a multidimensional mathematical construct. The underlying idea, however, remains the same and adding values that can only be expressed in non-monetary terms, such as utility, may extend it. Holdings can be exchanged, e.g., by decreasing the amount of money in the bank and purchasing real estate or shares instead. But we can also decide to spend the money on a far-away holiday, which is a good illustration of an exchange between material and immaterial values, for in that case our financial assets dwindle while our overall utility (hopefully) improves. Similarly, we can envision a preference relationship between, for instance the imagined satisfaction derived from living autonomously and the known satisfaction issuing from living in a democratic state. Such preferences obviously will be subject to change over time and dependent upon the further situation.

Another aspect of rational choice is that taking a particular action to fulfil a desire is based upon a belief that by doing so the desire will be fulfilled. But beliefs can be mistaken, while other people acting or circumstances generally may frustrate its achievement. Hence, it is rational to base one’s choices, out of the actions that are perceived to be open at a certain point in time upon the best available knowledge that might warrant the achievement of what we intended to achieve. In Mack’s case stories Zelda very probably boarded a ship or an aeroplane to arrive in a different location than the high seas, but something went wrong and she ended up swimming for her life. Also, she will have estimated her chances of safely and timely arriving at her destination as high enough to take the risk. Therefore, it is similarly rational to assess the probability of achieving one’s objective, given any of the beliefs

¹⁶ Compare Gauthier, *Morals by Agreement*, 2006, 49, saying that: ‘Each state of affairs [or situation] is characterized [...] not by a single value, but by a set of values, one for each affective relationship into which it enters or may be thought to enter’.

that would make one succeed.¹⁷ Individual preferences will thus be ordered by the perceived utility of a desired situation and the probability of that situation coming about by a particular action. Moreover, those preferences are supposed to be considered, as opposed to rash, as well as consistent with one another, and complete, covering the whole of life.¹⁸

Summing up: to be able to continue my argument toward a widespread acknowledgement of property rights, I needed a view on human motivation. The theory of rational choice fulfils that requirement by showing how individuals form preferences within a context of utility maximization. Utility or value is subjective, albeit not necessarily self-directed, and actions intended to maximize personal utility are subject to beliefs of what would realize the objective, and a perceived probability of that actually occurring.

2. Toward utility maximization

In this section I shall argue that individuals act rationally by leaving the Hobbesian state of nature and enter a Lockean one. In doing so they recognize each other's possessions as something they have a natural right to, and thus arrive at a position from which they can save themselves the cost of unproductive activities vis-à-vis each other, enhance the value of their property, and transact with like-minded individuals. Once transacting has led to a situation from which none of them can enhance their position without worsening that of any of the others, the 'Pareto-optimum' has been achieved.¹⁹ It is an optimum, for individual utility maximization is constrained by the injunction not to worsen another's position. When transacting, the optimum is achievable only under perfect conditions, which is seldom, if ever, the case in reality. To approach the optimum nevertheless, additional constraints to individual utility maximization are indispensable. In so far these constraints are moral ones, we could say that moral rules work as auxiliaries to maintain natural property rights and to compensate for less than perfect transaction conditions.²⁰

¹⁷ Gauthier, *Morals by Agreement*, 2006, 24.

¹⁸ Gauthier, *Morals by Agreement*, 2006, 23.

¹⁹ Arneson, 'The Shape of Lockean Rights', 2005, 277; Gauthier, *Morals by Agreement*, 2006, 76; Koutsoyiannis, *Modern Microeconomics*, 1981, 497, 526; Narveson, *The Libertarian Idea*, 2001, 189; Rawls, *A Theory of Justice*, 1999, 58.

²⁰ Kraus and Coleman, 'Morality and the theory of rational choice', 1991, 256; Narveson, *The Libertarian Idea*, 2001, 188-9.

Not everybody everywhere can be expected to appropriate with the intention to invest, or to concur with individuals having property rights generally. Arguably, in a state of nature there is little that can be done to prevent or rectify wrongful appropriations or violations of property rights generally, absent a legitimate authority. So-called 'anarcho-libertarians', however, expect that the market will take care of such anomalies, and indeed there are indications that this is what actually happened. Childs distinguishes the voluntary subjection of disputes to mediators in market legal systems from imposed settlements under state legal systems.²¹ Rothbard refers to various such market legal systems in history,²² and so does Hasnas.²³ At least it seems possible that mediation works without state intervention,²⁴ hence with moral laws only.

Natural rights conceivably are instances of moral laws, but they are not granted by nature or anyone else; they require recognition. Nozick, following Locke, merely presumed that individuals have natural rights.²⁵ Locke could propose God to have granted us such rights,²⁶ but the secular Nozick could not avail of that luxury, which is why he was criticized for having proposed a philosophy without foundations.²⁷ Natural rights precede conventions and therefore they cannot be conceived as valid without universal or at least large-scale recognition.²⁸ Merely positing them is not sufficient, whether they were allegedly established by a higher power or argued for. Decisive is that people generally accept these rights and abide by them. And although '[i]t is true that rights are not plausible candidates for objective existence',²⁹ 'the positing of rights is no more obscure than the positing of goals or obligations',³⁰ the latter two being alternatives to ground a moral theory. I opt for a right-based theory, because rights are

²¹ Childs, 'The Invisible Hand Strikes Back', 1977, 25.

²² Rothbard, 'Robert Nozick and the Immaculate Conception of the State', 1977, 47.

²³ Hasnas, 'Toward a Theory of Empirical Natural Rights', 2005, 127-34.

²⁴ Morris, *An Essay on the Modern State*, 2002, 56-101, shows that nongovernmental bodies, too, can maintain social order.

²⁵ The famous opening sentence of Nozick, *Anarchy, State, and Utopia*, 2003, ix: 'Individuals have rights, and there are things no person or group may do to them (without violating their rights)'.

²⁶ Locke, *Two Treatises of Government*, 2005, 226 (I§116).

²⁷ Nagel, 'Libertarianism Without Foundations', 1983.

