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Self-Ownership and World-Ownership

A Quest for Plausible Libertarianism

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Samenvatting

Dit doctoraat onderzoekt of het libertarisme een plausibele theorie van sociale en verdelende rechtvaardigheid vormt. Het onderzoek mengt zich daarbij in het levendige hedendaagse debat rond rechtvaardigheid dat met name sinds de publicatie van *Een theorie van Rechtvaardigheid* van John Rawls (1971) de politiek-theoretische discussies kleurt. Het libertarisme wordt gedefinieerd door de verdediging van het zelf-eigenaarschapsprincipe. Dit principe stelt dat personen de volledige eigenaar zijn van hun eigen persoon, inclusief hun lichaam, geest, talenten en energie. Libertairen voegen aan dit zelf-eigenaarschapsprincipe nog een egalitair of inegalitair wereld-eigenaarschapsprincipe toe. Dit tweede principe beschrijft hoe personen de rechtmatige eigenaar kunnen worden van goederen die extern zijn aan hun eigen persoon, zoals een stuk land of een auto. Door deze twee principes te verdedigen, neemt het libertarisme een positie in met betrekking tot de grenzen van de individuele vrijheid en de rechtvaardige verdeling van rijkdom en goederen.

Het libertarisme is een aantrekkelijke theorie van rechtvaardigheid omdat het zelf-eigenaarschapsprincipe een sterke basis vormt voor de bescherming van vele van de vrijheden die verdedigd werden door John Stuart Mill in zijn boek *Over Vrijheid* (1859). Tegelijkertijd is het libertarisme ook een populaire schietschijf voor criticasters. Deze tegenstelling vormt de motivatie van het onderzoek. Het belangrijkste doel van dit doctoraat is dan ook om uit te maken of het libertarisme een kritische analyse overleeft. Deze analyse zal gebeuren op basis van standaard morele redeneringen.

Ik zal concluderen dat een vorm van libertarisme inderdaad plausibel is. In het bijzonder zal ik een theorie verdedigen die ik *gematigd links-libertarisme* noem. Dit is een libertaire theorie omdat ze het zelf-eigenaarschapsprincipe verdedigt en omdat ze gebaseerd is op de fundamentele libertaire gedachte dat elke persoon vrij moet zijn om haar eigen leven in te vullen. Het is een vorm van links-libertarisme omdat deze theorie een egalitaire versie van het wereld-eigenaarschapsprincipe aanhangt. Daarenboven worden de potentiële inegalitaire implicaties van het links-libertarisme teniet gedaan door een bepaling dat stelt dat elke persoon recht heeft op voldoende externe goederen om op een onafhankelijke wijze eigen levensdoelen te bepalen en na te streven. Het is een gematigde vorm van libertarisme omdat het bijna-volledige (i.p.v. volledige) zelf-eigenaarschapsrechten verdedigt. Daarenboven erkent deze theorie dat zelf-eigenaarschapsrechten in het bijzonder moeten beschermen tegen

schendingen van individuele rechten die tot gevolg hebben dat een persoon wordt gebruikt als een middel ten voordele van anderen.

Abstract

This PhD investigates the plausibility of libertarianism as a theory of social and distributive justice. In doing so, it engages in the lively contemporary debate concerning justice, which experienced a significant boost since the publication of John Rawls' *A Theory of Justice* (1971). Libertarianism is defined by its defence of the self-ownership principle. This principle holds that agents have full ownership rights over their own person, which includes their body, mind, talents and energies. Libertarians complement the self-ownership principle with a world-ownership principle that can be more or less (in)egalitarian. The latter principle describes how individuals can become the justified owners of resources that are external to their person, like a plot of land or a car. In defending those two principles, libertarianism takes a stance on the proper limits of individual freedom and on the justifiability of distributions of wealth and resources.

Libertarianism is attractive because its defining principle, the self-ownership principle, protects, as a matter of fundamental moral right, many of the liberties famously defended by John Stuart Mill in his book *On Liberty* (1859). Notwithstanding the attractiveness of the self-ownership principle, libertarianism has been subject to an armoury of criticisms. Because of this contrast, the main aim of this PhD is to determine whether libertarianism survives critical scrutiny based on ordinary moral reasoning.

In the end, I will argue that *moderate sufficiency-constrained left-libertarianism* is, indeed, plausible. This theory is libertarian as it defends the self-ownership principle and as it is grounded in the basic libertarian claim that agents should be free to live their life as they see fit. It is a left-libertarian theory because it defends an egalitarian world-ownership principle. This egalitarian principle, in turn, must be constrained by a sufficiency proviso so as to counterbalance the inegalitarian implications that a left-libertarian theory might still generate. The sufficiency proviso ensures that agents have sufficient external resources to independently set and pursue life-projects. The theory is moderate in that it backs away from the standard libertarian conception of self-ownership and defends near-full (rather than full) self-ownership rights. Moreover, this moderate theory accepts that self-ownership rights should provide extra protections for agents against being used as a means for the benefit of others.

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Although writing a PhD has on occasions felt like a solitary, nasty, brutish and never ending endeavour, these feelings are only superficial. It was, in fact, great fun! I am well-aware that I will look back at these years as a PhD student as being some of the best years of my lifetime. Many agents (and some non-agents) helped me along the way, both intellectually and personally, to make a success of these years.

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Introduction

1. Contemporary debate on justice

'Justice' is an essential feature of 'a good society'. John Rawls (1999) even claims that justice is the first value of social institutions. This explains why contemporary political philosophers mainly focus on the following question: what are the principles that should inform the organization of political and economic institutions in order for those institutions to be just? Political and economic institutions are, for example, the institutions that enact laws (e.g. parliament and government), the fundamental rights and liberties listed in a society's constitutional document, the property and trade laws that govern economic interactions between individuals and the laws that govern the labour market. As justice is an important feature of a good society, one obvious way to evaluate a society is to check whether its political and economic institutions are in line with some of our deeply held convictions about how they *ought* to be organized. The institution of slavery, for example, clearly contradicts some of those deeply held beliefs. Respect for some fundamental rights and liberties, like the freedom of speech and expression, the freedom of assembly and the protection of bodily integrity, on the other hand, seem to be a necessary condition for any society to be labelled 'just'. It is relevant and important, thus, to investigate which convictions we have, after reflection, about the requirements of justice and to what extent we can formulate principles of justice that coherently bring together those most fundamental beliefs.

It is important to note, though, that justice is not the sole determinant of a good society. For instance, in a good society individuals help each other, do not commit adultery and fulfil their promises. These interpersonal acts have a significant impact on the way the lives of individuals fare and are relevant to evaluate the goodness of a society, but they are, standardly, not part of an investigation of the principles of justice. Justice, thus, is not all what matters. Nevertheless, with regards to social institutions, justice is of primary importance.

The role of a *theory of justice* is to evaluate "political subject matter" (Shields, 2016, p. 1). This includes, most importantly, the design of societal institutions. To evaluate the political, economic and social institutions of a society, we need an account of what justice entails. Standardly, theories of justice operate via *principles of justice*. Principles of justice provide guidance for political decision makers and help to evaluate different possible political and

economic regimes. Such principles provide guidance for politicians because they point the direction at which policies should aim to achieve justice and because they solve conflicts between *ad hoc* judgements. They give consistent guidance at times our intuitions are unclear. Principles also help to compare different political and economic regimes because they provide the ground or the conditions based upon which a regime could be tested and evaluated.

In the last fifty years, a vast number of different principles of justice have been articulated. Rawls has provided the most authoritative recent statement of such principles. In *A Theory of Justice* (1971), Rawls develops a liberal egalitarian theory based on two principles of justice. The first principle states that all persons have a claim to the same fully adequate scheme of basic rights and liberties (*liberty principle*). The second principle holds that social and economic inequalities (a) should be attached to positions open to all under fair equality of opportunity (*fair equality of opportunity principle*) and (b) should be to the greatest benefit of the least-advantaged members of society (*difference principle*). The two principles, together, protect an extensive sphere of personal rights and liberties for all individuals and ensure that resources, like income, wealth, powers and opportunities, are distributed in an 'egalitarian' manner which is sensitive to reasons of efficiency. The ultimate aim of the two principles, for Rawls, is to explain how the benefits and burdens of society, seen as a process of productive social cooperation, should be distributed *fairly* among all its members. That is why Rawls labels his theory *Justice as Fairness*.

Justice as Fairness has been criticized from different angles. Some of those criticisms come from other liberal egalitarians and could, therefore, be seen as a kind of 'friendly fire'. These critics accept the general framework of Rawls' theory (i.e. an extensive set of personal liberties and an egalitarian distribution of resources which takes reasons of efficiency into account) but argue for alternative principles of justice. Ronald Dworkin (2000), for example, holds that Justice as Fairness is insufficiently sensitive to the choices, ambitions and responsibility of individuals and too sensitive to their circumstances. A better version of liberal egalitarianism, or so he claims, accepts inequalities in wealth and income that are due to the choices of individuals and only redistributes resources in order to compensate (to some extent) for inequalities for which persons are not themselves responsible (e.g. inequalities due to disabilities, childhood environment, natural disasters). Amartya Sen (2009), another liberal egalitarian critic of Rawls, thinks Justice as Fairness wrongly focusses on the distribution of resources, like income, wealth, powers and positions of responsibility, because resources are only instrumentally valuable. Namely, Sen argues, resources are only instrumental for the

'functionings' they enable persons to do (i.e. the 'beings and doings' individuals can undertake, like being well-nourished or housed and to travel to school or give a present to one's parents). But not everyone can undertake the same functionings with the same amount of resources (some only need a bus pass to go to school, while others need, in addition to the bus pass, a wheelchair as well). Therefore, Sen concludes that a more plausible theory of justice focuses on the distribution of *capabilities* to function rather than on the distribution of resources as such.

Other criticisms of Rawls come from a neo-marxist angle. Most famously, G. A. Cohen (2008, 2009) argues that Justice as Fairness is too willing to accept inequalities because of reasons of efficiency. That is, Rawls' difference principle allows for inequalities if those inequalities incentivize people to be more productive, creative and venturous, and if this increase in productivity benefits the least advantaged. But Cohen thinks the difference principle should be rejected precisely because of this implication. Namely, the difference principle accepts the human inclination for greed and self-interest, whereas in Cohen's ideally just society everyone would incorporate an egalitarian ethos in their personal life and accept that inequalities cannot be justified for efficiency reasons.

Still another set of criticisms against Rawls' theory comes from libertarian theorists. Robert Nozick's (1974) version of libertarianism is, within philosophical academic circles, widely accepted as the most prominent, provoking and challenging recent statement of that theory. Nozick's most important criticism is that Rawls seems to forget that the products of social cooperation (e.g. the wealth and opportunities created in a society) are the result of the labour and effort of persons and the investment of their property, rather than a kind of 'manna from heaven' that can be (re)distributed as the liberal egalitarian sees fit. The thought is that individuals have legitimate claims over the products of their labour and over their property, and that these rights must be respected in a just society. One cannot simply neglect, as (Nozick claims) Rawls does, the history of property rights and install a massive and invasive state-enforced redistributive scheme. Such a scheme violates both the rights individuals have with regards to their own person (e.g. the rights over their own labour) and the ownership rights they have with regards to external resources.

In this PhD, I will focus on libertarian theories of justice, like the one formulated by Nozick. These theories are often highly inspired by the general framework provided by John Locke

(1960 [1698]) and could, therefore, also be called *Lockean libertarianism*.[1] In what follows, I will consider libertarianism as a theory of justice in its own right, rather than as a criticism of Rawls.

2. Why study libertarianism?

The reason to focus on libertarianism is, most importantly, the *prima facie* attractiveness of its defining feature: the *self-ownership principle*. That is, I take a theory of justice to be libertarian *if and only if* it defends a version of the self-ownership principle.[2] This principle of justice is, at least upon first examination, attractive and plausible. Before I explain why this is the case, let me quickly introduce the principle. The general thought is that beings who have the capacity for rational and moral agency (standardly adult human beings, hereafter called 'agents') own themselves (i.e. their bodies, minds, talents and energies) in a way that is relevantly similar to how they can own an object in a system of extensive and comprehensive private property rights. For example, in such a system, if you own a bicycle, you have the right to exclude others from using it. Similarly, if you own yourself, you can exclude others from using your person. In essence, ownership rights protect a right of non-interference with what is owned and a right to make use of what is owned. The self-ownership principle, thus, implies a right against others non-consensually harming or invading one's person and an extensive liberty to do with one's person as one sees fit. Another way to conceive of the self-ownership principle is to compare it with the relationship between a slave and a slave-holder. As G. A. Cohen (1995, p. 68, see also 214) explains, the self-ownership principle expresses the idea that "each person possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is

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[1] This is not to say that Locke himself was a libertarian. It only means that libertarians accept many of the building blocks that can be found in Locke's theory. Nozick (1974, p. 9), for example, claims that his description of the state of nature and the theory of rights he derives from it "follow[s] the respectable tradition of Locke". Furthermore, he thinks that his theory of initial acquisition of natural resources is an extension and improvement of Locke's (Nozick, 1974, pp. 174-182). Also Otsuka (2003, p. 1) introduces his *Libertarianism Without Inequality* as an effort to "present and defend an approach to political philosophy, and a set of moral and political principles, that draw their inspiration from John Locke's *Second Treatise of Government*". He thinks that although Locke's political theory contains a lot of truths of political morality, there is still room for contemporary libertarians to better apprehend and represent the basic ideas and principles put forward by Locke (Otsuka, 2003, pp. 1-2).

[2] This is a common way to define libertarian theories of justice. Other theorists who define libertarianism in this way are Cohen (1995), Vallentyne (2012a), van der Vossen (in: Vallentyne & van der Vossen, 2014), Mazor (Mazor & Vallentyne, forthcoming), Taylor (2005), Mack (2002b) and Wendt (2018). But see Zwolinski (2011) for a sceptic of this definition.

entitled, morally speaking, to dispose over himself in the way such slaveholder is entitled, legally speaking, to dispose over his slave." Like a slaveholder can legally decide, for example, when her slaves will work, what kind of work they will do, who they will meet, what they will eat and which religion they will adhere to, an agent has those liberties as a matter of moral right.

The self-ownership principle is, at least *prima facie*, an attractive foundation for a plausible theory of justice for three reasons. First, it is intuitively attractive. It is intuitive to think that what is wrong about slavery is that someone legally owns what morally belongs to someone else (i.e. her person). Similarly, (part of) the reason why rape is wrong quite plausibly relates to the fact that a rapist non-consensually invades and makes use of what is owned by someone else (i.e. her body). It is the agent herself, rather than another person (e.g. the rapist), who has the right to decide who can make use of her body and that is because it is *her* body. It is equally intuitive to think that what is right about me having the liberty to move my body from one place to another (e.g. to walk to the bakery) is that it is *my* body and, thus, that I have the right to decide which physical space (which is not already owned by someone who excludes me from his property) to occupy with that body. Also, it is intuitively plausible that you have the right to sell me your labour capacities in exchange for an income because it are *your* capacities rather than someone else's.