²⁸ Narveson, *The Libertarian Idea*, 2001, 134-5.

²⁹ Mackie, 'Can There Be a Right-Based Moral Theory?', 1984, 170.

³⁰ Mackie, 'Can There Be a Right-Based Moral Theory?', 1984, 171.

meant to protect individuals from interference by others and warrant autonomy.

The rights to property within and without us that I argued for in earlier chapters might be conceived as natural rights, provided they are acknowledged as such. Also, we can take them to be both inalienable and imprescriptible. Bentham, however, held natural rights as “simple nonsense” and the addition of adjectives like “imprescriptible” or “inalienable” as merely placing “nonsense upon stilts”.³¹ His objection was directed at the non-enforceability of such rights without a government, but I shall argue that we can do without this kind of enforcement,³² and work with moral laws because it is in people’s interest to endorse them. If those people, who acknowledge the right to self-ownership and qualified world-ownership, affirm those rights, they obtain a solid basis for cooperation by transacting.

Transacting commences with property. First and foremost, therefore, individuals would wish to ascertain their property, which remains shaky in a state of nature. That is why Kant prescribed a state of law, and Locke suggested a compact, which Nozick attempted to avoid as too demanding,³³ and Gauthier sought to revitalize without ceding more than is necessary. The underlying idea, inspired by Gauthier, is that by agreeing on property rights as advocated, those who do will be better off than when they don’t, if only because they will save themselves the cost of offensive and defensive activities vis-à-vis each other. Such activities are unproductive, because they merely alter relationships between individuals and objects; no value is added in the process.

We can easily envision individuals meeting and discovering that they have something to offer one another. Their context is a Hobbesian world where everything is up for grabs and property rights do not exist.³⁴ If someone possesses what I desire to possess and I perceive myself to be the stronger party, why not simply take what I want and be done with it? It saves me the expense of giving something in return, such

³¹ Simmons, *On the Edge of Anarchy*, 1995, 101n2.

³² Gauthier, *Morals by Agreement*, 2006, 164.

³³ This is how I interpret Nozick’s attempt to justify a minimal state coming into being, instead of Locke’s voluntary compact, which would lead to majority rule, and to no longer being at liberty to withdraw one’s (land) possessions from the commonwealth (Locke, *Two Treatises of Government*, 2005, 331 (II§95), 349 (II§121)).

³⁴ Narveson, *The Libertarian Idea*, 2001, 45. Or, as Gauthier, *Morals by Agreement*, 2006, 208, puts it more appropriately: in the Hobbesian state of nature ‘there are no exclusive rights whatsoever but only liberties’.

that we are both better off. The strategy is worth continuing as long as it lasts, for someday the roles will be reversed and the other is stronger than I am, making me lose part or all of what I accumulated, or even life itself. One of features in which we are equal is that we are vulnerable; as Hobbes put it eloquently: '...as to the strength of body, the weakest hath strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himselfe'.³⁵ Also, the more I possess, the more attractive it becomes for others to relieve me of the burden to protect it, a burden that will require an increasing, though unproductive effort. It seems probable that in the end we are all better off by trading what we are prepared to let against something that we value higher.³⁶ At least it provides us with an opportunity to enhance the value of our possessions, for ourselves and for others, by productive activities. What we seek, then, is a stable balance of powers.

For that to come about individuals need to recognize each other's holdings as being their property. I have argued that our body and its powers are always property, but external natural resources, whether raw or contained in a manufactured product, are subject to having been rightfully acquired. As argued in the previous chapter, that is the case when they were originally appropriated from nature with an intention to invest in them. The crucial point is that a mere balance of predatory and defensive powers in the contestants is not stable,³⁷ for a slight shift in the distribution of those powers would disturb the equilibrium.³⁸ Although such predatory and defensive activities are costly in terms of their being non-productive,³⁹ and therefore there is something to gain for each of them, not even a fool would accept co-operative interaction on that basis.⁴⁰ Might does not make right.

Note, however, that I am not speaking about unequal positions simpliciter; their respective holdings could very well be disparate and dissimilar in value, but the issue is that they acquired it without worsening the situation of the other. Suppose we both used to cultivate a plot of land and suddenly you appropriate it, believing that I may be coerced to becoming a day labourer in your service. This is clearly a wrongful

³⁵ Hobbes, *Leviathan*, 1985, 183 (Chapter 13).

³⁶ Narveson, *The Libertarian Idea*, 2001, 177-81.

³⁷ Gauthier, *Morals by Agreement*, 2006, 193-4

³⁸ Gauthier, *Morals by Agreement*, 2006, 230.

³⁹ Gauthier, *Morals by Agreement*, 2006, 195.

⁴⁰ Gauthier, *Morals by Agreement*, 2006, 198.

appropriation, as discussed in chapter two, and my situation is worsened. But being stronger than I am, e.g., in having weapons with which you force me into slavery, I acquiesce to preserve my life, though obviously only until I find an opportunity to escape or reverse the situation. Acquiescence under threat of force is inherently unstable, quite different from the situation in which we voluntarily agree to cooperate, even if it implies that I become a day labourer in your service. You might convince me beforehand that we both stand to gain from this change in our cooperative relationship.

What we expect to arrive at, then, is an initial bargaining position in which both parties bring to the table what they have acquired without having taken advantage of the other bargaining partner.⁴¹ Only that would provide a natural and stable equilibrium, because neither would have to swallow unreasonable demands, whereas eliminating unproductive activities by cooperative interaction may enhance either's situation. And cooperative interaction means transacting, or exchanging goods under conditions that both parties voluntarily agree to. Therefore, natural property rights as I argued for are a just starting point for transacting, increasing utility.

In a two-person world the individuals have no other option than to bargain over those conditions, but were the scale of interaction to be enlarged, conditions will tend to become set as if by invisible hand. And then we speak of a market for a specific good where many anonymous suppliers face numerous equally anonymous buyers. If those markets function properly – are perfect markets –, the outcome of the transaction process is as just as the situation from which it set off.⁴² This is what Nozick meant when he asserted that '[w]hatever arises from a just situation by just steps is itself just'.⁴³ And 'justice' in this context denotes '...the disposition not to take advantage of one's fellows, not to seek free goods or to impose uncompensated costs, provided that one supposes others similarly disposed'.⁴⁴ But how do we get to a multi-person world of similarly disposed individuals, and what if markets are imperfect?