Second, the self-ownership principle protects many of the liberties famously defended by John Stuart Mill in *On Liberty* (1859). In particular, the principle adequately captures what is so attractive about Mill's *harm principle*.[3] The harm principle holds that one ought to be free to live one's life without interference from others as long as one does no harm to others. In other words, the only reason a person or state can interfere with someone's life is to prevent this person from harming others. Consequently, the harm principle protects a right of self-determination as long as one's acts only concern oneself and extensively protects against paternalistic interferences from others or the state. The self-ownership principle protects a similar sphere of liberty and non-interference. If you own yourself, that implies, arguably, that you have a right to do with your person what you like and to act as you prefer as long as you

[3] I do not claim that Mill himself supported the self-ownership principle. One reason to doubt that Mill defends the self-ownership principle is that Mill thinks persons have positive duties to help others who are in need, whereas the self-ownership principle is in tension with such duties (cf. chapter I, but see also chapter III for a suggestion to limit the self-ownership principle by certain positive duties). For further arguments that Mill's harm principle is not a libertarian principle, see Brink (2014).

do not violate the ownership rights of someone else (i.e. do not harm or invade someone else's person).

Third, the self-ownership principle seems to capture what is required to respect the special moral status of agents. Indeed, agents have a special moral status. This status limits how others may treat an agent and what they may do to her. There are things we ought not to do to agents that are unproblematic if done to other things, like, for example, objects. Whereas I ought not to throw you in the pond of my local park, there seems nothing wrong with me throwing a stone in that same pond. Agents, thus, are different from objects. They have a special moral status and should be treated with due respect. Quite plausibly, the special moral status of agents requires not to harm or invade their person. Equally plausible, this moral status requires to let agents free to live their own lives in their own chosen way and, thus, to do with their person what they like as long as they do not harm or invade anyone else's person. That is, to show proper respect for the moral status of agents requires to let them live their lives as they see fit. It is precisely this duty of non-interference with the lives of others that the self-ownership principle aims to capture. This makes it an attractive and *prima facie* plausible principle of justice.

There are two other reasons to study libertarian theories of justice. For one thing, despites the attraction of libertarianism's defining principle of justice, the theory has been the subject of a vast amount of critical literature. Part of that literature attacks the self-ownership principle itself, because it is claimed to be inegalitarian (e.g. Cohen, 1995; Eyal, 2006), indeterminate (e.g. Arneson, 1991; Fried, 2004, 2005), unfounded (e.g. Cohen, 1995; Fried, 2004, 2005; Nagel, 1981 [1975]) and fanatically extreme in its implications (e.g. Arneson, 2005; Freeman, 2001; Lippert-Rasmussen, 2008; Sobel, 2012). Other criticisms focus on the second principle that constitutes libertarian theories of justice: the *world-ownership principle*. The world-ownership principle prescribes which ownership rights agents can justly acquire over resources external to persons, like a car, a house and money on a bank account. These criticisms mainly take issue with the vast inegalitarian tendencies of the most popular and well-known version of a libertarian world-ownership principle: right-libertarian world-ownership. Right-libertarianism defends a conception of the world-ownership principle that allows for manifest inequalities in resources, like wealth and income, between agents. Bluntly, right-libertarianism aims to provide a justification for an unbridled free market economy. The inegalitarian world-ownership principle of right-libertarianism has been criticized for being insufficiently sensitive to the values of equality and fairness (e.g. Cohen,

1995; Freeman, 2001; Kymlicka, 2002; Olsaretti, 2004; Rawls, 1999; Van Parijs, 1995; Wolff, 1991). This leaves us with conflicting impressions. On the one hand, the central principle of justice of libertarianism, the self-ownership principle, has an attractive core. On the other hand, libertarianism is a popular target for criticism. One might wonder whether, in the end, libertarianism is justifiable at all.

A further reason why libertarian theories of justice are of special interest is that they seem to be underdeveloped. Most famously, Thomas Nagel (1981 [1975]) argues that Nozick defends a "libertarianism without foundations". Also Richard Arneson (2005, p. 255) believes that "there is spadework yet to be done on the project of developing the most plausible versions of Lockean and Lockean libertarian views. Prior to doing this work and articulating the sensible alternatives and what can be said for and against them, we are not yet in a position reasonably to opt for any particular version of Lockean theory, or for that matter to decide between the natural rights tradition and rival consequentialisms." It is of interest, thus, to take up Arneson's challenge and to engage in some of the 'spadework' necessary to figure out whether the libertarian project might ever succeed. This PhD attempts to contribute to this endeavour. Some modesty is at place, though. I will, of course, not be able to provide a full foundation and articulation of the most plausible libertarian theory of justice. This would require more knowledge and ability than I can offer and more time than a PhD allows for. As is common to any research project, I will only be able to stand on the shoulders of giants and hope to offer some extra lenses for future researchers.

3. The project

The aim of this PhD is to figure out whether a libertarian theory can ever be justified. Recall that for a theory to be libertarian, it has to defend some version of the self-ownership principle.[4] The question is, in other words, whether there is a coherent, consistent and plausible theory of justice in which this principle plays a central role. If so, libertarianism is justifiable. If libertarianism indeed survives scrutiny, what is the most plausible version of libertarianism? If it does not survive scrutiny, is there still anything rival theories can learn from libertarianism?

[4] This principle will be specified further in chapter I.

I will argue that, in the end, a moderate version of the self-ownership principle is plausible and that the best conception of the world-ownership principle, i.e. the principle that explains which rights over external resources are justifiable, is a version of sufficiency-constrained egalitarianism. In particular, the best conception of self-ownership grants agents almost full ownership of their own person, but allows for rights infringements if the consequences of not infringing the rights would be sufficiently bad. Moreover, part of how we ought to determine whether a consequence is sufficiently bad to justify a rights infringement is based on whether the infringement occurs *as a means* for the benefit of others rather than *as a side effect* of pursuing the greater good. If the infringement is a means to the benefit of others, it is harder to justify than if it occurs as a side effect. With regards to the world-ownership principle, I will argue that an egalitarian conception is most plausible. This means that I will defend a *left*-libertarian theory of justice (in contrast to the right-libertarian theory of, for example, Nozick). Nevertheless, because at least some left-libertarian theories cannot guarantee that all agents have at all times sufficient resources to live their lives as they see fit, I will explain that the egalitarian world-ownership principle should be constrained by a sufficiency proviso.

I believe this general framework is both consistent and plausible. Namely, it is consistently and plausibly grounded in the special moral status of agents as separate and independent purposive beings. That is, what makes agents special, or distinct from objects and (most) non-human animals, is that they have a capacity to set and pursue ends. They have a capacity to choose for themselves how their lives should be lived. Moreover, agents are separate from one another in that they are all, individually, an independent source of intrinsic moral value. The idea of the *separateness of persons* is that we ought not to compensate a wrong to one agent with some benefits to others. We ought not to make trade-offs between the lives and wellbeing of different agents. This special moral status of agents as separate purposive beings grounds the basic claim that each agent has a right to live her life as she sees fit, i.e. in her own chosen way. This PhD can be seen as a development of that claim, a quest for its best interpretation and a delineation of its implications.

Before I explain how my argument will develop, I first need to undertake two further steps in this introduction. In the following section, I will briefly delineate the way I understand libertarianism. This short introduction will provide a theoretical framework in which all the chapters of this PhD will fit. Thereafter, I will spend another section of this introduction to some methodological comments. I will explain that the arguments of this PhD fit in the

tradition of Analytical Political Theory and aim to justify moderate left-libertarianism based on ordinary moral reasoning.

4. Delineating libertarianism

Libertarianism, or Lockean libertarianism, will be investigated as a distinct theory of justice. In contrast to Rawls, who focusses on the fair distribution of the benefits and burdens of social cooperation, libertarians standardly interpret justice as being concerned with the *enforceable duties agents owe to one another* (Vallentyne, 2007a, 2012a).[5] Let us unpack this idea. First, libertarians focus on the duties of *agents*. Agents are beings who have moral agency. That is, agents are rational beings who can judge, evaluate and choose options based on reason and self-interest. Standardly, agents are adult human beings. Nevertheless, those two categories do not overlap completely as not all adult human beings have the relevant choice-making and rational capacities (e.g. the severely mentally ill) and as it is possible that some non-human animals do have these capacities. Second, libertarian justice is interested in the *duties* of agents. Duties delineate the permissibility of actions. If an agent acts in accordance with all her duties, her action is permissible or right. If an agent violates a duty, her action is impermissible or wrong. Third, questions of justice, according to libertarians, relate to the duties agents *owe to one another*. A libertarian theory of justice, thus, focusses on the avoidance of interpersonal wrongs. It limits what we can permissibly do to each other, how we can treat and use one another and which sort of harm doing we can justly engage in. This implies that these theories are silent about the existence of impersonal duties, like duties we might have to preserve historical heritage or an exceptional piece of nature.[6] For libertarians, impersonal duties are irrelevant for considerations of justice. Fourth, libertarianism is interested in the content of the *enforceable* duties agents owe to one another. This concept of justice is limited to the duties others are authorized to enforce. Arguably, not all our moral duties are enforceable. I have a duty to keep promises or to call my mother to congratulate her with her birthday, but you are not permitted to force me to do so. These are non-enforceable duties, which are part of the domain of decency rather than justice. Some other duties clearly are enforceable. If you want to kill your neighbour, clearly I can force you

[5] This interpretation of justice can be found in several prominent libertarian texts, like Nozick (1974), Narveson (2001), Mack (2002a, 2002b), Feser (2004, 2005), Steiner (1994) and Rothbard (1978, 1998).
[6] For a similar distinction between interpersonal and impersonal duties, see T. Scanlon (1998).

not to perform this act as you have an enforceable duty not to kill your neighbour. A libertarian conception of justice only concerns the enforceable duties agents owe to each other. Duties of justice, thus, are a subset of all moral duties.

Lockean libertarian theories claim that the enforceable duties we owe to each other limit what the state can do without our consent. As Nozick (1974, p. 6) explains: "Moral philosophy sets the background for, and boundaries of, political philosophy. What persons may and may not do to one another limits what they may do through the apparatus of a state, or do to establish such an apparatus." Moreover, if a state can be justified at all, the source of legitimate state action will be the enforcement of our enforceable duties (Nozick, 1974, p. 6). This implies that the legal laws a state enacts should be highly informed by those duties. Moral rights serve as "a standard for the moral assessment of legal rights", and the former are thus determined independently from the latter (Steiner, 2011b, p. 111). The relevant question for a libertarian theory of justice is, then, what those enforceable interpersonal duties of agents are.[7]

Note that libertarianism is not always conceived as a distinct theory of justice (Wendt, 2018, pp. 169-170; Zwolinski, 2008a). Sometimes, libertarianism is interpreted simply as a (radical) defence of a free market economy. But such defence is compatible with a range of theories of justice. John Tomasi (2012), for example, argues in favour of free markets from a Rawlsian justificatory framework. More famously, many 'classical liberals' defend free markets based on a utilitarian or consequentialist reasoning (e.g. Epstein, 1998; Friedman, 1962; Friedman & Friedman, 1980; Hayek, 1944; Murray, 1988, 2006). The thought of the latter group of theorists is that free markets are the most efficient way to generate utility or wellbeing in society, and that governmental policies are often a very inefficient means to do so. This PhD is not about such (mainly) economic theories and arguments.

Libertarianism as a distinct theory of justice is primarily concerned with the distribution of *ownership rights* or *property rights*. Some libertarians even argue that property rights are the only rights that exist (e.g. Rothbard, 1998; Steiner, 1994, for example p. 93). The thought is that if we know who owns what, we know which acts are permissible and which duties are enforceable. Namely, if everything in the world is owned by someone, everyone can do with her property what she likes as long as she does not violate the ownership rights of others. So if

[7] Note that this does not imply that we should copy moral rights into legal codes. There is a distinction between the theoretical question "what rights do we have?" and the practical question "what sort of laws should be established in order to protect individual rights?" (Arneson, 2005, p. 270). To answer the latter, but not the former, epistemic and administrative difficulties will play a large role.

you own a car and I own a hammer, I can do a whole range of things with my hammer, but I cannot use it to smash your car. The latter action is impermissible because it would violate your ownership rights over your car. As we will see, the specification of ownership rights is not as straightforward as this example suggests. Nevertheless, the example does capture the fundamental libertarian thought that ownership rights delineate a sphere of permissible actions for agents.

For libertarians, there are three categories of 'things' that can be owned by agents. Everything in the physical world is either (1) a being with moral standing, (2) a natural resource or (3) an artefact (Roark, 2013, p. 27; Vallentyne, 2000, p. 2). 'Agents' are part of the first category. As I have quickly explained, the self-ownership principle governs the ownership of agents. Namely, according to that principle, each agent owns her own person. Arguably, agents do not exhaust the category of beings with moral standing. On the one hand, there are human beings who lack agency and still have moral standing. Foetuses and the severely mentally ill lack moral agency and still have interests that make them subject to moral considerations. On the other hand, it is clear that (most if not all) non-human animals are not agents in the sense described above either. Still, we ought not to torture dogs for fun. If these considerations are true, there is a category of beings that are not agents and still have moral standing. It is difficult to specify exactly which beings are part of this category. From what age does a 'normal' human being become a moral agent? Are there non-human animals with sufficient rational capacities to be considered agents? And are there non-human animals that even lack the interests to be considered as beings with moral standing? These difficult questions will be neglected in this PhD.[8] I will simply assume that, in general, human animals develop into beings with moral agency. As libertarianism is only concerned with the duties agents owe to *each other*, I will also shelve issues concerning the duties of agents towards beings with moral standing that are not agents (e.g. duties towards non-human animals, infants and other young minors).

Besides beings with moral standing, the material world exists of resources that do not have moral standing. These resources can be divided into two different categories. On the one hand, there are unmodified, unproduced resources (Roark, 2013, p. 28; Vallentyne, 2000, p. 5). This are *natural resources*. Natural resources are all those resources that agents find in an

[8] For an interesting introduction to the issues that arise in a more detailed analysis of moral status, see Jaworska and Tannenbaum (2013).

unmodified state of nature apart from beings with moral standing. Unaffected land, the atmosphere, rivers, oceans, forests and deposits of fossil fuels (e.g. gas and crude oil) are all examples of natural resources. On the other hand, contrary to what can be found in an unmodified state of nature, in the contemporary world we also find produced resources. These produced resources, or *artefacts*, are natural resources that have been modified by agents. For example, if an agent creates a couch out of a tree, she created the couch even though she did not create the tree. It is safe to say that all artefacts are created out of natural resources. Each artefact (e.g. a couch, a car, a computer, a pencil, a book, etc.) consists of natural resources that have been modified by agents.

All libertarian theories defend, apart from the self-ownership principle, a *world-ownership principle* which specifies the rights agents have over natural resources and artefacts. Libertarians call these resources *external resources*. The world-ownership principle is, thus, concerned with the distribution of the ownership rights over external resources. Given that all external resources are either natural resources or produced out of natural resources, the relevant question for libertarians is whether there are limits to the appropriation of natural resources. In other words, which moral principle applies to the acquisition of natural resources. As we will see, right-libertarians argue that there are no or only very weak limits to the amount of natural resources an agent can permissibly appropriate (e.g. Mack, 2002a; Nozick, 1974; Rothbard, 1978, 1998). Left-libertarians, in contrast, think that all agents have an equal claim to natural resources and, thus, defend a stringent egalitarian proviso. According to those theorists, one can only come to own natural resources if one leaves an equal or fair share for all others to appropriate or if one pays the value of the resource to a redistributable social pot (e.g. Otsuka, 2003; Roark, 2013; Steiner, 1994; Vallentyne, 2012a).

A last relevant feature of libertarianism is that it defends *natural rights*. Therefore, we could also label the theory discussed here '*natural rights libertarianism*'. The concept of 'a natural right' can mean several things. One traditional understanding is that a natural right has a divine origin. In this understanding, a natural right is a command of God which agents can access through their natural capacity of reason and which is derived from the very nature of things. This indeed is how Locke (1960 [1698] see, for example, II, sections 16 and 124) himself used the concept (Laslett, 1960, p. 82; Rawls, 2007, pp. 109-110). But, of course, contemporary libertarians have something else in mind when they use the term 'natural rights'. Lockean libertarians conceive of natural rights as "foundational", "non-derivative" (Steiner, 2011b, p. 110) or "nonacquired" (Mack, 2010, p. 53). For Michael Otsuka (2003, p.

3), a paradigmatic Lockean libertarian himself, "rights […] are 'natural' rather than 'artificial' in the following sense. They are rights that do not depend for their existence on any of the following: their recognition by the laws or officials of any state or the principles of any institution; the presence of any social conventions; or the fact of any actual contractual agreement to conform one's will to the dictates of the rights." Natural rights are, thus, pre-institutional, pre-conventional and pre-contractual rights. It are rights agents have in virtue of them being agents and these rights are not the product of some voluntary act (Hart, 1955; Simmons, 1979, pp. 62-63). If a group of agents would simply pop-up in a previously uninhabited world, they would have these rights *stante pede* (see also Gibbard, 2000 [1976], p. 24). One important implication of a defence of natural rights is that the scope of libertarian justice is global (Steiner, 1987, p. 68). If agents have certain rights because of them being agents, it is irrelevant on which part of the globe they live.

To better comprehend the concept of a natural right, consider the following example. Other things being equal, if I kill my neighbour, the wrongness of this act does not depend on the existence of a law that forbids killing or a contractual agreement in which my neighbour and I agree not to kill each other. Killing is wrong even in a situation where people live together without any political institutions. The explanation for the wrongness is that my neighbour has a natural right not to be killed. Similarly, the wrongness of slavery, rape, torture and other serious incursions upon one's person does not depend on the existence of a law, institution, social convention or contract that labels them 'wrong' and 'impermissible'.

To summarize, this PhD will discuss and analyse libertarianism as a distinct theory of justice, which specifies the enforceable duties agents owe to one another. Libertarians primarily focus on the distribution of ownership rights. They believe that the proper distribution of ownership rights is determined by two principles: the self-ownership principle and a more or less (in)egalitarian conception of world-ownership. And, in a libertarian theory of justice, the rights of agents are natural in that they are pre-institutional, pre-conventional and pre-contractual.

5. Some methodological comments

During the course of this book, I will follow the tradition of *Analytical Political Theory*. Because political theory cannot use empirical methods, Analytical Political Theory stresses

the importance of clarity, systematic rigour and narrowness of focus in analysing normative concepts and ideas (McDermott, 2008; Pierik, 2011). According to this tradition, it is essential to be as clear as possible about one's normative foundations, to define concepts, to reason consistently and to argue transparently (Freeden, 2004; Pierik, 2011). Qualitative normative thinking is produced by means of rational arguments. These rational arguments ought to identify conceptual distinctions and determine coherency among concepts (Freeden, 2004). Although political theory has no mechanism of conjecture and refutation, Analytical Political Theory does try to gain knowledge in a way that is similar to the empirical sciences (McDermott, 2008; Pierik, 2011). Instead of empirical observations, it accepts our strong intuitions, or considered judgements, as an important ground to test normative theories. Our intuitions are a tool to confirm or refute a theory. For example, a theory that allows for the state-enforced institution of apartheid can be rejected simply based on our considered judgements. We have strong intuitions which state that such a theory is *obviously* wrong.

Because of the force of intuitions in normative arguments, my arguments will mainly make use of *ordinary moral reasoning*. The method of 'ordinary moral reasoning' aims to prescribe plausible moral principles that capture our most fundamental moral commitments and can explain our intuitions in certain cases while these principles, at the same time, can explain the lack of intuitive force in other cases (Otsuka, 2003, p. 5). The method takes a lot of the demands and directives of morality as given moral truths.[9] This implies that it accepts statements of the form "but surely A ought to do such and such" or "plainly it is morally permissible for B to do so and so" (Thomson, 1990, p. 4). For example, ordinary moral reasoning could start from factual moral statements like 'other things being equal, one ought not to lie, torture or kill' or 'other things being equal, plainly it is morally permissible for me to give my mother a present'. Nevertheless, the method of ordinary moral reasoning does not take all the content of morality as given. Some moral demands are at first unclear but can be derived via rational, logical and coherent argumentation. Still other moral directives will remain unclear. With regards to these unclear moral rules, the method provides at best the suggestion that "it is plausible to think that so and so has such and such a right" (Thomson, 1990, pp. 32-33). At worse some moral questions remain unanswered.

[9] For a defence of this method against sceptics of moral truths, see Thomson's introduction in *The Realm of Rights* (1990).

To determine which enforceable duties we owe to each other, I will often make use of highly abstract and fictional cases. For example, I will imagine agents who make clothes from their own hair, runaway trolleys which are about to kill people down the track, agents throwing bombs in the park and careless shoppers who bump into other shoppers all the time. These examples might, at first sight, seem strange and far-fetched, but, as Dworkin (2011, p. 352) explains, "this […] kind of artificiality is inevitable, however. If we are to reject politics as the final arbiter of justice, we must supply something else to define what justice requires […]. Given our complex and deeply unfair economic structure, with its own dense history, it is difficult to do this without heroically counterfactual exercises." That is, hypothetical cases help us to analyse our considered judgements and to isolate different questions and problems that need to be answered and resolved separately. It does so by abstracting from the messy actual world.

A popular counterfactual case among Lockean libertarians is the idea of *the state of nature* (e.g. Nozick, 1974; Otsuka, 2003, p. 22; Rothbard, 1998, pp. 29-34). The state of nature is a pre-political situation in which agents live and interact without subordination to a state or government. In the absence of a state there are no legal laws and, consequently, no enforcement of such rights by means of a police force or a judicial system. The easiest way to conceive of such a state of nature is to imagine a group of shipwrecked agents who moor at an uninhabited island without a chance to communicate with the outside world for many years to come (Dworkin, 2000). These shipwrecked people need to build a society from scratch, starting from the state of nature.

State of nature theorizing helps us to reflect systematically about our rights and duties by abstracting from the complicated structure of contemporary societies. In most parts of the world, societies today are characterized by a complex system of political, legal and economic institutions. These institutions frame our social relations (e.g. they might create and perpetuate inequalities) and incentivize our behaviour (e.g. they might encourage greed) in a sense that could blur our ideas about right and wrong. Therefore, to figure out what is right and wrong, it is helpful to abstract from social and institutional background conditions. This is the role of state of nature thought experiments.

In testing how principles of justice relate to our intuitions or considered judgements, this PhD partly engages in a search for reflective equilibrium. The *method of reflective equilibrium*, famously developed by Rawls (1999), holds that progress in normative theorizing will only be

made if principles and theories approach 'reflective equilibrium'. Reflective equilibrium is the "state one reached after a person has weighed various proposed conceptions and he has either revised his judgments to accord with one of them or held fast to his initial convictions (and the corresponding conception)" (Rawls, 1999, p. 43). This state can be reached by considering different developed moral theories and testing them against our moral intuitions. The test is to be done by applying the theories to particular real world cases or non-realistic thought experiments. Usually one starts with applying theories to easy cases about which we have strong intuitions (e.g. murder is wrong, slavery is bad). If, possibly after revision, a theory is in line with these strong intuitions, the next step is to apply it to harder cases. For example, what would be the consequences of the theory in case we apply it to children, imagine a world in which resources are not scarce or take a substantial part of the population to have few marketable talents? At that point, the dialogue that is created between our strong moral intuitions and the principles and rules prescribed by different normative theories enables us to revise our considered judgments and/or to revise the best normative theory. The purpose of this permanent revision and mutual adjustment is to reach reflective equilibrium, a state in which our considered judgments, the prescriptions of the theory and our more abstract moral beliefs about humans and the world (e.g. all human beings are of equal moral worth) converge maximally and coherently (Wenar, 2017).

The method used in this PhD, ordinary moral reasoning, is similar though distinctive from the method of reflective equilibrium. Like the method of reflective equilibrium, ordinary moral reasoning aims to find convergence between our considered judgements and the best principles of justice. That is, our intuitions must point at the plausibility of the principles and, in turn, the prescriptions of the principles must be in line with our strongest intuitions. Sometimes our intuitions can make us change the content of the principle, but in other cases (the rationale for) the principle is robust and might convince us to critically reflect upon our intuitions. Nevertheless, ordinary moral reasoning is not similar to the method of reflective equilibrium because another essential component of the latter is *to compare* different existing theories and to figure out which of those theories accords best with our considered judgements and our more abstract fundamental beliefs about humans and the world.[10] It is only after such comparison that one can conclude that a theory is *coherent*, in that it is the

[10] Rawls (1999) himself compares Justice as Fairness with utilitarianism.

theory that, compared to the most plausible alternatives, comes closest to the state of reflective equilibrium.

This PhD only occasionally engages in such comparisons and, therefore, falls short of a complete exercise in reflective equilibrium. In chapter II, I partly compare libertarian self-ownership with liberal rights and liberties. In chapters IV, V and VI, I compare right-libertarianism with left-libertarianism. I do not, though, engage in a systematic comparison of (left-)libertarianism with its most plausible alternative: liberal egalitarianism (as defended by Rawls or Dworkin). I believe my choice not to perform a full comparison is justified. As I explained earlier, there is still some spadework to be done to articulate and ground the most plausible Lockean libertarian theory. This endeavour can be done based on ordinary moral reasoning alone and without having to engage in the comparisons required by the method of reflective equilibrium. This choice naturally limits the ambitions of this PhD. That is, in the end, I will not be able to show the superiority of (left-)libertarianism over liberal egalitarianism. I will only be in a position to state the most plausible libertarian theory and to provisionally reflect upon its merits compared to rival theories of justice.

One last note on the method of this PhD. As it is an investigation of the individual rights and liberties of agents, it will at times engage in a detailed conceptual analysis (e.g. chapter I). This might lead the reader to wonder what the relevance of such a discussion is to resolve the major issues to which theories of justice are directed (e.g. poverty, discrimination and oppression). Nevertheless, like Hillel Steiner (1994, p. 3), I believe that "these issues cannot be effectively engaged without an armoury of abstract niceties. Unedifying gallops, from fragmentary moral convictions to full-blown institutional and policy prescriptions, can be avoided only through preliminary conceptual analysis. Only with the distinctions supplied by such analysis can one make informed consumer choices from among the multiplicity of justice theories presently on offer."

6. Structure of the argument

The argument develops as follows. The first part of the book, which consists of the first three chapters, will investigate the plausibility of the self-ownership principle and defend a moderate version which I will label *near-full means principle-based self-ownership*.

Chapter I aims to show that the self-ownership principle is determinate. That is, I will argue that we can derive a determinate set of rights and duties from the standard libertarian conception of the principle: full self-ownership. The argument of the first chapter rebuts *the indeterminacy objection*. The indeterminacy objection holds, in short, that it is unclear which rights and duties the self-ownership principle entails and, moreover, that much of its (intuitive) attractiveness depends on the vague descriptions and definitions of self-ownership that libertarians standardly provide. The rejection of the indeterminacy objection will enable me (a) to specify the meaning and implications the self-ownership principle in more detail and (b) to challenge libertarians to better explicate and delineate the specific conception of self-ownership they prefer. In short, this first chapter deals with the *specification* of the self-ownership principle.

Chapter II focusses on the *justification* of the self-ownership principle. Is the self-ownership principle justifiable as a principle of justice? I will develop and critically scrutinize two popular arguments in favour of the principle. The first, *the abductive argument*, states that the self-ownership principle is an attractive and plausible explanation for many of our considered judgements with regards to the relation agents have with their person. The claim is that the self-ownership principle provides the intuitively correct answer in many (hypothetical) cases about right and wrong actions and, moreover, that it offers a deep and unifying rationale for those prescriptions. The second, *the fundamental argument*, holds that the self-ownership principle shows proper respect for the special moral status of agents. That is, the fundamental argument states that agents have a special moral status based on their rational, purposive capacities and their separate existence. To respect this special moral status, a theory of justice must defend rights of the kind implied by the self-ownership principle. I will argue that both arguments are attractive but inconclusive. They are attractive because they point in the right direction. It is true that both our intuitions and the special moral status of agents ground very stringent and extensive self-ownership rights. Nevertheless, the abductive argument as well as the fundamental argument are inconclusive because liberalism, in being the most popular alternative to libertarianism, can use the same argument to ground their preferred set of liberties. Therefore, none of those two arguments in favour of the self-ownership principle is sufficient to conclude that a defence of the principle is, in the end, justifiable.

Chapter III also concerns the justification of the self-ownership principle but changes strategy. Rather than to develop a constructive argument for the principle from scratch (cf. chapter II), it takes full self-ownership as a given. Progress is made by means of a critical analysis of this

principle. In particular, I will develop and defend *the fanaticism objection* against libertarian self-ownership. The fanaticism objection holds, in short, that full self-ownership is fanatical as (a) it implies that all rights infringements, however small or negligible, are rights violations and, thus, unjustifiable, (b) it cannot explain why some rights infringements that use an agent as a means for the benefit of others are harder to justify than rights infringements that occur as a side effect of pursuing the greater good, and (c) it condemns all uses of force that aim to ensure that an agent provides service to others. These three implications of full self-ownership are extremely counterintuitive. Therefore, we should reject the prototypical libertarian conception of the self-ownership principle. Nevertheless, I believe there is a way out for libertarians. After having considered and rejected Nozick's answer to the fanaticism objection, I will develop a new account of self-ownership: *near-full means principle-based self-ownership*. This account accepts that no rule or principle is absolute, and that self-ownership rights are, therefore, very stringent rather than absolute. Moreover, it holds that the stringency of a self-ownership right is in part determined by whether, in being the subject of a rights infringement, an agent is being used as a means for the benefit of others. I will argue that near-full means principle-based self-ownership is both a plausible answer to the fanaticism objection and a genuinely libertarian principle.

The second part of the book focusses on the world-ownership principle. I will reject radical right-libertarian and Nozickean right-libertarian versions and defend an egalitarian, or left-libertarian, conception of world-ownership.

In chapter IV, I will investigate the relationship between the self-ownership principle and the world-ownership principle. In particular, I will wonder whether a defence of the self-ownership principle has implications for the content and structure of the ownership rights agents can acquire over external resources. One route to derive rights over external resources from a defence of the self-ownership principle, especially popular among right-libertarians, claims that the *concept* of self-ownership informs the world-ownership principle. That is, right-libertarians often defend a version of the *labour-mixing theory*, the *rule of first-occupancy* or the idea of *non-invasive rights-violations*. All three suggestions will be rejected. This leads to the conclusion that self-ownership is a merely formal concept.

In a second part of the chapter, I will go on to argue that the fact that self-ownership is a merely formal concept generates problems for libertarians. As is well-known, this feature of self-ownership is problematic for right-libertarians as they cannot ensures that propertyless

proletarians have any effective (or substantive) liberty to live their lives in their own chosen way. Less well-known, though, is that a defence of merely formal self-ownership also generates problems for left-libertarians. That is, also in a left-libertarian society some agents might end up without any ownership rights over external resources and, thus, without any effective rights to set and pursue their own ends. In short, formal self-ownership renders the self-ownership principle an unattractive ideal, both in a right- and in a left-libertarian society.

In support of libertarianism, I will then argue that although the concept of self-ownership is merely formal, the *rationale* for self-ownership speaks in favour of a conception of the world-ownership principle that secures effective (or substantive) self-ownership rights for all. To respect the special moral status of agents as separate and independent purposive beings, a system of ownership rights must ensure that all agents can unilaterally become the private owner of *sufficient* resources to live a life as a project pursuer. I will argue, thus, for a sufficientarian version of libertarianism. Based on the rationale for self-ownership, it is essential that all agents have enough resources for project-pursuit. In short, the rationale for self-ownership supports a *natural right of private property* and a *sufficiency proviso*.