Each of the two individuals with whom we set out will have more desires than just the two goods they can provide one

⁴¹ Nothing speaks against worsening the situation of another who is not a bargaining partner as in the Hobbesian state of nature (Gauthier, *Morals by Agreement*, 2006, 201).

⁴² Gauthier, *Morals by Agreement*, 2006, 95.

⁴³ Nozick, *Anarchy, State, and Utopia*, 2003, 151.

⁴⁴ Gauthier, *Morals by Agreement*, 2006, 113.

another, and they will be acquainted with other individuals willing to exchange goods under similar just conditions. Then we shall arrive at a network of cooperating individuals, which may eventually stretch all over the world. Factors inhibiting such a wide expansion might be: different local conventions, languages, desires, beliefs, as well as deficient means of communication and transportation. That is why most transactions will remain local ones, but where such obstacles can be overcome, there will arise a tendency to transact where price and quality of the particular good are optimal. However, in such a network it is hard to see how everyone could trade with everyone. Therefore, individuals will tend to specialize in branches with regard to the kinds of product and their origin. Some will for instance acquire bananas from Central America, others will manufacture furniture in Europe, and that is more efficient than all of us acquiring our own bananas and manufacturing our own furniture. In this 'network of the willing' it is possible to attain Pareto-optimality, the situation in which no one is able to enhance their position without worsening that of another, provided transaction conditions are perfect.

But here we encounter an obstacle that is less easily overcome: imperfect conditions. Under perfect conditions there are a large number of sellers and buyers, the products traded are homogenous, sellers are free to enter or exit the market, and their purpose is to maximize profits, whereas regulation by governments is absent. Then we have the situation of pure competition, to which must be added perfect mobility of factors of production and perfect knowledge to achieve perfect competition.⁴⁵ In reality, however, products are often differentiated, e.g., adapted to different tastes, various kinds of barriers to entry are created to discourage fresh competition, and governments interfere in many ways.⁴⁶ Moreover, mobility of capital goods and labour is far from perfect, while it is little more than a dream that sellers and buyers would be perfectly informed about available products, prices, the extant competition, and other relevant aspects of markets. Only under ideal circumstances will transaction costs be zero, and markets are cleared. Moreover, and that is particularly important for our discussion, external effects of production processes are internalized. To give a concrete example: when such processes would pollute a river, the producer will take

⁴⁵ Gauthier, *Morals by Agreement*, 2006, 154-5.

⁴⁶ Not only do they raise all kinds of taxes, but they often interfere in labour relations, demand licences to open a new business, to export to another country, they restrict imports from elsewhere, just to name a few examples.

appropriate measures to prevent that from occurring, so that people living downstream do not bear the consequences, like fish dying,⁴⁷ or compensate them for the disadvantage if prevention is impossible.

Widely acknowledged property rights as advocated, hence a just initial position, and perfect competition would suffice to arrive at an equally just outcome. Taking the former condition as settled, and the latter as deficient, we face a problem. Although it is rational to try and maximize utility, sometimes we have to constrain ourselves and settle for less. That is so when chances are that we could be worse off while trying to maximize. Under perfect conditions markets are transparent, which means that we know all we need to know to maximize utility, bar the truth of our beliefs. But where conditions are less than perfect we lack knowledge and must act without certainty. The classical example is the prisoner's dilemma, in which the police separately interview two thugs.⁴⁸ In case any of them confesses while the other doesn't, the latter ends up with twenty years in prison and the former walks. If neither confesses, they both walk. And if both confess, they each face ten years in prison. Obviously, it is best for both when they act in unison, preferably by not confessing, but being interviewed separately, they don't know what the other will say, unless they have agreed upon that beforehand. Even then, the stakes are high, and a lot depends on mutual loyalty. Non-confession appears to be the best strategy only where the two can rely on each other; if not, confession is optimal. Hence the dilemma.

The story can be told in a somewhat different fashion, for instance as someone who enters a store to acquire a \$ 5 fry pan.⁴⁹ Of course they are best off with having the fry pan and the money still in their pocket, but then the shopkeeper is worse off. It would thus seem that, without further constraints e.g. in the form of a policeman standing by the door, it would be dim-witted to pay for the pan. But surely the next time this individual returns the shopkeeper will be waiting for them with a firearm to recover the erstwhile loss and prevent further damage. Hence, the individual will do best to never return, but then soon they will run out of stores to be

⁴⁷ Gauthier, *Morals by Agreement*, 2006, 211-4.

⁴⁸ Koutsoyiannis, *Modern Microeconomics*, 1981, 412-3. Variants can be found in Gauthier, *Morals by Agreement*, 2006, 80-1, Kraus and Coleman, 'The Rationality of Keeping Agreements', 1991, 257-8, and Narveson, *The Libertarian Idea*, 2001, 137-8.

⁴⁹ This example is Narveson's.

robbed. If both shopkeeper and client intend to enduringly live together, they do best to not worsen each other's situation and focus on rendering their cooperation fruitful to each of them. It appears sub-optimal in the short run, but at the end of the day it isn't. Hence the phrase 'constrained utility maximization', as opposed to 'straight utility maximization', which is what a robber does.⁵⁰

The prisoner's dilemma has a bearing on our discussion on the recognition of property rights, too. It is the starting point for transactions, and I argued that we do better for ourselves in the long run by acknowledging those rights than by fight or flight strategies. In the latter case we frequently face a prisoner's dilemma: the winner takes all, the loser is left with nothing, while the outcome is uncertain, and cooperation will make both better off eventually. Hobbes predicted that in the state of nature there would be

...no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of time; no Arts; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.⁵¹

Perhaps the effect of two people acknowledging a few simple rules is not so overwhelming as to mitigate the unruliness of the state of nature, but it is a beginning and it might start others thinking of following suit. The issue is not just winning or losing a single fight, but the reiteration of such battles and the permanent uncertainty that comes with it. When people generally adopt a disposition to cooperate, chances increase that they can rely on each other, and therefore that they all will be more productive.