Chapters V and VI investigate which principle of distributive justice should apply to the distribution of external resources above the sufficiency threshold. Chapter V considers and rejects one proposal: right-libertarianism above the sufficiency threshold. I label this view *sufficiency-constrained right-libertarianism*. Sufficiency-constrained right-libertarianism holds that it is non-instrumentally important that agents have enough resources and that, once everyone has enough, unrestricted initial appropriation and voluntary exchange govern the distribution of resources. Highly inspired by Cohen's work, I will reject two versions of the view: *Nozickean sufficiency* and *project-pursuit sufficiency*. These suggestions are implausible because, most importantly, they allow for vast inequalities based on an arbitrary first-come first-served principle of initial acquisition. Therefore, I will claim that we should accept egalitarianism as the default position for a plausible principle of distributive justice above the sufficiency threshold. This claim will be strengthened by refuting two right-libertarian critiques of egalitarianism. Some form of *sufficiency-constrained egalitarianism* is, thus, the way forward.

Chapter VI defends egalitarianism above the sufficiency threshold. In particular, I will evaluate different left-libertarian principles of distributive justice and develop and defend one myself. In a first part of the chapter, I will argue that left-libertarians rightly focus on raw

natural resources and abandoned artefacts as the proper *distribuendum* of egalitarian justice. That is, raw natural resources and abandoned artefacts share certain features which make them especially well-fit for redistribution. Those features, namely, ground the idea that all agents have a claim to a fair share. With regards to the initial acquisition of those resources, I will reject an *Actual-Share proviso* in favour of a *Georgist proviso*. A Georgist proviso on original appropriation holds that one can only become the justified owner of a previously unowned resource if one pays its competitive value to a social or collective fund. The second part of the chapter deals with the proper *equalisandum* of egalitarian justice. One popular view among left-libertarians is that the agents have a right to an equal share of the value of natural resources and abandoned artefacts. I will reject this *Equal Share Georgism* based on the *egalitarian objection*. The egalitarian objection holds that Equal Share Georgism is insufficiently egalitarian because it fails to compensate for brute luck adversities, like having innate disabilities, an unsupportive family background or living in a society with unfavourable economic or political institutions. Rather, the proper equalisandum should aim to compensate for bad brute luck and, thus, should use the revenues of the collective fund in an 'equalizing' or 'equality-promoting' fashion. This can be done, not by giving everyone an equal share, but by distributing larger shares to those agents who suffer from brute luck adversities. In the end, I will defend a view which I will label *Equalizing Resources Georgism*.

In the conclusion, I will first summarize the content of the theory defended in the thesis. Then, I will set out some important ways in which I engaged with the existing literature and challenged common opinions about libertarianism. Thereafter, I will engage with the potential criticism that the theory I defend cannot adequately be labelled 'libertarian'. I will end with some comments on the limitations of my quest for plausible libertarianism and suggest some directions for future research.

Chapter I: The Determinacy of Libertarian Self-Ownership

A defence of the self-ownership principle is what distinguishes libertarians from (other) liberals like Rawls and Dworkin. That is, a commitment to self-ownership is the defining feature of all libertarian theories of justice. Apart from a commitment to self-ownership, libertarians also defend a world-ownership principle that grants private ownership rights over external resources.[11] Vallentyne and van der Vossen (2014), for example, define libertarianism as "the moral view that agents initially fully own themselves and have certain moral powers to acquire property rights in external things."

The basic idea of the *concept of self-ownership* is that all agents have a set of equal ownership rights with regards to their person. People in some way or another own their person, which consists of, at least, one's body, mind, talents, energies and faculties. The rights agents have over themselves protect a liberty to direct their life as they see fit, to set and pursue projects and to act in their preferred way without others being permitted to coercively interfere (as long as self-owners do not violate the equal self-ownership rights of others).[12] Theorists can defend different *conceptions of self-ownership*, i.e. different articulations and specifications of the concept of self-ownership. A conception of self-ownership gives meaning to the concept by specifying the rights and duties we have with regards to our person (Wall, 2009, p. 400). In this chapter, I will argue that the standard libertarian conception of self-ownership, *full self-ownership*, is determinate.[13] This means that the meaning of full self-ownership is sufficiently clear to derive an extensive and broadly applicable set of precise rights and duties.

In arguing for the determinacy of full self-ownership, I provide a reply to the *indeterminacy objection*. The indeterminacy objection holds, in short, that it is unclear which rights and duties the self-ownership principle entails and, moreover, that much of its (intuitive)

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[11] A conception of the world-ownership principle can be more (left-libertarianism) or less (right-libertarianism) egalitarian.

[12] Note that, plausibly, self-ownership rights are *necessary but not sufficient* to set and pursue ends. They are insufficient, as without any rights over external resources self-ownership rights are useless. Our bodies and mind, at the very least, need space and food to function. For more on the relationship between self-ownership and world-ownership, see chapter IV.

[13] I will use 'full self-ownership' and 'libertarian self-ownership' interchangeably, whereas I will interpret 'the self-ownership principle', more broadly, as a principle which could be expressed and interpreted in several ways. Full/libertarian self-ownership is one specific conception (or interpretation) of the self-ownership principle, but other conceptions are possible as well (e.g. near-full self-ownership, cf. chapter III). The self-ownership principle, thus, refers to a set of conceptions of self-ownership.

attractiveness depends on the vague descriptions and definitions of self-ownership libertarians standardly provide. The argument in this chapter serves two aims. First, a response to the indeterminacy objection will enable me to explain the meaning and implications of full self-ownership in more detail. Secondly, my response will pave the way to challenge libertarians to position themselves on each of two grounds based on which conceptions of self-ownership can differ. Although the 'standard' libertarian conception of self-ownership (i.e. full self-ownership) has a determinate core, some libertarians defend non-standard less-than-full conceptions of self-ownership that need better specification.

Note that nothing of what I will argue in this chapter serves as a justification for full self-ownership. Here the concern is merely one of specification.[14] It is, therefore, consistent to think that full self-ownership is determinate (and thus to agree with most, if not all, of what I will say in this chapter) and, at the same time, to reject the principle as an accurate expression of some of the enforceable duties we owe to one another.[15] I shelve my (partial) defence of the principle until the next chapter.

This chapter proceeds as follows. I will first set out the indeterminacy objection. Then, second, I will develop the determinate core of full self-ownership through a discussion of the incidents of rights and the meaning of ownership rights respectively. Third, I will discuss three important and explicit implications of libertarian self-ownership. This discussion will give extra evidence of the determinacy of the principle. Thereafter, fourth, I will provide two grounds based on which conceptions of self-ownership can differ. In a fifth part, I will conclude and challenge libertarians to better specify which conception of self-ownership they defend. This challenge is consistent with my position that full self-ownership is, to a large extent, determinate.

1. The indeterminacy objection

The self-ownership principle has been criticised for being indeterminate (e.g. Arneson, 2000 [1991]; Dworkin, in Cohen, 1995, p. 213; Fried, 2004, 2005). The objection holds that the meaning of the principle is, at best, deliberately left unclear by libertarians and, at worst,

[14] For an example of the distinction between the *specification* and the *justification* of an idea in another context (egalitarianism), see Cohen's *Luck and Equality* (2011b).
[15] Indeed, this is Cohen's position in *Self-Ownership, Freedom, and Equality* (1995).

inherently obscure due to an impossibility to non-arbitrarily specify a set of libertarian self-ownership rights. Richard Arneson (2000 [1991], p. 340) holds, for example, that "[t]he idea of self-ownership is not nearly so determinate as competing conceptions such as act-utilitarianism or Rawls's principles of justice, so a criticism of one of these doctrines by appeal to the rousing idea of self-ownership is suspect, as the attraction of such appeals is at least partly a function of their vagueness."[16] If the critique is sound, it would show that the self-ownership principle is of no help to specify the rights and duties of agents. Moreover, the principle is indeterminate, it is impossible to figure out how it relates to our considered judgements in our search for plausibility and justifiability.

Although the indeterminacy objection would show, if sound, that the libertarian's reference to the self-ownership principle is of no use to specify the rights and duties they defend, note that the objection would be insufficient to reject libertarianism altogether. That is because a libertarian can argue that a reference to the 'self-ownership principle', is simply meant to be a tool to specify a set of rights that can be justified on independent, non-ownership-based, grounds. Vallentyne, Steiner and Otsuka (2005, p. 204, fn. 8), for example, suggest that, "those who – despite the historical reality of slavery – find the notion of ownership of persons bizarre can simply substitute the relevant bundle of rights". If the indeterminacy objection shows that reference to self-ownership does not help to conceive of the 'relevant bundle of rights', it would force libertarians to find another way to specify the content of their preferred set of rights, but the objection would be insufficient to reject the libertarian rights and duties as such. Indeed, as I will explain in chapter III, the most plausible libertarian position conceives of the self-ownership principle in this instrumental way. That is, the principle accurately captures many of the rights that are justifiable on independent grounds, but nothing of substance need to be lost if one does not refer to the 'ownership of one's person' as such.

Nevertheless, notwithstanding the fact that libertarians could accept the objection and get rid of the whole idea of owning one's person without having to give up on their defence of a specific set of libertarian rights, the indeterminacy objection would still be vastly damaging for libertarianism. That is because libertarians, in fact, *do* use the self-ownership principle to

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[16] Although I believe Arneson's "demolition" of self-ownership, as the title of his article (*Lockean Self-Ownership: Towards a Demolition*) suggest, is based on a wrong interpretation of the relationship between the self-ownership principle and the world-ownership principle – he thinks the former necessarily determines the content of the latter – he relevantly expresses a version of the indeterminacy objection. For a better view on the relationship between self-ownership and world-ownership, see Vallentyne, Steiner and Otsuka (2005, pp. 208-210).

specify a set of rights, liberties and duties. It are precisely those rights that come with the concept of ownership that libertarians defend in relation to an agent's person. So even although the justification of self-ownership does not need to be based on the idea of ownership, the specification of self-ownership requires the concept of ownership to be determinate. Therefore, it is relevant to address the indeterminacy objection.

The indeterminacy objection comes in two versions. A first version, which I will call the *ad hominem indeterminacy objection*, is fair with regards to many libertarians but rather uninteresting and unconvincing as a critique of the self-ownership principle.[17] The ad hominem indeterminacy objection claims that many libertarians insufficiently specify what they mean when they refer to self-ownership. Libertarians often simply assert that the principle is obviously attractive, plausible and clear and, therefore, do not take the time to flesh out the specific rights and duties that it implies. This criticism is fair. With regards to the specification of the set of rights, Nozick (1974, p. 30), for example, admits that he "largely hope[s] to avoid" the need to offer a complete structure of rights. Nozick is happy to spell out only an underspecified conception of the self-ownership principle. His conception does specify that self-ownership rights protect agents against being severely harmed, like in cases of murder, rape, slavery and the like, but does not shed light on the protections of agents against very minor harms (e.g. pollution generated by carbon emissions, cf. chapter III) or on the permissibility of harm in order to avoid a moral catastrophe.

Nozick is hardly the only main libertarian that leaves his conception of self-ownership undefined. Also Charles Murray (1997) and Murray Rothbard (1998), to name two other giants in the libertarian tradition, spend little or no time to provide their readers with a structure of self-ownership rights which is broadly applicable and can serve as a guideline to determine our rights and duties in difficult cases. Although it is true that, as for Nozick, the careful reader of Murray and Rothbard may be able to derive and compose a partial structure of rights, the authors hardly do any effort to provide one themselves. Other libertarians do an effort to discuss the self-ownership principle, but define it by reference to the kind of incursions each liberal theory would protect individuals against (like assault, forcible detention and imprisonment, involuntary slavery and rape), leaving it unclear what the principle prescribes in harder cases (e.g. Otsuka, 2003, p. 15).

[17] Although few theorists explicitly make the ad hominem indeterminacy objections, it is implicit in the works of Arneson (2000 [1991]), Nagel (1981 [1975]) and Thomson (1981).

So the ad hominem indeterminacy objection is correct. Many important libertarian texts fail to give an outline of the structure of rights that is implied by the self-ownership principle. One aim of this chapter is to get libertarians off the hook and to provide a general framework from which all discussion about libertarian self-ownership can start. The framework I will provide heavily builds upon the work of Cohen (1995) and Vallentyne (2011, 2012a). It will help to partly answer the objection at hand. Note, nevertheless, that this framework will be incomplete and that the more precise structure of rights I defend will be informed, enriched, nuanced and limited by the discussions and conclusions of the subsequent chapters. A second aim of this chapter is, at the same time, to rephrase and expand the ad hominem indeterminacy objection. I will give two grounds based on which conceptions of self-ownership can differ and challenge present and future libertarians to specify their position on each of those dividing lines. If future libertarian theories meet this challenge, the ad hominem indeterminacy objection will disappear in discussions about the self-ownership principle, as all will be sufficiently determinate to infer the structure of rights that is defended by that particular libertarian theory.

Nevertheless, although the ad hominem indeterminacy objection is correct, it cannot serve as a decisive reason to reject the self-ownership principle. This is because, obviously, it might at the same time be true that (a) many libertarians fail to articulate a structure of rights that comes with their conception of self-ownership and that (b) a certain well-developed conception of self-ownership is an accurate specification of our rights and duties. Moreover, some libertarians do provide a more expansive analysis of the structure of rights they defend. Mack (1995, 2002b, 2005), Steiner (1998, with Matthew Kramer and N. Simmonds; 1994) and Simmons (1992, 1993), to name a few, have extensively written about the nature, structure and content of libertarian self-ownership rights.

A second and more interesting version of the indeterminacy objection holds that the self-ownership principle is inherently obscure because of the nature of ‘ownership’ and ‘rights’ (Dworkin, in Cohen, 1995, p. 213; Fried, 2004, 2005). I will call this the *inherent indeterminacy objection*. The inherent indeterminacy objection notes, first of all, that ‘ownership’ is a decomposable concept. If you own a book, you relate to the book in a special way. As an owner you have certain powers with regards to the book (you are permitted to do certain things with the book) which distinguish your position from that of non-owners. For example, you are now permitted to read the book when it fits your schedule, use the book to fire the stove, give the book to a friend as a birthday present, sell the book to a local second-

hand bookshop or sue me if I take or destroy the book without your permission. Interestingly, it is perfectly conceivable that those different powers and entitlements that come with 'ownership' fall on different agents. As Fried (2004, p. 73) notes, having ownership of land in mind, "party A could retain nominal ownership of Tara, but give away to B the right to live on the land during A's lifetime, to C the right to farm the land, to D the right to mine it, to E the right to use it as a right of way to reach E's own property, and to F the right to inherit the estate in its entirety upon A's death." Ownership is an "intricate and changeable" concept and therefore, or so the objection goes, it is very difficult, if not impossible, to determine which rights come with ownership (Fried, 2004, p. 73).

The inherent indeterminacy objection also stresses, secondly, that ownership rights necessarily grant some liberty to certain agents at the expense of a loss of liberty of others. If I own a plot of land, I can do certain things with that plot of land (i.e. I have a certain liberty of action with regards to the land) that non-owners are not permitted to do. Moreover, because of my ownership of the land, I can exclude non-owners from doing certain things to the land (e.g. exclude them from farming the land). Ownership rights, thus, by definition give the owner the right to limit the liberty of action of others. Also, equally relevant, the inherent indeterminacy objection claims that my permissible use of my ownership will conflict with your interests to permissibly use your ownership. Imagine we both have ownership rights over neighbouring plots of land. Does my ownership over my plot allow me to open an outdoor fish market? This would limit your options to use your plot of land, as the terrible smell that inevitably comes with a fish market will not make it feasible for you to start an outdoor spa for tourists. As Barbara Fried (2004, p. 74) notes: "[a]ll property rights necessarily infringe the liberties of others, as all entail reciprocal burdens on others, and in a world of scarcity, such burdens are often substantial." According to the inherent indeterminacy objection such inherent conflicts of interests and ownership rights cannot be solved by reference to still other ownership rights. The objection concludes that the Self-Ownership Principle is, therefore, inherently indeterminate.

2. The determinate core of the self-ownership principle

The argument against the indeterminacy objection proceeds in two steps. In this section, I will provide an interpretative framework for the rights implied by the self-ownership principle and

explain why *full* self-ownership is determinate. In the next section, I will discuss some clear implications of the self-ownership principle as extra proof for its determinacy.

2.1. The meaning of rights

As the self-ownership principle prescribes a set of rights, it is helpful to flesh out what it means to have a right. To say that a person has a right is to attribute a certain moral status to that person (Thomson, 1990: 38). Moreover, what moral status one attributes to that person depends on the moral significance of having a right. So what is it to have a right? Wesley Newcomb Hohfeld (1913) has provided an influential answer to this question.[18] Hohfeld's analysis shows that rights can be constituted by four basic incidents (Wenar, 2011).

Firstly, rights can consist of *claims*. Claims, or 'claim-rights', are rights in the strictest sense. What makes them rights in the strictest sense is that they always correlate with duties. For person X to have a claim against person Y that a certain state of affairs p shall obtain is for Y to be under a duty toward X, a duty which is discharged if and only if p (Thomson, 1990, p. 41). For example, if I lend you my copy of Nozick's *Anarchy, State, and Utopia*, I (X) have a claim against you (Y) that the book will be returned (p), as you (Y) are under a duty to make sure that the book will be returned (p). Note that the duty in question can also be a duty to refrain from doing something. For example, if I own my arm, I have a claim against everyone else not to break my arm (without my consent), as all others have a duty to refrain from doing this act.

Secondly, a right can consist of a *privilege*. Privileges licence the holder of such a right to perform a certain act. One has a privilege to do X insofar one has no duty not to do X. Privileges differ from claims because whereas claims entail duties as their correlative, privileges entail no duties. Moreover, a privilege is the opposite of a duty. If I hold a driver licence, I have a privilege to drive, as I have no duty not to drive. The person without a driver licence, on the other hand, has a duty not to drive. Similarly, if I own my house, I have a privilege to enter it whenever I want, as I have no duty not to enter it. Nevertheless, to have a privilege to drive a car or to enter a house does not mean that I have a duty to do so. Rather, it means that I can permissibly choose whether or not to drive the car or to enter my house.

[18] Although Hohfeld was a legal theorist interested in the meaning of 'legal' rights, like many others (e.g. Steiner, 1994; Thomson, 1990) I take his discussion as insightful for an analysis of 'moral' rights as well.

Some authors have equalized ‘privileges’ with ‘liberties’ (e.g. Steiner, 1994, pp. 59-60) but this is confusing. For example, if we say that you are at liberty to eat my salad, we generally think you not only lack a duty not to eat my salad (i.e. that you have a privilege to eat my salad) but also that you have a claim against me interfering with you eating my salad (Thomson, 1990, pp. 53-56). Nevertheless, nothing included in the definition of a privilege says something about a claim-right against interference. For you to have a privilege to eat my salad, remember, is just for you to have no duty not to eat my salad. This is consistent with you to lack a claim against me that I do not interfere with you when you eat the salad. I could, for example, give you the privilege to eat my salad while at the same time prevent you from eating it by holding fast to it (Thomson, 1990, p. 52). To be at liberty to eat my salad, therefore, means to have both a privilege and a claim-right. It is important to distinguish these three sorts of rights. I will use claims and privileges as defined above, and will interpret a liberty-right as a cluster of different rights, among which can be claims and privileges.

Thirdly, *powers* enable a person to alter her own or someone else’s Hohfeldian incidents. I have a power if and only if I can alter the privileges or the claim-rights of an agent. For example, I have a power if my consent matters to whether you have a privilege to use my laptop. Generally, if the laptop is mine, we do think I have such a power. If I do not consent, you have a duty not to use my laptop (i.e. I have a claim that you do not use my laptop). But if I consent, your duties change. Instead of having a duty not to use my laptop, you now have no such duty. As my consent altered your normative position towards my laptop, I have a moral power over the laptop: the moral power to alter your privileges, claims and duties with regards to my laptop.

Fourthly, a right can include *immunities*. If I lack a power to change your claim-rights or privileges, you have an immunity against me. In this sense, immunities relate to powers like privileges relate to claims (Thomson, 1990, p. 59). For me to have an immunity against you is for you to lack a power as regards me. For example, no person has the legal power to alter the claim-rights I have against others protected by the constitutional right to freedom of speech, and therefore I have a legal immunity (against everyone) that my claim-rights will be altered. Similarly, if we all have a moral ownership right to an egalitarian share of the natural resources on earth, I have a moral immunity (against everyone) to the non-consensual loss of this right.

2.2. The self-ownership rights

The self-ownership principle holds that the moral rights we have over ourselves are relevantly similar to the ownership rights we can have over external resources like a plot of land or a car.[19] Therefore, it is useful to look at how such ownership rights can be defined.

The key part of any ownership right is the right to exclude, i.e. the right to say no (Schmidtz, 2011). If I own a pen, I can exclude you (and all others) from using the pen. In other words, being the owner of the pen, I most essentially have a claim-right against you that you do not use the pen unless I consent to your use. Consequently, you have a duty not to use my pen non-consensually. Ownership rights function like traffic lights.[20] If the light is green, it is permissible to proceed and if the light is red, one has to stop. With regards to ownership, it is the owner who controls the lights and decides when others can proceed or when they must stop. To go back to our example, if you want to use my pen, it is me who can turn the light to green or red.

Although the right to exclude others is the key part of any ownership right, ownership can more accurately be described as a bundle of rights (Waldron, 2004; section 1). According to this conception of ownership, the right to exclude others is part of a more general right to control what one owns (which, in turn, is part of a still broader set of ownership rights). Namely, to own something implies that one has the right to control the thing. It implies the right to determine what will happen to the owned thing, to dispose of the thing as one sees fit (Narveson, 1998, p. 7). The right to exclude is a necessary part of this control right, as one is not properly in a position to determine what will happen to a thing if others can permissibly access and use the thing whenever they see fit. Nevertheless, the right to exclude others is not a sufficient condition to control a thing. To determine what will happen to what I own, apart from the right to exclude others, I also need a privilege to use, a power to license the use of others (Waldron, 2004; section 1) and an immunity against the non-consensual loss of the thing. For example, in order to control my pen it is insufficient that I can exclude others from using my pen, it must also be morally permissible for me to use my pen (i.e. have a privilege

[19] For examples of libertarians who defend the comparability of ownership over external resources and ownership over one's person, see Murray (1997), Narveson (2001), Nozick (1974), Rothbard (1998), Vallentyne (1998, 2000, 2012a) and Steiner (1994).

[20] Note that although I borrow the comparison with traffic lights from Schmidtz (2011), his use of the analogy differs from mine. Schmidtz refers to the efficiency and effectiveness of both ownership rights and traffic lights. I focus on their common power to change the rights of participants to the system of ownership and traffic respectively.

to use my pen), I must have the power to lend or rent my pen to others and I must have an immunity against someone else having the right to confiscate my pen. The combination of this claim-right, privilege, power and immunity constitutes control-ownership.

From this analogy, we can infer that for someone to own herself is to control the disposition and use of her person, which includes her body, mind and talents, and to have the right to exclude others from using it. This simple statement expresses the core idea of the self-ownership principle. The principle protects the most extensive rights of control over one's person compatible with everyone else having the same control rights over their person. This core idea is called 'control self-ownership' (Vallentyne, 2011, p. 156).

Control self-ownership consist of a claim-right, a privilege, a power and an immunity.[21] If one is a control self-owner, one has a claim-right against others not to use one's person without prior consent. Recall that all claim-rights have a correlative duty held by someone else. This means that my claim-right against you not to use my person without my prior consent correlates with your duty not to use me without such consent. Imagine that you could use my hair to weave a blanket to protect yourself against cold weather,[22] control self-ownership installs a duty on you not to do so without my consent. If I control-own my person, which includes my body, I have a claim-right against you to refrain from using my hair without my consent. Similarly, these claims against others using my person without my consent are a clear way to frame the impermissibility of killing, torture, rape and many other forms of impermissible harm.

Besides, control self-ownership consists of an unrestricted privilege to use oneself. Control self-owners have no duty not to use their person, and thus have a privilege to use it.[23] Whereas they have a claim against others not to use one's person without prior consent, it would not make sense to state that such claim would also exist against oneself. If an agent uses her person in a certain way, it can be logically assumed that she automatically consents with her own use of herself. This privilege also implies that there is no need for the permission of

[21] See also Vallentyne (2011, p. 157) for a discussion of the claim-right, privilege and power implied by control self-ownership. Strangely, he does not note the immunity.
[22] Cf. Otsuka's example of hair weaving (2003, p. 17).
[23] Strictly speaking, because I discuss libertarian justice as being concerned with the *enforceable* duties agents owe to one another, I should specify here that what is important for control self-ownership is that agents have no *enforceable* duty not to use their person. An agent might in fact have a non-enforceable duty not to use her person in certain ways and still be a full self-owner in the way I discuss it here. So in fact I should stress the lack of an *enforceable* duty of a control self-owner not to use her person in a certain way. Nevertheless, to give the full picture of incidents that a right of self-ownership could imply, I discuss privileges here as well.

someone else in order to use oneself. For example, if an agent gains pleasure from singing a song every now and then, she has a privilege to do so and does not have to be licenced by others.[24] Also, if one wants to use one's labour to transform one's justly acquired tree into a couch, one has a privilege to do so.[25]

Third, control self-ownership includes a power to authorize the use of one's person. This power enables the person to alter both her own control-rights over herself as well as those of others. I can, for example, agree (e.g. in a contract with you) not to smoke cigarettes anymore. Whereas I previously had a privilege to smoke, the agreement changes the privileges I have to use my person. Control self-ownership protects my right to make such agreements, and thus ensures my power to change the rights to use I have over myself. Moreover, the power I have to authorize the use of my person can also be directed to others. If I start a loving relationship with another person, I authorize her to use my person in certain ways. Although she previously had a duty not to kiss me or not to use my extraordinary washing-up labour capacities, she now has a privilege to do so, and, with regards to the latter use, might even have a claim-right against me (given the division of household labour we, implicitly or explicitly, agreed on).

Lastly, control self-ownership includes an immunity against everyone else to alter one's claim-rights and privileges to control oneself. Whereas each agent has, as we have seen, the power to change their own claim-rights and privileges, no one has a similar power with regards to someone else's claim-rights and privileges. Therefore we all have an immunity against everyone else, an immunity that protects our control rights from being altered by someone else. For example, whereas I have the power to authorize an employer to use my person, within certain limits, during my hours at work, no one else has a similar right of authorization with regards to my person. This means that I have an immunity against everyone else to change my control rights over my person.

The powers and immunities granted by control self-ownership stress the importance of personal consent. Although the claims and privileges implied by control self-ownership delineate a protected sphere of liberty to use one's person as one likes, the powers make it

[24] Of course, there might be situations in which one has a duty not to sing a song. If one is at a funeral and is not licenced by the family of the dead to sing a song, one probably has a duty not to do so. I leave these special cases aside.

[25] For the sake of argument I assume that a correct principle of world-ownership grounds, at least in certain circumstances, ownership rights over trees strong enough to allow for such a transformation.

possible to grant others claims and privileges over the use of your person that initially were protected by the immunities. Some actions that are impermissible without your consent (e.g. to harm you, to have sex with you, to use your labour) become permissible if personal consent has been given. Importantly, this consent has to be valid. Valid consent disqualifies consent based on deception or manipulation.[26] If I consent that you can use my hair because I have been made to believe that it will be used to produce a curtain for our common living room, this cannot be considered as valid consent for any other use (like the production of a personal blanket for yourself) of the hair. Similarly, if we agree that I will help you to garden in return for a visit to a game of Barcelona's best football team, my consent is invalid if you then take me to a game of Espanyol Barcelona, rather than FC Barcelona, because you rate football teams on the beauty of their shirts rather than the quality of their football. In short, control self-ownership protects agents, i.e. their body, mind and labour, from being used without their informed and authentic consent.

Although control rights are at the centre of what it means to 'own' something, it is not the only right ownership protects. To own a car, for example, implies more than only to be able to control its use. In general, it also includes, among other rights, the right to sell the car and the right to demand compensation if someone damages the car. Making use of Honoré's (1961) analysis of ownership, we can derive five other sets of rights that constitute 'full' ownership over a thing (Vallentyne, 2012a; Vallentyne et al., 2005).[27] Apart from control rights, it concerns rights of compensation, enforcement rights, rights to transfer (e.g. by sale or gift), immunities to the non-consensual loss of these ownership rights and immunities to the non-consensual loss of other rights simply because an agent makes use of her ownership rights.

With regards to the ownership of the person these rights have specific implications. First, the right to compensation specifies that insofar self-ownership rights have been violated, compensation is owed. If A harms B, non-consensually uses B or interferes with B's exercise of her self-ownership rights, for example, A owes compensation to B.[28] Second, the enforcement rights entail that an agent has the right to enforce the ownership rights over

[26] For a discussion on the relationship between the self-ownership principle and deception and manipulation, see Roark (2013, pp. 49-51).
[27] To my knowledge, one of the first analyses of the concept of self-ownership by means of Honoré's framework of 'full liberal ownership' can be found in Kernohan (1988).
[28] This opens the broad topic of compensation rights. That is, precisely how much compensation is owed? Must it be more, less or equal to the amount of harm done to the victim? I will say a bit more on compensation rights in chapter III, but I will largely set aside issues of compensation in this PhD.

herself on others.[29] If A wants to kill B, B has the right to enforce her ownership rights over her person and therefore has the right of self-defence. Also, if A harms B, B has the right to enforce compensation to rectify the harm. Third, the right to transfer implies that a self-owner can transfer the control rights, rights of compensation and/or enforcement rights to others. A familiar example of such a transfer in the history of political thought is the idea that individual enforcement rights can be transferred to a central government by means of a social contract so that the government legitimately gains the monopoly on violence. Arguably, Locke (1960 [1698]) provided the most classical account of such a justification and legitimation of state power by reference to a transfer of self-ownership rights from agents to the state via a social contract.[30] The right to transfer has many other implications as well. It paves the way for, among other interpersonal relationships, loving relationships, paid and unpaid employment contracts and membership of an association. In each of these interpersonal relationships you give or sell some self-ownership rights to someone else for a limited amount of time and a limited amount of actions. Also, in each of these relationships others can, within limits, (co-)decide how your person will be used. More controversially, the right to transfer breaks ground for voluntary prostitution, voluntary organ trade (Steiner, 2002b) and voluntary slavery.[31] Fourth, the immunities to the non-consensual loss of self-ownership and any other rights refers to the idea that no agent A can gain the power to change any of the rights of agent B as a consequence of B merely possessing or making use of her self-ownership rights. So if B wants to sell part of her self-ownership rights to a consenting buyer, no one else, including the state, will by that simple fact receive any power to alter any of the (self-ownership or non-self-ownership) rights of B. For example, a government violates the immunities of a prostitute by arresting her for trading some of her self-ownership rights.