Similar considerations are in play while transacting under imperfect conditions. As Kraus and Coleman put it: 'Morality is a potential solution to the problem of market failure'.⁵² So what we need are moral principles to compensate for imperfect transaction conditions. It would take me too far afield to discuss those principles in more detail, particularly since the purpose of this chapter is merely to ensure the property rights I argued for in preceding chapters, and thus provide a starting point for productive activities. The issue is that '[t]hese principles, if they are to be moral principles, must be

⁵⁰ Gauthier, *Morals by Agreement*, 2006, 167-70.

⁵¹ Hobbes, *Leviathan*, 1985, 186 (Chapter 13).

⁵² Kraus and Coleman, 'The Rationality of Keeping Agreements', 1991, 256.

fair and impartial'.⁵³ The property rights satisfy that requirement, because they prejudicially affect no one, whereas they are in everyone's interest. Further research is required into the specific imperfections of the market and the moral principles that would counteract those shortcomings. But we have a fair and impartial starting point for market transactions in property rights, which can be maintained without intervention by external authorities.

That completes my argument for natural property rights as a starting-point for transacting, but there are two remaining challenges that need to be addressed, because they might threaten the appropriate functioning of the network: political organization in societies and non-participants.

3. Societies and outsiders

Thus far I have assumed a global aggregation of individuals, who are neither induced nor hampered by any considerations other than to arrive at a fair and impartial starting point to augment their position in terms of subjective utility. But we cannot ignore the fact that people usually share part of the earth's surface with others, or that they are otherwise closely connected to those others, sharing a particular culture. Fact is that people do associate in a variety of ways, only one of which is by transacting with others. In the section on rational choice I argued that individuals might have desires that are not self-regarding, e.g., those directed at the well-being of their near and dear. In the actual world part of our desires often favour the well-being of our countrymen over that of strangers. And we even develop moral rules that go much further than property rights or compensating market deficiencies. In this section I shall argue that these preferences might affect free trade among individuals, hence Pareto-optimality. Also, there will be individuals who – alone or in concert with others – do not endorse our conception of property rights and the moral rules to compensate for deficient markets. Let's call them 'outsiders'. They might threaten the members of the network in various ways. Let me consider the possible drawbacks and threats in that order.

None of us is born solitarily, since we immediately become a member of a small group: the core family. But that is often part of increasingly larger groups: the wider family, the tribe, the people, and the nation. Hence, arguably, individualism is nonsense to begin with; at most we are somewhat different

⁵³ Kraus and Coleman, 'The Rationality of Keeping Agreements', 1991, 258 (original italics).

from those we grew up with. This is generally the stance of communitarians, who reject the claim that living in society is a choice, which individuals either make or decline. They contend that it embodies 'the mistaken view that people's ends are formed independently of or prior to society'.⁵⁴ However, the issue need not overly concern us here as long as we can agree on humanity consisting of individuals who aspire and act to increase utility as they conceive of it. To some extent their social environment no doubt creates similarity between individual views, values and dispositions,⁵⁵ whereas political organization usually invigorates this tendency, but as rational beings they possess the capability of reappraising embedded conventions. And often they belong to a variety of dissimilar associations, segregated by language, religion, profession, and what have you. Therefore, I take societies to be particular associations of people who merely happen to live in the same geographical area. And that means they act primarily as individuals, striving to maximize their own utility.

From the sole vantage point of individuals acknowledging each other's property rights and transacting under just conditions, there is no reason to form a society, let alone one with political organization. That is why the aggregation of transacting individuals is not even an association with a unifying structure.⁵⁶ In fact, it is simply a network. But I appreciate that people may have other reasons to associate, like the common conventions, languages, desires, beliefs, mentioned above. They might even develop views on what is just, over and above property rights and the moral principles necessary to compensate for deficient market conditions, and establish institutions to that effect. Nozick expounded on possibilities to create a variety of utopias, if only we recognize property rights.⁵⁷ And Wolff has propounded similar ideas.⁵⁸ But we mustn't close our eyes for the possible drawbacks of making arrangements on a local or otherwise restricted scale, for they might hamper free trade between individuals of different groups. History might seem to prove that no advanced level of well-being has ever been realized outside a well-ordered society with political organization, but obviously that doesn't

⁵⁴ Mulhall and Swift, *Liberals and Communitarians*, 2005, 13.

⁵⁵ As Mackie, 'Can There Be a Right-Based Moral Theory?', 1984, 179, put it: a right-based moral theory is 'in no way committed to seeing individuals as spontaneous originators of their thoughts and desires'.

⁵⁶ Narveson, *The Libertarian Idea*, 2001, 207.

⁵⁷ Nozick, *Anarchy, State, and Utopia*, 2003, 297-334.

⁵⁸ Wolff, *In Defense of Anarchism*, 1976, 78-82.

prove it could not have happened. And to mention just one actual example of disturbing free trade: subsidizing local food products by western states seriously hampers third-world exports, and precludes Pareto-optimality.

Imagine a society that has adopted political organization to coordinate its members. I shall not be concerned with the inherent conflict between the supreme authority of the state and the moral autonomy of its citizens.⁵⁹ But because these citizens are subject to the state's supreme authority, they will be less free to act as individuals vis-à-vis individuals who are not citizens of that state. To finance its activities a state must raise taxes, and taxes almost unavoidably affect supply and demand.⁶⁰ A manufacturer who is charged with a lump-sum tax per period will see their fixed costs rising, and where market prices are determined by invisible hand, independent of costs, the manufacturer may well end up with a financial loss and eventually go out of business. A profits tax will have a similar effect. The imposition of a specific sales tax or value added tax would raise consumer prices for citizens and lead to a lower local demand or a loss in overall spending power. The money previously spent by citizens will now be spent by the state, usually for entirely different purposes. In any case, the Pareto-optimality within the network will deteriorate, and the position of innumerable individuals in the network will be prejudicially affected. Obviously, the effect will depend upon the relative size of this society within the network, but it can hardly be denied that its citizens have altered their position at the expense of other members of the network. And similar effects will result from other taxes, which always constitute a transfer of spending power from one group of individuals in society to another.