2.3. The determinacy of full self-ownership

[29] Enforcement is subject, arguably, to certain proportionality constraints. If you threaten to touch my feet, I'm obviously not permitted to kill you.

[30] See Otsuka (2003) for a modern account of a Lockean justification of the state.

[31] Of course, these implications only hold in an ideal world in which the proper world-ownership principle is (more or less) respected. As we will see later in the second part of this PhD, the correct conception of the world-ownership principle requires extensive redistribution of resources which ensures that everyone has enough to independently set and pursue her own ends. This will imply that no agent is forced by lack of access to external resources (i.e. poverty) to engage in prostitution, organ trade or slavery.

The elaboration on 'rights' and 'ownership' adds some determinacy to the self-ownership principle. The discussion of the former explains that because self-ownership concerns 'rights', it refers to bundles of claims, privileges, powers and immunities. The discussion of the latter illuminates that ownership consists of a bundle of different ownership rights. These ownership rights are, more specifically, control rights, compensation rights, transfer rights, enforcement rights and immunities to the non-consensual loss of self-ownership rights or other rights.

Nevertheless, this detailed discussion of self-ownership rights is insufficient to answer the inherent indeterminacy objection. This is because Fried and others, when they express this criticism, themselves refer to the decomposability of ownership rights as part of the reason to hold that the self-ownership principle is indeterminate. It is precisely because ownership of a thing can consist of many different bundles of rights that it is very difficult, if not impossible, (a) to determine which bundle is implied by self-ownership and (b) to balance the different interests of distinct agents in defending a structure of ownership rights (cf. supra).

Mazor (Mazor & Vallentyne, forthcoming), Vallentyne, Steiner and Otsuka (2005), following Cohen (1995, p. 213), rightly argue that what makes the self-ownership principle determinate is that libertarians standardly defend 'universal' and 'full' (or 'near-full') self-ownership. The constraint of 'universality' holds that every person ought to have the same self-ownership rights. This obviously limits the possible sets of rights. If both you and I have the same right to control and use our hands, it is clear that I cannot use mine in order to cut off yours. Me cutting off your hands would mean that I claim more rights for myself than I am willing to grant you, as by definition this act would not leave you the opportunity to cut off mine.

The constraint of 'fullness' implies that the equal set of ownership rights agents have over themselves ought to be 'maximal' in two senses (Lippert-Rasmussen, 2008, p. 92). First, the rights ought to be maximally comprehensive, in that as many ownership rights (e.g. control rights, transfer rights, compensation rights, etc.) and incidents of rights (claims, privileges, powers and immunities) as possible are included in the set of self-ownership rights. Secondly, the rights ought to be of maximal stringency, in that no other moral considerations (e.g. total wellbeing) can override the self-ownership rights.[32] For libertarians, thus, self-ownership is not one among many moral considerations that have to be taken into account to determine our

[32] I will say more about the 'comprehensiveness' and 'stringency' of self-ownership later in this chapter. Those readers unfamiliar with these ideas might want to have a look at section 4 of the current chapter first before reading the next few paragraphs.

rights and duties. Rather, they hold that self-ownership rights have special weight. These rights provide the default position to determine which rights and duties agents have towards themselves and towards the person of others. If other moral considerations are of any relevance at all, it is only in special cases like in situations of great need or moral catastrophes.

Full self-ownership is determinate in some obvious ways. For example, it excludes all sets of self-ownership rights that are not maximally comprehensive. Set A is more full than set B insofar as set A includes all the ownership rights and incidents of set B plus at least one extra ownership right or incident. Also, set A is more full than set B insofar as it is more difficult to override the rights of set A than the rights of set B due to other moral considerations. Given all this, it is fully determinate that my full self-ownership right over my fist does not permit me to punch your nose. This is because, given universal full self-ownership, you own your nose in a way that maximally protects you from non-consensual interference.

Fried (2005, pp. 217-218) thinks this argument goes too quick. My punch of your nose is so intuitively wrong, that it sheds no light on the real issue at hand. The inherent indeterminacy objection, she argues, obviously refers to harder cases in which seemingly permissible ownership claims conflict. Fried (2005, p. 218) herself presents us an example of such a harder case:

> "A railroad runs its train through an empty field. Some years later, a farmer buys the surrounding land to plant a hayfield. The train emits sparks in its normal operations, which one day set the hay on fire. Who has the right here: the railroad company, to run its trains with impunity, or the farmer, to grow crops in close proximity to the tracks, with full indemnity for any damage caused by sparks emitted by the train? […] For present purposes, the problem is not factual causation, but legal entitlement: whose preferred use of his property shall be legally protected, the farmer's or the railroad's?"

It is strange that Fried considers this example as supporting her idea that ownership is inherently indeterminate. This is because the answer to her question given by full ownership theory is rather obvious: the railroad company should give way and the farmer should be protected. Namely, if both fully own their land, the sparks of fire non-consensually interfere with the control rights of the farmer to improve her land in her preferred way. There is no equivalent non-consensual interference of the farmer with the land of the railroad company. Full ownership is entirely determinate here. Of course, one could hold that this is not the right

solution for this conflict, or note that "[c]ourts and commentators have offered many answers over the years" (Fried, 2005, p. 218), but this is different from the claim that full ownership is indeterminate. It might just be that full ownership sometimes points to conclusions that not all find persuasive.

Mazor and Vallentyne (forthcoming) apply this rebuttal of Fried's criticism on full ownership theory to self-ownership with an example about jogging. If I start jogging in a busy street because I realize I would otherwise be late for an important appointment, I thereby generate an increased risk for all other persons in the street to be accidently hit by my hand. The inherent indeterminacy objection holds that this situation generates a conflict between my control rights, on the one hand, and the control rights of all others, on the other hand. An indeterminacy arises, or so the criticism goes, as self-ownership cannot prescribe which control rights to protect. But this is simply false. Full self-ownership is, just like full ownership in the previous paragraph, perfectly determinate here. My control rights do not provide me with a permission to do what I want with my person. My rights are limited by the equally maximal self-ownership rights of others. Given the control rights of the other agents in the street, it is impermissible for me to generate an increased risk of harming them. Therefore, full self-ownership does not permit me to start jogging. Again, one might think that this conclusion is problematic, but that position is clearly distinct from an argument that holds that the self-ownership principle does not provide us with a determinate conclusion.

Although the self-ownership principle is determinate with regards to the control rights that it includes, it should be noted that other self-ownership rights do generate some indeterminacy. More precisely, it is not always clear how to balance, based on full self-ownership, the compensation and enforcement rights, on the one hand, with the immunities protected by the principle, on the other hand (Mazor & Vallentyne, forthcoming; Vallentyne et al., 2005). For example, the more forceful everyone's rights of compensation and enforcement with regards to wrongdoers, the weaker everyone's immunities against the non-consensual loss of one's rights. If you break my leg, all things being equal, I am permitted demand and enforce compensation based on my self-ownership rights. But in case your immunities against the non-consensual loss of your rights are really stringent, my compensation and enforcement rights will be worthless. I will not be able to demand and enforce any compensation at all because I will constantly run into your very stringent immunities. The opposite situation is equally true. If your immunities to the non-consensual loss of your rights are very weak, it will be very easy for me to demand and enforce compensation and, thus, my compensation

and enforcement rights will be very stringent. Given the universality of self-ownership rights, your weak or stringent immunities would not only affect my compensation and enforcement rights, but also my own immunities. Therefore, there does not exist a universal and maximal set of compensation rights, enforcement rights and immunities. Different sets of these rights are consistent with full self-ownership.[33]

3. The implications of full self-ownership

So far I have taken two steps in response to the indeterminacy objection. First, I have responded to the ad hominem indeterminacy objection by a discussion of the meaning of 'rights' and the meaning of 'ownership'. This discussion clarified what is at stake when theorists defend the self-ownership principle. Second, I have provided a reply to the inherent indeterminacy objection by reference to 'full' self-ownership and showed that there is nothing inherently indeterminate in the control (and transfer) rights included in the self-ownership principle. Admittedly, there is some inherent indeterminacy with regards to the compensation and enforcement rights, and the immunities that are protected by full self-ownership.

I will now discuss three clear implications of full self-ownership: its anti-paternalistic character, its rejection of enforceable positive duties and its defence of the right to all the income one can generate by employing one's person. In doing so, this section speaks to both versions of the indeterminacy objection. It is relevant as a reply to the ad hominem indeterminacy objection as it clarifies the position in more detail, to an extent some libertarian texts might fail to reach. It is also relevant for the inherent indeterminacy objection as it elaborates on the implications of the determinate core of full self-ownership constituted by its control and transfer rights.

3.1. Anti-paternalism

The first important implication of full self-ownership is that it rejects paternalism (e.g. Nozick, 1974, p. ix). A defender of paternalism holds that, sometimes, it is permissible for a state or an agent to non-consensually intervene in the life of another agent for that agent's

[33] For an argument that full self-ownership is consistent with military conscription because of this indeterminacy, see Steiner (2006).

own good. Typical examples of state paternalism are laws that require to wear a motor helmet when you drive a motorcycle or to wear a seat belt when you are in a driving car, or laws that forbid you to take drugs or to prostitute yourself. These are paternalistic laws insofar as the reason to implement them is to protect the (physical, mental and/or moral) wellbeing of agents. Typical examples of interpersonal paternalism are someone who hides a bottle of wine for his alcohol addict colleague or a husband who does not tell his wife about his adultery because he is convinced this knowledge would lead her straight into a depression.

Although some paternalistic interventions take place via omissions (e.g. A refrains from doing an offer to B because A thinks this offer would not be in the interest of B) most forms of paternalism involve an interference (Wall, 2009). It is so called 'paternalistic interference' that full self-ownership rejects. Paternalistic interference "is a trespass on the person of another that is done for the sake of the other's good, but without his or her consensual approval" (Wall, 2009, p. 403).

Full self-ownership rejects any form of paternalistic interference as to have ownership rights over a thing means the owner has the moral permission to decide what will happen to the thing and, equally important, it excludes all others from having a say over the thing. So if you own yourself, it is you rather than your mother, friend or the government who can permissibly decide how to use your person. Moreover, one's set of ownership rights is more full if it protects against paternalistic interference (Wall, 2009, p. 404). For imagine two sets of ownership rights one can have over oneself. The first set grants an agent all the ownership rights over herself compatible with everyone else having the same ownership rights over themselves *minus* the right to take drugs. The second set grants this agent an equally full set of ownership rights over herself, but this time this set is complemented with a right to take drugs. It is clear that this second set is more extensive, i.e. secures more (control-)ownership rights, than the first. Therefore, this second set is more full than the first.

The libertarian rejection of paternalism clearly applies to the paradigmatic cases of paternalistic interference, both in case of state paternalism as in case of interpersonal paternalism. Insofar libertarians defend full self-ownership they permit you to decide for yourself whether or not to drink alcohol, to take drugs, to wear a motor helmet or to prostitute yourself.[34] No state or other individual has a right to interfere with these decisions.

[34] For an example of this libertarian position, see Charles Murray (1997, pp. 102-113).

Nevertheless, this anti-paternalist position also has significant implications for historically more horrific examples of paternalism (Roark, 2013, pp. 58-59). These implications become clear if we look at the historical justifications of slavery and the inequality between men and women. In most parts of history, slaves and women were seen as irrational and emotional beings which were, like children, incapable of directing their own lives and therefore in need of a slave owner or a man to guide them through the challenges of life. Slaves and women were dehumanized in order to give their 'masters' a justification for the violation of self-ownership rights through domination and subordination. Full self-ownership constitutes a radical rejection of such subordination and enables us to permanently stress the dangers of justifications that refer to paternalism and dehumanization.

3.2. No enforceable positive duties

A second clear implication of full self-ownership is its rejection of enforceable positive duties (e.g. Narveson, 2001, pp. 100-101).[35] A positive duty is a duty that falls on an agent to do something for the good of another agent. In general, a positive duty concerns a duty to help or assist someone else. If such a duty is enforceable, this means that someone else (e.g. some other individual or the state) is permitted to enforce the duty so that the duty-bearer cannot but respect the duty. Typical examples of enforceable positive duties are the duty to save a drowning child at small cost to oneself or a duty to call an ambulance in case one witnesses a severe car accident.

Theorists who defend full self-ownership reject the existence of enforceable positive duties. According to Cohen, "the right not to (be forced to) supply product or service to anyone" even is "[t]he polemically crucial right of self-ownership" (Cohen, 1995, p. 215). Libertarian self-ownership does not affirm enforceable positive duties because of two reasons. A first reason is that not helping another person cannot be characterized as a violation of the self-ownership rights of the needy. If ownership rights are the only rights we have with regards to our person,

[35] I should note that, unless stated differently, I will include Jan Narveson in the family of Lockean libertarians. This might seem strange, as the informed reader will know that Narveson is clearly not a natural rights libertarian like, for example, Nozick, Rothbard or Steiner. His statement of libertarianism in *The Libertarian Idea* (2001) is grounded in a contractarian theory about the foundations of morality, rather than in natural rights. Nevertheless, the libertarian principles of justice he defends are so similar to the principles of natural rights libertarianism that it is insightful to include his theory into the discussions of this PhD. See in particular Narveson (1999) for a statement of his principles with a clear Lockean flavour.

as libertarians hold, there is no wrongness involved in not being helped as no right to assistance is normally part of the set of rights that constitute 'ownership'. If I own a laptop, my ownership of the laptop does not give me a right to require you to help me to fix the laptop in case it does not function properly. Similarly, my ownership over my person does not give me a right to your assistance in case the proper functioning of my person is in danger.

Self-ownership rights are *negative rights*. For a right to be negative means that, if the right correlates with a duty (i.e. if the right is a claim-right), the duty-bearer has a *negative duty*. A negative duty is a duty to the right-holder in which the state of affairs that defines the right occurs if the duty-bearer *refrains* from some specified sort of doing or from any doing that would not bring about the state of affairs.[36] A negative right, thus, correlates with a negative duty for the duty-bearer. Negative rights contrast with positive rights. For a right to be positive means that the duty-bearer has a *positive duty*, i.e. a duty "to *perform* some specified [doing], or any [doing] that would bring about a certain specified" state of affairs (Narveson, 2001, p. 57; his italics).[37] A positive right, thus, correlates with a positive duty for the duty-bearer. In general, negative rights are rights of non-interference. If I have a negative right against you to enter the metro station, you have a duty not to interfere with me in case I act in accordance with this right and try enter the metro station. You ought not to prevent me from doing so. Each time you use force, the threat of force, coercion, aggression or deception to stop me from entering the metro station, you violate the negative right I have against you. Positive rights, on the other hand, generally imply duties to help or assist others. If I have a

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[36] Compare with a similar though different definition of Narveson (2001, p. 57). While Narveson speaks of "actions", I refer to "doings". Narveson overlooks the distinction between doing/allowing, on the one hand, and action/inaction, on the other hand. Namely, he does not recognize that an action can constitute an allowing and an inaction can constitute a doing. For an example of the former, imagine I fall on a button, thereby pressing it, that happens to serve as your lifeline from that point onwards. From now on, the only way you will remain alive is by me pushing the button. If I decide, after being placed on the button for a while, to go on with my life and remove myself from the button, I clearly act. Still, this can arguably be categorized as an allowing. By removing myself from the button, I do not kill you. Rather, I allow you to die. For an example of the latter, imagine I fall on a button that will, in about one minute, make a bomb exploit that is attached to your body. I can easily, at no costs to myself, remove myself from the button in time in order to save your life. Nevertheless, I decide to remain on the button for a few minutes and, consequently, you die. This is clearly an inaction but it can arguably be characterized as a doing. If I choose to remain on the button, I kill you. For the distinction between doing/allowing and actions/inaction, see Woollard (2015, pp. 8-11, 115-116). Negative duties are concerned with doings rather than actions, as surely also Narveson would admit that my negative duty not to kill you implies, in the second example, the duty to remove myself from the button that will otherwise directly lead to your death in one minute. With regards to the first example, if it would be impermissible for me to go on with my life, I would have a duty to remain on the button as long as you do not die because of some other reason. But again, surely also Narveson would admit that my negative duty not to kill you does not imply a duty to sacrifice all my individual ends (as long as you remain alive) for the pursuit of someone else's wellbeing. Therefore, the negative rights libertarians defend are concerned with doings rather than actions.

[37] Cf. previous footnote.

positive claim against you to enter the metro station, you have a duty to enable me to enter the metro station. This might include, for example, a non-enforceable duty to assist me when you see me struggling when I am making my way down the stairs, or an enforceable duty to fund some governmental policy to install an elevator to help me if I am physically disabled or immobile for some other reason.

Libertarians rightly take self-ownership to imply only negative claim-rights. Self-ownership guarantees the right to be left alone and to pursue one's ends as one sees fit. It protects a sphere of liberty in which one is free from interference from others to do whatever one likes, as long as one does not violate the rights of others.

Secondly, the Self-Ownership Principle rejects enforceable positive duties because a set of self-ownership rights that includes such duties is less full than a set of ownership rights that exclude such duties (Wall, 2009, p. 401). My control and use rights with regard to my person are more comprehensive if I cannot be forced to put my person into your service. Enforceable positive duties are at odds with full self-ownership. They require some to help others and, therefore, do not respect all agents as the sovereign of their own person. If my positive right against you requires you to put your person to my service by, for example, helping me to descend the stairs of the metro station, at that very moment you are not at liberty to pursue your own projects as you see fit and, therefore, at that very moment, you do not fully own yourself. Enforceable positive duties, in other words, constrain the self-ownership rights of agents.

3.3. Income rights

A third implication of libertarian self-ownership, which I will discuss at some more length, are the income rights that follow from full self-ownership. This discussion will proceed in two steps. I will first explain why many authors think that the right to the income that can be gained from employing oneself can be logically derived from the full self-ownership. Thereafter I will nuance this apparent logical derivation and argue that the income rights that libertarian self-ownership protects only concern the income (a) that is generated by exclusively making use of one's own person and (b) that consists of rewards that originate only in one's own or someone else's person. This analysis will both clarify the content of the

income rights that follow from self-ownership and severely limit the applicability of those rights with regards to labour income.

Many authors think that the right to all the income that one can generate through one's labour logically follows from libertarian self-ownership.[38] Nozick forcefully articulates this thought when he claims that, if one defends self-ownership, one ought to hold that "[t]axation of earnings from labor is on a par with forced labor" (Nozick, 1974, p. 169), as such taxation "institute[s] (partial) ownership by others of people and their actions and labor" (Nozick, 1974, p. 172). Otsuka (2003, p. 15) thinks that "[a] very stringent right to all of the income that one can gain from one's mind and body (including one's labour) either on one's own or through unregulated and untaxed voluntary exchanges with other individuals" is what distinguishes a libertarian conception of the self-ownership principle from liberal egalitarian accounts of personal liberty.[39]

That agents have the right to the income that one can gain from the labour of one's person indeed seems a logical implication of full self-ownership for two reasons. First, the principle rejects any taxation that is based on the mere possession of the self-ownership rights. So a tax on personal internal endowments (i.e. one's natural talents) is unjust. Also, simply to make use of one's self-ownership rights, for example by performing some labour or by transferring some of one's self-ownership rights to others (e.g. the sale of an organ), can never be a reason for taxation for libertarians. Remember that one of the core rights of libertarian self-ownership is precisely an immunity against the non-consensual loss of one's self-ownership rights or any other rights (e.g. ownership rights over some external resources like money) just because one is a self-owner. Therefore, no one, including the government, is permitted to forcefully take away some ownership from an agent just because she possesses or exercises her self-ownership rights. Second, full self-ownership, at first, seems to imply full ownership rights of the fruits of one's labour. This is because full self-ownership grants the most extensive and stringent set of control rights over one's body, mind, talents and energies

[38] Right-libertarians like Feser (2004, pp. 34-35), Rothbard (2000, p. 225) and Wheeler (2000) defend this claim literally. Left-libertarians like Vallentyne (1998, 2012b), Steiner (1994, chapters 7 and 8) and Otsuka (2003, chapter 1) hold, as we will see, a more nuanced view. Cohen (1995, p. 216), being a critic of both versions of libertarianism, here is in agreement with right-libertarianism as he thinks that "a tax on earned market income as such is inconsistent with self-ownership".

[39] Nevertheless, Otsuka himself also severely, though insufficiently, limits the application of the income rights, as I will explain shortly.

which, in combination, form one's labour capacities. Libertarian self-ownership, thus, holds that agents own their labour.

But if this is true, it seems that one can logically infer the right to the fruits of one's labour. Like Rothbard (2000, p. 225, his italics) asks: "if a producer is *not* entitled to the fruits of his labor, who is?". If Fay owns some paint and paper, it seems that it is Fay rather than someone else who owns the painting that results from her mixing her labour with those products (Steiner, 1994, p. 234). Now remember that among the rights of self-ownership also is a right to transfer what is yours to someone else on the conditions all agents involved mutually agree on. This transfer can be a gift, but it can also be a sale. So if Fay owns what comes from her labour and she has a right to transfer this to someone else on conditions she agrees with, it seems that she logically also has the full right to whatever ownership rights the other parties in the agreement want to transfer to her (e.g. an income). If she is happy to hand over her painting to Hwa if he, on his part, transfers 10 EUR to her, it seems that after the transfer has taken place Fay is the logical owner of those 10 EUR. But if the right to all the income one can generate with one's labour indeed follows from full self-ownership (as right-libertarians and Cohen tend to believe, cf. supra, fn. 25), and if agents indeed fully own themselves, this implication of libertarian self-ownership can justify vast inequalities in income between agents. Namely, if this analysis is correct, inequalities in income straightforwardly follow from the justified transfer and income rights with regards to one's labour capacities implied by full self-ownership.

Nevertheless, the idea that the right to all the income one can gain from one's labour logically follows from full self-ownership should be rejected. It only implies a right to (a) a very specific kind of income, and this income (b) must follow from a very specific kind of labour. To defend this implication, it is helpful to use Otsuka's framework of 'income-generating labour' (2003, pp. 16-17). Otsuka explains that labour can generate an income in four different ways. One can either use worldly resources or not use worldly resources in the production process and one can generate an income either by trade or by keeping one's production for one's own use. The resulting scheme is the following:

Fig. 1 Means of generating income from labour:

	Worldly resources	No worldly resources
Trading	e.g. Farming	e.g. Entertaining
No trading	e.g. Farming	e.g. Hair weaving

Source: Otsuka (2003, p. 17)

A typical example of a production process in which one uses worldly resources is farming. By mixing one's labour with some land one can generate products (e.g. fruits and vegetables) which can, thereafter, be traded with others or be kept to feed oneself and one's family. Other forms of production do not imply the use of external resources and are purely based on the employment of one's own person. If Benjamin sings a song to Robin, he only uses his own person to generate some value for Robin. He can trade this value with Robin by agreeing that he will only sing the song if Robin, in return, transfers something to Benjamin (i.e. if Robin provides Benjamin with an income). Another example in which a labour activity does not involve worldly resources is a situation in which a person weaves his own hair into a blanket to protect himself against cold weather. Here the weaver neither uses worldly resources nor participates in trade and still generates an 'income' (the blanket) from his labour.[40]

Full self-ownership can only grant ownership rights over the income of labour that does not use worldly resources. This is because the principle only tells us something about the rights we have with regards to our own person, body, mind, talents and, as we have seen, labour capacities. It grants us an extensive set of ownership rights with regards to those personal faculties. Nevertheless, libertarian self-ownership is silent about the rights we have with regards to external resources.[41] Full self-ownership rights are meaningless if we want to know an agent's rights to control, use, transform or transfer something that is not a part of one's person, like a plot of land, some paint or a bicycle. As was noted in the introduction of this PhD, in order to know which ownership rights agents have over such external resources, libertarians need to specify a conception of the world-ownership principle. This world-ownership principle could be egalitarian or inegalitarian and, thus, more or less in accord with

[40] Note that these examples closely follow Otsuka's (2003, pp. 16-18).
[41] In chapter VI, I will modify this claim and argue that the Self-Ownership Principle does have implications with regards to our rights over external resources. Nothing I will conclude in that chapter, though, is inconsistent with the argument I present here.

governmental policies that implement a form of taxation on the use or appropriation of external resources (cf. infra, Part II).

So if an agent mixes her self-owned labour with an external resource, it is unclear which income rights follow from that process as long as we do not have an account of the ownership rights agents have over external resources.[42] For if those rights over worldly resources are less than full, for example if the correct conception of the world-ownership principle includes a proviso that 'one can acquire an external resource and mix one's labour with it as long as one pays a 5% income tax', no right to all the income one can generate with one's labour is protected. A farmer's rights to the fruits of his labour are informed by his rights over the plot of land. In similar vein, Fay's right to the income from the transfer of her painting to Hwa is informed by her rights over the external resources she used in the process of painting. She *only* has the right to all the income she can generate by selling her painting to Hwa *if* her rights over the paint and paper she used to produce the painting were *full* ownership rights. That is, if those ownership rights were maximally comprehensive and stringent. Nevertheless, nothing about the farmer's or Fay's full *self*-ownership rights can inform us about their rights over *external resources* like land, paint and paper. We need a specification of the world-ownership principle to fill this gap. For now this argument suffices to show that libertarian self-ownership only implies income rights with regards to a very specific kind of labour. Namely, the principle's relevance for income rights is restricted to those forms of labour that do not make use of external resources.

But even if libertarian self-ownership cannot tell us anything about the income rights agents have if external resources are involved in the labour process, to what extent can the principle inform us about the income rights we have when no external resources are used? Consider first the case in which no external resources are used *and* no trading takes place. This is the situation of the hair weaver. As Otsuka (2003, p. 19) explains:

> "The weaver's rights of ownership over her means of production and the fruits of her labour can plausibly be grounded solely and completely in her libertarian right of self-ownership. Her means of production consist of nothing more than her mind and parts of her body, and the fruits of her labour consist of nothing more than parts of her body that have been transformed into items that are suitable to be worn as clothing".

[42] This argument has also been made by Vallentyne (2012b), Otsuka (2003, pp. 20-21) and Steiner (1994, chapters 7 and 8), and by those three authors combined (Vallentyne et al., 2005).

So in this case it is clear that full self-ownership implies full ownership rights over all the income that an agent can generate through such autarchic processes.

But consider, second, the case in which a form of income-generating labour takes place that does not make use of external resources but that, contrary to hair weaving, does involve trading.[43] Take the example of Benjamin who sings a song for Robin in exchange for an income. Some authors think that any tax on the income of Benjamin would limit his self-ownership rights (Cohen, 1995, pp. 216; 220-221; Feser, 2004, pp. 34-35; Otsuka, 2003, p. 15). Their argument goes as follows:

(a) Full self-owners have the right to dispose of their capacities as they choose.
(b) It follows that full self-owners are entitled to set the conditions based on which they want to transfer what they own.
(c) If Benjamin's income is taxed, his rights to transfer what he owns on the conditions he chooses are restricted.
(d) Therefore, if Benjamin fully owns himself, he has the right to all the benefits he can generate by employing his person.[44]

So these authors argue that full self-ownership is determinate with regards to the income one can generate by using one's own person. They think the principle grants you full ownership rights to all the things, however constituted (e.g. goods like money or food, or services like providing a massage or a haircut), someone is happy to offer in exchange for some of your person's talents, energies and labour capacities (e.g. singing a song). So if Benjamin and Robin agree that Benjamin will sing a song and Robin will give him an income in return, this

[43] Interestingly, although it was Otsuka who provided the framework for this analysis and stated that there are four ways in which labour can generate an income (worldly resources – no worldly resources; trading – no trading), he does not discuss the implications of libertarian self-ownership for the situation at issue here, i.e. the case in which there are no external resources involved but there is trade (e.g. entertainment). Because of this neglect, Fried (2004, p. 83) concludes that Otsuka holds the view that libertarian self-ownership only secures income rights with regards to autarchicly produced goods *for the producer's own consumption*. Nevertheless, as Otsuka's outline of a 'libertarian right of self-ownership' makes clear, he thinks that a self-owner's income rights extent to "all of the income that one can gain from one's mind and body (including one's labour) either on one's own *or trough unregulated and untaxed voluntary exchanges with others*" (Otsuka, 2003, p. 15). Fried's presentation is, thus, inaccurate. In what follows I will argue that Otsuka is wrong to think that, if one does not make use of external resources in the labour process, libertarian self-ownership always implies a right to the income one can gain through unregulated and untaxed voluntary exchanges with others.

[44] I believe this is the most plausible reading of what Cohen writes in chapter 9, section 4 and that it is most clearly outlined by the statements that "[i]f my wage for that day['s labour], whether it be paid in dusters or in dollars, has tax docked off it […], however good, independently considered, [the] reasons for taxing may be, then my rights over my talent are restricted" (1995, p. 220) and that "I do not (fully) own myself if I am required to give others (part of) what I earn by applying my powers" (1995, p. 216).

position holds that full self-ownership grants Benjamin ownership rights over all the income.[45] This position, though, is unsustainable.

Full self-ownership does not ensure rights to all the income one can generate with one's labour, even if the labour does not make use of external resources. This is because the right to income not only depends on the mutual consent of the agents involved in the agreement, but also on the transfer rights of the paying participant (Kernohan, 1988, p. 75; Taylor, 2005; Vallentyne, 2012b).[46] For Benjamin to establish ownership rights over the income he can earn by singing a song for Robin, it does not only have to be the case that they both mutually agree to the transfer, but also that Robin has the right to transfer the income integrally to Benjamin. Libertarian self-ownership, though, is silent about Robin's transfer rights with regards to most forms of income she could provide for Benjamin.

For the current argument, it is relevant to distinguish two forms of income that Robin could transfer to Benjamin. One form of income includes external resources, like a monetary income, some food or a house. The other form of income only consists of resources or services that originate in one's person, like giving a massage or transferring a blanket that one has woven from one's own hair. Full self-ownership only has determinate implications with regards to the latter form of income. So if Benjamin and Robin agree on a transfer which includes singing a song in return for a 10-minute massage by Robin for Benjamin, full self-ownership grants Benjamin the right to all the income. This is the case not only because of Benjamin's own self-ownership rights (by virtue of which he can control his labour capacities and set the conditions for transfer), but also because of Robin's self-ownership rights to transfer her person's talents, energies and labour capacities to Benjamin. A 'tax' that would demand Robin to divide her massage-time and also spend some to a third person would be a violation of full self-ownership. Most kinds of income, though, are versions of the first form. They at least partly consist of external resources. But to determine an agent's transfer rights with regards to such resources one needs, again, to know which conception of the world-ownership principle is correct. Because if Robin is morally permitted only to transfer external resources (e.g. money) to Benjamin on the condition that she reserves a part of those

[45] Consider, as an example of this position, also Feser's idea that one implication of libertarian self-ownership is that "[i]f you have something – a ten dollar bill, say – and freely offer to give it to me in exchange for an hour of work, and I do the work, then the ten dollar bill becomes mine" (2004, p. 34).