To be sure, such taxes are not the only factors disturbing Pareto-optimality in the network. States sometimes declare specific goods 'strategic' and therefore not tradable with non-citizens, they subsidize locally made goods and/or they levy import duties, all of which have disturbing effects. Nevertheless, such actions by the state are justifiable when its citizens had preferences in accord with the state's choices, but then those choices would be superfluous. When not, the members of the network outside society are forced to bear the consequences, albeit to a lesser degree than that state's citizens themselves. The latter are directly affected by what their

⁵⁹ Wolff, *In Defense of Anarchism*, 1976, 3-19.

⁶⁰ Koutsoyiannis, *Modern Microeconomics*, 1981, 168-70.

state does, the former only indirectly and to a degree which corresponds with that state's relative influence.

I have implicitly assumed that the citizens of this society, or most of them, are otherwise members of the network. But what about individuals who have not acknowledged property rights and the moral principles necessary to compensate for deficient market conditions? For instance, when such outsiders enjoy advantages created by members of the network.

Hart's principle of fairness says: 'when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission'.⁶¹ And if that were true, outsiders would be obliged to join the network or refrain from enjoying the advantages it yields. But who are the outsiders? They have remained in the Hobbesian state of nature, even when they have endorsed another morality. And they might constitute a threat to the network by taking predatory action toward rightful property holders, by withholding extra-personal natural resources from inclusion into the network, and by enjoying unpaid for benefits. Let's take a closer look at these.

To begin with the latter issue, Hart cannot have referred to the world population, so he probably thought of the other members of a society. But the network is not a society as he conceived of it, because it may be spread out over the world and will have no clearly demarcated borders. Moreover, everyone within the network subscribed to our moral principles, hence need not be coerced, whereas no authority exists to induce outsiders. The principle doesn't help to avoid free riding anyway, because individuals across the border of Hart's society may still enjoy the advantages created by those within. All the principle does – if valid at all – is coercively enlarge the circle of participants, stopping short of universality on grounds of a restrictive criterion of membership, i.e., living in a certain territory. And although activities within the network possibly will have beneficial effects on those outside it, the latter may also 'enjoy' negative external effects, since networkers have no moral obligations towards them. Where pollution is precluded, the outsiders will benefit as well, but they have no claim on compensation if pollution is unavoidable. In addition, overflowing benefits affect optimality only when they cause additional costs. Using a road does incur costs to its owner, but they can restrict its use to those who

⁶¹ Hart, 'Are There Any Natural Rights?', 1984, 85.

pay for it. Using a lighthouse does not incur extra costs to the owner, hence does not threaten optimality when used by outsiders.⁶² The issue evaporates.

The second possible threat to the network is withholding extra-personal natural resources from the network. They are precluded from being available for appropriation and investment, hence from making them objects of transaction. On the other hand, outsiders – alone or in concert with others – could appropriate and invest for their own exclusive use, in which case they deprive themselves of the opportunity to transact with the members of the network. Were they appropriated in accordance with the investment requirement, no one can complain about their use of it but if they were not, their possessor's claim to property is null and void. And, whatever morality they do or do not endorse, from the perspective of the members of the network they are still in the Hobbesian state of nature. Therefore, they may be treated accordingly by anyone who chooses to do so. Sheer power reigns outside the network and the cost of conquest is to be traded-off with the advantages this is expected to yield.

Similar arguments apply to outsiders performing predatory action against settled property rights. Those who rightfully possess property and are rational will want to defend it only in case it is worth defending. In other words: if the expenses on defensive action are greater than the advantages yielded by the property, they will surrender it; otherwise they will defend it. Pareto-optimality in the network is not necessarily affected, but since the position of the individual(s) attacked has worsened, the aggregate level of utility is lessened.

Therefore, outsiders appear to be of modest relevance, except when they aggress against members of the network. Measured in aggregate utility, however, it would be better for everyone if they participated. The formation of societies with political organization almost inevitably has negative effects on Pareto-optimality.

Conclusions

Provided my arguments are still sound, it would seem that we have developed an elementary morality that leads us out of the misery of the Hobbesian state of nature without having to rely on formal structures and authority. All that is required is that individuals who crave for a better life come to realize that a vigilant disposition to cooperate provides them with a

⁶² Gauthier, *Morals by Agreement*, 2006, 96.

good chance to achieve precisely that, together with others who are similarly disposed. But it requires an effort, because a good life does not arise spontaneously, and neither will it fall upon them like manna from heaven. Threats will remain, though, if only from aggressive individuals with a dissentient morality or none to speak of. And by forming societies with additional or conflicting moral rules, cooperating individuals will threaten Pareto-optimality in the network. So what has been achieved is that individuals transact the world over and not solely within their own society. Trade is universal and it need not be confined to an arbitrary group within contingent borders. No contracts are required, and everyone can join, if only they accept the simple rules of the game, beginning with well-grounded property rights.

CONCLUSIONS

The research question I started out with was whether private property is possible at all in a state of nature. And my thesis was that we fully own ourselves as well as the extra-personal objects we have justifiably acquired, and that exclusive rights can protect this private property if and when these rights are widely acknowledged. My focus would be on ownership of natural resources in a state of nature. To justify these rights I was to argue for full liberal ownership, albeit under a moral constraint on how they are employed, and concerning extra-personal natural resources on how they are acquired. I thus wanted to find out whether private property in the full liberal sense would be justifiable in a pre-political state, particularly with respect to natural resources, constituted by our body, its powers and the extra-personal natural world, which often is transformed into artefacts. But neither self-ownership nor the original ownership of the extra-personal natural world is unambiguous, or so it appeared from the extant literature.

The goal I set myself was to provide reasons for full liberal property rights of natural resources, though qualified by how they were acquired and put to use. Moreover, I wanted to stop short of introducing societies with political organization, because the supreme authority that unavoidably comes with it is irreconcilable with personal autonomy. A Lockean state of nature without legitimate government fulfils that requirement, whereas the Hobbesian one does not, because in the latter nobody has any effective rights. Locke, however, based such rights upon (the Christian) God having granted them, which is merely a presumption. Rights must be grounded in convention or positive law, neither of which is available in a state of nature. Therefore, so-called 'natural rights' must do the job, and they are plausible only when widely recognized. The task before me thus became to not only provide sturdy and practical arguments for the existence of property rights in natural resources, but also to obtain affirmation on as wide a scale as possible. And where Hobbes and Locke, as well as most contemporary philosophers, reasoned within the context of clearly demarcated societies, my stage would have to be human society at large. If only for practical reasons, then, social contracts are out of the question, although a Rawlsian one might be feasible because it is virtual. Finally, I wanted to keep an open eye for the needs of those who fail to pull their own weight.

Did I succeed in achieving my purposes? I believe I did to a considerable extent. Arguments led me to the conclusion

that we wholly own our body and its powers, that the extra-personal world is up for grabs, parts of which we may freely appropriate under condition of investment therein, while we act rationally by acknowledging the exclusive property rights to such natural resources. Individuals who fail to pull their own weight, however, will not be institutionally supported and remain dependent upon voluntary assistance.

Do my arguments corroborate the conclusions I claim? Let me recapitulate, first concerning our body and its powers, then pertaining to the extra-personal world, and finally with respect to the affirmation of both these property rights.

In the Hobbesian state of nature all we have is liberties, implying that we cannot effectively claim to have a right to anything. In Locke's state of nature, however, we can, but without God's benefaction we need wide-scale affirmation to do so. The other side of the coin is that we are no leaseholders with strings attached; we own our body and its powers in every conceivable sense, provided we do not harm others in their interests when using it. We harm others in their interests when we invade their private moral space or deny them access to objects in the extra-personal world they wish to exercise their world-interactive powers upon. The latter is not the same as an obligation to provide them with objects, but rather one to not apply invasive or non-invasive means with a view to withhold them from using those objects. Obviously, when we own such object and require its use for ourselves, the obligation does not apply. That we are autonomous does not imply that we be provided with the wherewithal to act upon the choices we make, but simply that we are not interfered with. Constraining individuals from liberally exercising some of their powers is not in the interest of others, provided the exercise does not harm those others in their interests. No one has the authority to set goals over and above individuals choosing how they will act. And neither does anyone have the authority to decree that individual endeavours will benefit the least-advantaged in terms of personal powers, unless, of course, a group of people voluntarily decides to adopt such a principle. Equality in one sense or other is not a natural right, and neither can we justifiably say that we deserve something as a consequence of worth, need, or merit. Nevertheless, we may be moved to act upon genuine need in others, albeit not coercively.

Extra-personal natural resources must be taken as having been up for grabs before human beings appropriated them. Neither collective ownership nor equal sharing is a tenable

thesis from a practical point of view. The former would imply that we ask everyone else's permission to use extra-personal resources, an insurmountable impediment when 'everyone' is equal to 'the world population'. Any conceivable subset of the world population would have to justify why they exclusively owned part of the world's riches. Equal sharing might seem to be an attractive option but runs into practical obstacles in terms of administration. Moreover, the world population is in constant flux, and so is the reserve of extra-personal natural resources, the value of which varies with their applicability and per person. Individuals are therefore morally at liberty to appropriate them, albeit under condition that they invest in them so that more and better resources become available for others who are ready to procure them. Locke set as provisos that appropriators mix their labour with the resource, take no more than they need, and leave enough and as good for others, which can be translated into practical terms and made to include the yet unborn. We need no authority to tell us that we ought to concern ourselves with what we leave behind for our children. And if we genuinely believe that mankind ought to be preserved, we are competent to take appropriate action toward that end. Efficaciously exploiting natural resources is a way to approach such end, particularly when scarcity reigns and we must compete to obtain them. No compensation is due to those who missed an opportunity to appropriate, since there will be other opportunities or new ones will arise from investments made. Moreover, we can always avail of our own capabilities, invest therein, and put them to good use.

Individuals often wish to enhance their standard of living, possibly by downright taking from another what they require. But the other may be stronger than we expected or the next time they will be prepared. Straight maximization of personal utility is feasible only under conditions of certainty. Utility or value is what humans generally strive to maximize, whether by material or immaterial means. It is, however, not necessarily or entirely self-directed; utility can be derived from the well-being of (particular) others. In the Hobbesian state of nature nothing is certain, property least of all, and therefore it would be rational to acknowledge each other's property if and when it is justifiably acquired. Having argued that no one is harmed by self-ownership and by qualified appropriation of extra-personal natural resources, we can avail of a suitable justification. And by being proprietors, (groups of) individuals are in a position to enhance the value of their possessions or trade them with others. The aim of transacting is that each of

the participants will become better off because they obtained something they value higher than what they let, hence made a step toward utility maximization. But the outcome of such processes is certain only under perfect conditions. Failing this requirement, we could invoke moral constraints as auxiliaries to approach perfection nevertheless. This can be exemplified by the prisoner's dilemma, where the outcome in terms of utility depends on whether the individuals involved can rely on each other. Though cheating may maximize utility for the trickster in one-off encounters, reiteration of these or similar encounters will undermine mutual trust and preclude value enhancement overall. The optimum, which is achievable in a network of people having adopted property rights and further moral rules that substitute perfect conditions is that no one can enhance their position without worsening that of another participant. A society, the political organization of which contravenes its citizens's autonomous choices, undermines such an optimum. Outsiders may constitute a threat to this 'network of the willing' in various ways, but their influence is relatively insignificant and countermeasures will be rationally subject to a trade-off between cost and expected yield.

That completes the recapitulation of arguments I put forth in defence of private property rights, for the extra-personal world subject to an investment requirement. The arguments corroborate the conclusions I claimed. There is, however, one final consideration concerning individuals who fail to pull their own weight. Let me explain.

An almost unavoidable consequence of our minimal moral constraints upon human action towards natural resources is that – roughly – individual wealth will be as unequally distributed as personal powers. Poorly endowed individuals will have little opportunity to develop what powers they have but that may be insufficient to subsist. And without further moral incentives – other than the occasional act of charity – this could well result in a more limited cohesion among members of the human species than is already the case.¹ Philosophers

¹ This point is more extensively analyzed by Reich, *The Work of Nations*, 1992, who sees emerging – in the USA – three broad categories of work, corresponding to the different competitive positions people find themselves in: routine production services, in-person services, and symbolic-analytic services (174), of which particularly the last group is gradually seceding from the others (282-300), because they could perform their activities (and employ the services of the other two categories) almost anywhere in the world. The result is that they create their own communities with their own collective goods in separation from the rest of the world. And they have very little incentive to contribute to the well-being of others.

who advocate the preservation of mankind will nonetheless have a hard time effectively conveying their message, and once they seek to enforce it, they will be culpable of violating individual rights. Defying self-ownership would undermine our sense of individuality, and constraining endeavour would harm everyone by not making available the natural resources that could be accessible, or delayed, and less efficaciously.

FURTHER RESEARCH

I suggest further research into the possibilities and caveats of philosophical anarchy, if only to counter the progress of state power vis-à-vis the individual, even in our democratic societies. I would be tempted to wager the thesis that states, as we are familiar with, produce a negative balance of cost and benefits. To be more specific, my thesis would be that redistribution within a group of individual persons can only be morally justified by a form of organization they voluntarily, hence willingly, fully informed, uncoerced and intentionally, enter into. The extent to which redistribution would be justifiable depends on what they agree upon, but it ought to be minimally set at the value that is created over and above the value that would have existed without such organization, and always according to the principles set by that group of individuals. Strictly speaking the extent of the redistributed value should stop short of the additional value, since otherwise it would remove the incentive to cooperate. But we could make a distinction between material and immaterial values, and opt for redistributing the former only so that the latter remain, thereby constituting the minimal incentive to participate.

The rationale of organization is that there is no natural authority so that the authorization required for redistribution must proceed from voluntary arrangements, whereas that for the minimal extent is that the individuals create additional value by so organizing themselves. Without such voluntary arrangements, redistribution can never be justified, or so I would argue along the following line.

The premise of self-ownership and the premise of external natural resources being up for grabs cannot but lead to the institution of private property of natural resources. Self-ownership means that persons fully own their body and its powers with which to affect the world while external natural resources being up for grabs means that they can be justifiably appropriated by anyone who can use them to enhance at least their own position, often thereby augmenting the position of others in the process. Arguably, such appropriation is conditioned by requiring the investment of (one's) labour into the resource.

Since individuals are merely equal in their being human, whereas significant differences in personal powers prevail, it must be expected that individual (material) situations will be dissimilar too. That may be considered at odds with philosophical positions emphasizing either an extended conception

of personal autonomy or positive rights to a certain level of well-being. Measures to equalize individual situations require redistribution of natural resources – (the proceeds of) either personal powers or external natural resources or both – as well as an authority to effectuate such measures. But neither can be justified unless individuals voluntarily form a community, endorse redistribution in some mode, and it is shown that a political organization of cohabitation provides additional value to participants. In the latter case, there being a common authority and mutual advantages, redistributive taxation may be justified to maximally the extent of the additional value. Nothing, though, guarantees that redistributing added value suffices to fund the means for a wide conception of personal autonomy or the enforcement of positive rights often argued to be morally obligatory.

BIBLIOGRAPHY

- Arneson, Richard J. 'The Shape of Lockean Rights: Fairness, Pareto, Moderation, and Consent' in Ellen Frankel Paul, Fred. D. Miller Jr. and Jeffrey Paul (eds.), *Natural Rights Liberalism from Locke to Nozick*, Cambridge etc.: Cambridge University Press, 2005, 255-85.
- Arthur, John. 'Resource Acquisition and Harm' in *Canadian Journal of Philosophy* 17:2, 1987, 337-47.
- Barnett, Randy E. 'Whither Anarchy? Has Robert Nozick Justified the State?' in *Journal of Libertarian Studies*, Vol. 1, No. 1, 1977, 15-21.
- Childs, Roy A. Jr. 'The Invisible Hand Strikes Back' in *Journal of Libertarian Studies*, Vol. 1, No. 1, 1977, 23-33.
- Christman, John. *The Myth of Property*, New York etc.: Oxford University Press, 1994.
- Cohen, G.A. *Self-ownership, Freedom, and Equality*. Cambridge etc.: Cambridge University Press, 2001.
- Feser, Edward. 'There is no Such Thing as an Unjust Initial Acquisition' in Ellen Frankel Paul, Fred. D. Miller Jr. and Jeffrey Paul (eds.), *Natural Rights Liberalism from Locke to Nozick*, Cambridge etc: Cambridge University Press, 2005, 56-80.
- Gaus, Gerald F. and Loren E. Lomasky. 'Are Property Rights Problematic?' in *The Monist*, Vol.73, No. 4, 1990, 483-503.
- Gauthier, David. *Morals by Agreement*. Oxford etc.: Oxford University Press, 2006.
- Gray, John. 'Mill's Conception of Happiness and the Theory of Individuality' in John Gray and G.W. Smith (eds). *J.S. Mill's On Liberty in Focus*, London: Routledge, 2002, 190-211.
- Hart, H.L.A. 'Are There Any Natural Rights?' in Jeremy Waldron (ed.), *Theories of Rights*, Oxford etc.: Oxford University Press, 1984, 77-90.
- Hasnas, John. 'Toward a Theory of Empirical Natural Rights' in Ellen Frankel Paul, Fred. D. Miller Jr. and Jeffrey Paul (eds.), *Natural Rights Liberalism from Locke to Nozick*, Cambridge etc.: Cambridge University Press, 2005, 111-47.

- Hobbes, Thomas. *Leviathan*; Edited with an Introduction by C.B. Macpherson, London etc.: Penguin, 1985.
- Jarvis Thomson, Judith. 'Some Ruminations on Rights' in Jeffrey Paul (ed.), *Reading Nozick; Essays on Anarchy, State, and Utopia*. Oxford: Blackwell, 1983, 130-47.
- Kant, Immanuel. *Metaphysische Anfangsgründe der Rechtslehre; Metaphysik der Sitten, Erster Teil*, Herausgegeben von Bernd Ludwig, Hamburg: Meiner, 1998.
- Kirzner, Israel M. 'Entrepreneurship, Entitlement, and Economic Justice' in Jeffrey Paul (ed.), *Reading Nozick; Essays on Anarchy, State, and Utopia*. Oxford: Blackwell, 1983, 383-411.
- Koutsoyiannis, A. *Modern Microeconomics*, London and Basingstoke: Macmillan, 1981.
- Kraus, Jody S. and Jules L. Coleman. 'Morality and the Theory of Rational Choice' in Peter Vallentyne (ed.), *Contractarianism and Rational Choice: Essays on David Gauthier's "Morals by agreement"*, New York &c.: Cambridge University Press, 1991, 254-90.
- Locke, John. *Two Treatises of Government*. Edited with an introduction and notes by Peter Laslett. Cambridge: Cambridge University Press, 2005.
- Mack, Eric. 'Self-ownership and the Right of Property' in *The Monist*, Vol. 73, No. 4, 1990, 519-43.
- Mack, Eric. 'The Self-Ownership Proviso: A New and Improved Lockean Proviso' in *Social Philosophy and Policy* 12, no. 1, 1995, 186-218.
- Mackie, J.L. 'Can There be a Right-Based Moral Theory?' in Jeremy Waldron (ed.), *Theories of Rights*, Oxford etc.: Oxford University Press, 1984, 168-81.
- Mill, J.S. 'On Liberty' in John Gray and G.W. Smith (eds). *J.S. Mill's On Liberty in Focus*, London: Routledge, 2002, 23-128.
- Morris, Christopher W. *An Essay on the Modern State*, Cambridge etc.: Cambridge University Press, 2002.
- Morris, Christopher W. and Arthur Ripstein. 'Practical Reason and Preference' in Christopher W. Morris and Arthur Ripstein, *Practical Rationality and Preference; Essays for*

- David Gauthier*, Cambridge &c.: Cambridge University Press, 2001.
- Mulhall, Stephen and Adam Swift. *Liberals and Communitarians*, Malden &c.: Blackwell, 2005.
- Nagel, Thomas. 'Libertarianism Without Foundations' in Jeffrey Paul (ed.), *Reading Nozick; Essays on Anarchy, State, and Utopia*. Oxford: Blackwell, 1983, 191-205.
- Narveson, Jan. *The Libertarian Idea*. Toronto: Broadview, 2001.
- Nozick, Robert. *Anarchy, State, and Utopia*. Malden etc.: Blackwell, 2003.
- Rawls, John. *A Theory of Justice*. Oxford etc.: Oxford University Press, 1999.
- Rawls, John. *Political Liberalism*. New York etc.: Columbia University Press, 2005.
- Raz, Joseph. *The Morality of Freedom*, Oxford etc.: Oxford University Press, 1988.
- Reich, Robert B. *The Work of Nations*, New York: Vintage Books, 1992.
- Rothbard, Murray. 'Robert Nozick and the Immaculate Conception of the State, in *Journal of Libertarian Studies*, Vol. 1, No. 1, 1977, 45-57.
- Ryan, Alan. 'Self-Ownership, Autonomy, and Property Rights' in *Social Philosophy and Policy*, Vol. 12, 1994, 241-58.
- Sanders, John T. 'Justice and the Initial Acquisition of Property' in *Harvard Journal of Law & Public Policy*, Vol. 10, No. 2, 1987, 367-99.
- Sauvé, Kevin. 'Gauthier, Property Rights, and Future Generations' in *Canadian Journal of Philosophy*, Vol. 25, No. 2, 1995, 163-76.
- Schmidtz, David. 'When Is Original Appropriation Required?' in *The Monist*, Vol. 73, No. 4, 1990, 504-18.
- Schmidtz, David. 'The Institution of Property' in *Social Philosophy and Policy*, Vol. 12, 1994, 42-62.
- Simmons, A. John. *On the Edge of Anarchy*, Princeton: Princeton University Press, 1995.

- Steiner, Hillel. 'The Natural Right to the Means of Production' in *The Philosophical Quarterly*, Vol. 27, No. 106, 1977, 41-9.
- Steiner, Hillel. 'The Structure of Compossible Rights' in *The Journal of Philosophy*, Vol. 74, No. 12, 1977, 767-75.
- Steiner, Hillel. 'Justice and Entitlement' in Jeffrey Paul (ed.), *Reading Nozick; Essays on Anarchy, State, and Utopia*. Oxford: Blackwell, 1983, 380-2.
- Sterba, James P. *The Triumph of Practice over Theory in Ethics*, New York etc.: Oxford University Press, 2005.
- Tamir, Yael. *Liberal Nationalism*, Princeton: Princeton University Press, 1993
- Ten, C.L. 'Mill's Defence of Liberty' in John Gray and G.W. Smith (eds). *J.S. Mill's On Liberty in Focus*, London: Routledge, 2002, 212-238.
- Vlastos, Gregory. 'Justice and Equality' in Jeremy Waldron (ed.), *Theories of Rights*, Oxford etc.: Oxford University Press, 1984, 41-76.
- Waldron, Jeremy. *The Right to Private Property*, Oxford etc.: Oxford University Press, 2002.
- Wolff, Robert Paul. *In Defense of Anarchism*, New York etc.: Harper, 1976.