[46] Vallentyne seems to have changed his mind on the issue. In his early work he seems to have held that the income rights solely depend on the self-ownership rights of the recipient (1998, p. 611), whereas he later argues that also the transfer rights of the payer are relevant to specify someone's income rights (2012b).

resources for the worst-off group in society, an income tax is permissible irrespective of Benjamin's self-ownership rights.

The disagreement among libertarians about the permissibility of income taxation is Fried's (2004) key proof that the Self-Ownership Principle is indeterminate. In this section I have argued that full self-ownership does have determinate implications with regards to the right to income of agents. Nevertheless, the principle's applicability here is extremely limited. It only concerns labour activities that do not involve the use of external resources (e.g. entertainment or hair weaving) and forms of income that only originate in an agent's person (e.g. to massage or to weave hair). With regards to such forms of labour and income, libertarian self-ownership grants full ownership rights over the fruits of one's labour. Most income, of course, consists in external resources or follows from activities that make use of such resources. To determine the rights agents have with regards to those forms of income, we need a coherent conception of the world-ownership principle. This lack of applicability, though, can hardly be taken as a critique against the libertarian's use and defence of the self-ownership principle. One cannot judge a theory, libertarianism, merely by focussing on one of its two principles and then argue that it does not provide all the answers with regards to questions of distributive justice.

4. Different conceptions of self-ownership

Although this chapter discusses and defends the determinacy of full self-ownership, and thereby rejects the indeterminacy objection, it should be noted that this conception of the self-ownership principle is not the only one held by contemporary libertarians. Recall that full self-ownership is only one of many possible conceptions of the principle. Although it is the prototypical libertarian conception, in that it is the conception most if not all anti-libertarians aim to criticize, a number of libertarians defend less-than-full conceptions of self-ownership (e.g. Christman, 1991; Murray, 1997; Narveson, 2001; Otsuka, 2003; Zwolinski, 2008b).

To acknowledge the diversity in conceptions of self-ownership advocated by libertarians strengthens, though, the ad hominem indeterminacy objection. This objection states that many libertarians insufficiently specify what they mean when they refer to self-ownership, as it is unclear which specific conception of self-ownership they defend. The fact that not all libertarians defend full self-ownership and, moreover, that many uphold different versions of

the concept increases the need for each individual libertarian to define the conception of self-ownership they aim to defend.

This last section of the chapter elaborates the ad hominem indeterminacy objection. It challenges all libertarians to either defend full self-ownership or to explain how one's own conception differs from this standard libertarian conception of the self-ownership principle. A conception of self-ownership can differ from the standard libertarian conception and, thus, can be less-than-full in (at least) three ways. It can be less-than-full (1) because it does not take the self-ownership rights to be of maximal stringency, or (2) because the scope of the rights is not maximally comprehensive, or (3) both. In what follows I will explain the possible differences in stringency and scope. Libertarians should take these distinctions into account when they explain and defend their preferred conception of self-ownership.

4.1. Absolute versus stringent self-ownership

A first ground on which conceptions of self-ownership can differ is the *stringency* of the rights they defend. The stringency of a right refers to the ease by which other moral considerations can 'outweigh' or 'override' the right in question. If other considerations are sufficiently weighty, a right can permissibly be 'infringed'. If no other consideration overrides the right, an infringement of that right would violate the right. As Thomson (1981, p. 132) explains:

> "Suppose that someone has a right that such and such shall not be the case. I shall say that we infringe a right of his if and only if we bring about that it is the case. I shall say that we violate a right of his if and only if *both* we bring about that it is the case *and* we act wrongly in so doing."

The easier it is for other considerations to outweigh the right and, thus, to permissibly infringe it, the less stringent the right. The harder it is for other considerations to override the right, the more stringent the right. The stringency of rights can be anything on a scale from 'extremely loose' to 'absolute'. An extremely loose right is a right that is very easily outweighed by other considerations. The right only functions as a *pro tanto* reason for action. An absolute right, on the other hand, is never permissibly infringeable. Other considerations are never sufficiently weighty to override the absolute right. In the case of an absolute right, every infringement of

the right is at the same time a violation of that right. The right functions as an all-things-considered reason for action.

Many positions between extremely loose rights and absolute rights are possible, among them are, for example, in order of increasing stringency, 'loose' rights, 'stringent' rights and 'very stringent' rights. Arguably, conceptions of self-ownership that grant only 'extremely loose' or 'loose' rights are not conceptions that libertarians would normally defend, as in such conceptions self-ownership-related considerations do not play an important role in explaining the rights agents have with regards to their person. Therefore, only conceptions of self-ownership that protect 'stringent', 'very stringent' or 'absolute' rights are relevant here.

Some libertarians defend self-ownership rights as absolute rights (e.g. Feser, 2004; Nozick, 1974; Rothbard, 1998; Vallentyne, 2012a).[47] Nozick claims that "[i]ndividuals have rights, and there are things no person or group may do to them (without violating their rights)" (Nozick, 1974, p. ix).[48] Agents have a special moral status which requires that one "may not […] violate persons for the greater social good" (Nozick, 1974, pp. 32-33).[49] Rothbard is even more clear. He argues that each agent is entitled to "100 percent self-ownership" (Rothbard, 1998, p. 45) and that "[t]he fundamental axiom of libertarian theory is that each person must be a self-owners, and that no one has the right to interfere with such self-ownership" (Rothbard, 1998, p. 60). If one interferes with someone's self-ownership rights, and thereby infringes them, one does not respect the "society of absolute self-ownership" (Rothbard, 1998,

[47] Although this clearly is Rothbard's and Feser's position, Nozick and Vallentyne are a little bit more unclear and nuanced respectively. Most of the time Nozick writes as if he has absolute self-ownership rights in mind, but he nevertheless leaves the option open to weaken the absoluteness in cases of catastrophic moral horror (Nozick, 1974, p. 30), in situations in which one could save 10 000 persons (or even cows) from severe pain by inflicting a slight discomfort on one other person (p. 41) and if someone becomes the owner of the only water hole in the desert (p. 179). Nevertheless, most commentators think Nozick defends absolute rights (e.g. Arneson, 2011; Feser, 2004, pp. 36-39; Thomson, 1981, p. 136; Vallentyne, 2012a, fn. 7). Like Nozick, Vallentyne writes most of the time as if he defends absolute self-ownership rights. Nevertheless, at times he takes a position (similar to the one of Wheeler, 2000, p. 237-238) which states that although any infringement of a right is at the same time a violation of that right, "reasonable and decent people" sometimes unjustly infringe rights because of the good this infringement would bring (Vallentyne, 2012a, section 3.1 'Security Rights').

[48] This statement might seem superfluous, as it is a truism of rights that there are things no person may do to them without violating their rights. There would be no point of talking about individual rights if nothing would ever constitute a violation of that right. Arguably Nozick meant something else with this statement. Namely, that persons have rights so stringent that they can never be justifiably infringed, i.e. that agents have absolute rights. Also Narveson (2001, pp. 53-54) thinks this is the most plausible reading of this statement. Thomson (1981, p. 136) discusses other instances at which Nozick defends absolute rights.

[49] Note that at other places Nozick is more agnostic about the issue of absoluteness: "The question of whether these side constraints are absolute, or whether they may be violated in order to avoid catastrophic moral horror, and if the latter, what the resulting structure might look like, is one I hope largely to avoid" (1974, p. 30). Depending on how one interprets the idea of 'catastrophic moral horror' this leaves more, or less, room for non-absoluteness of rights.

p. 46). Also Vallentyne (2011, pp. 158-159; 2012a) thinks absolute self-ownership is, at least, plausible. Agents have a moral right to the "logically strongest set of ownership rights" over themselves (Vallentyne, 2012a, p. 5). In such a 'strongest set' the "rights are conclusive and unconditional" (Vallentyne, 2012a, p. 9). This implies that it is impermissible "to gently push an innocent agent to the ground in order to save ten innocent lives" (Vallentyne & van der Vossen, 2014, section 1). Those libertarians hold that "one's rights constitute a set of absolute restrictions within which all other people must behave with respect to him, and override all considerations of utility or welfare" (Feser, 2004, p. 38). One's "rights cannot be overridden for any reason" and are, thus, absolute (Feser, 2004, p. 38).

Other libertarians opt for 'stringent' or 'very stringent' rather than absolute rights. Otsuka (2003, p. 15), for example, defends a conception of self-ownership that combines "a very stringent right of control over and use of one's mind and body" with "a very stringent right to all of the income that one can gain from one's mind and body". Also Narveson (2001), Roark (2013), Wheeler (2000, pp. 237-238) and Zwolinski (2008b, 2016) defend this less-than-absolute conception of self-ownership. Such authors think that it would be "preposterous" (Narveson, 2001, p. 55) and mirror "moral fanaticism" (Otsuka, 2003, p. 13) to take all self-ownership rights to be absolute. They question whether any right at all, even a right as fundamental as 'the right not to be killed', can ever be absolute (Narveson, 2001, p. 55; Otsuka, 2003, p. 13).[50]

4.2. Differences in scope

Conceptions of self-ownership differ, apart from the stringency of the rights, also in *scope*. The scope of a conception of self-ownership is determined by the comprehensiveness of the rights included. We have seen that self-ownership standardly consists of five ownership rights (rights of control, transfer, compensation, enforcement and immunities) and that each of those rights consists of one or more of the specific incidents of the Hohfeldian structure of rights (claims, privileges, powers and immunities). A conception of self-ownership is of maximal scope in case it holds that agents have all five rights and all the relevant incidents related to those rights. Libertarians who want to defend full self-ownership must maintain, apart from

[50] I will say more about this debate among libertarians in chapter III, where I defend very stringent, rather than absolute, self-ownership rights.

the maximal stringency of the rights, a conception that is of maximal scope. Nevertheless, apart from maximal scope, one can also argue for less-than-maximal scope or *partial* self-ownership. If one argues for partial self-ownership, one either argues that one or more of the five general ownership rights do not apply to the ownership of one's person, or that some of the relevant incidents of an ownership right are absent in the case of self-ownership.

Some libertarians explicitly hold that agents fully own themselves with regards to the scope of the rights (e.g. Rothbard, 1998, p. 45; Vallentyne et al., 2005; Wheeler, 2000, p. 242). In this view, the set of ownership rights over oneself is as comprehensive as possible, "compatible with someone else having the same kind of ownership rights over everything else in the world" (Vallentyne et al., 2005, p. 205).[51] One advantage of full self-ownership over partial self-ownership is that it adds some simplicity to the concept of self-ownership. If agents have all possible ownership rights with regards to themselves, as full self-ownership claims, there is no need to make up and defend a list of exceptions to the general principle.

Nevertheless, other libertarians defend partial self-ownership and do specify some ownership rights that do not apply to the special case of owning one's person. Murray, for example, thinks persons lack the right to transfer their self-ownership rights to others: "Self-ownership is unalienable, […] a person cannot sell himself, any more than he can sell his rights to life, liberty, and the pursuit of happiness" (Murray, 1997, p. 6). Most clearly, Murray thinks voluntary slavery is impermissible. If an agent would voluntarily enslave herself, she would sell (or give) herself, including all her self-ownership rights, to someone else. In contrast, full self-ownership implies that such a transfer is permissible. If I fully own my car, my ownership includes a right to transfer the car, including all the ownership rights I previously had over the car, to someone else. To forbid such a transfer with regard to someone's self affirms partial self-ownership, as it means that one does not have all those ownership rights over oneself that are generally included in a set of full ownership rights over an external resource.

Christman (1991) provides another example of partial self-ownership. He argues that the essential rights necessary to live an autonomous and independent life are the control rights included in the set of ownership rights. To pursue one's projects as one sees fit it is important

[51] Wheeler (2000, p. 242), for example, states that "since no moral justification exists for drawing the line anywhere [short from comprehensive self-ownership], a person has exclusive rights to all of his body". This is a strange motivation for maximally comprehensive self-ownership rights, of course, because if there is no moral justification to draw the line anywhere, surely to draw the line at the extreme is as arbitrary as to draw the line anywhere else.

that one can determine oneself how to use and control what one owns. It is far less important for one's self-determination, or so he claims, that one also has a right to all the benefits and income one can generate by using and transferring one's ownership. Moreover, the income rights have a distinct justification. Rather than a justification by reference to individual autonomy, independence and self-determination, the justification of income rights needs a reference to the distribution of goods. Therefore, Christman defends partial self-ownership. He states that individuals ought to have control self-ownership, but that they have no income rights over their person. This position contrasts with full self-ownership as, in general, libertarians who defend full self-ownership think that the combination of control and use rights with the rights to transfer imply a right to the full benefits one can generate by the use and transfer of what one owns. As we have seen in the previous section, the applicability of the income rights implied by full self-ownership is severely limited, as they only apply to very specific forms of labour and income. There is a question to what extent Christman, in fact, would still argue for 'full control self-ownership', instead of the more general 'full self-ownership', if he would have realized that the applicability of the income rights implied by the latter is as severely limited as I have shown in the previous section.

5. Conclusion

The standard libertarian conception of the self-ownership principle, i.e. full self-ownership, has a determinate core from which one can derive specific rights that are broadly applicable. Therefore, the inherent indeterminacy objection fails. The key to understand the determinacy of the self-ownership principle is the comparison libertarians make between ownership rights over oneself and ownership rights over external resources, like a plot of land, a book or a car. Just like full ownership over an external resource protects determinate rights of control, use and transfer over that resource, full self-ownership protects the same rights over oneself. Moreover, full self-ownership implies all those incidents (claims, privileges, powers and immunities) that makes one's ownership over oneself as complete as possible.

As extra proof for its determinacy, this chapter discussed three specific implications of the self-ownership principle. First, full self-ownership rejects all forms of paternalistic interference. If another person (or the state) paternalistically interferes with your person in order to stop you from, for example, smoking tobacco, she fails to respect your right as a full self-owner to exclude others from using your person. Your ownership rights over yourself are

more comprehensive if you have the liberty (i.e. claim-right to exclude others and privilege to do so) to decide for yourself whether or not to smoke. Insofar this liberty can be granted equally to all without violating anyone's ownership rights, full self-ownership implies this liberty. Second, libertarian self-ownership rejects all enforceable positive duties. Duties to help or rescue others are inconsistent with the idea that you can fully control and use your own person. Obviously, your rights to control and use your person are more extensive if you cannot be required to put your person into service for someone else. Third, the right to income, implied by full self-ownership, is determinate but has a very limited application. Full self-ownership grants agents the right to all the income one can gain from one's labour if and only if (a) the production process does not include the use of external resources and (b) the income gained through trade with others does not consist of external resources.

Although the inherent indeterminacy objection should be rejected, the ad hominem indeterminacy objection is, arguably, correct. Many libertarians insufficiently specify which rights and duties are implied by the conception of self-ownership they defend. To reply to this objection, I challenge libertarians to either defend full self-ownership or to explain how their conception of self-ownership differs from this standard libertarian account. Libertarians can back away from full self-ownership in one of three ways. They can (1) reject the maximal stringency of full self-ownership, (2) reject the maximal comprehensiveness of full self-ownership or (3) do both, and adjust their conception accordingly. It would help both defenders and critics of libertarianism if all libertarians would take this task seriously and specify which conception of self-ownership they defend. It is my aim to respond to the ad hominem indeterminacy objection, and thus to specify my preferred conception of self-ownership, in the subsequent chapters. As will become clear, the conception of self-ownership I support differs quite a bit from full self-ownership. Nevertheless, the determinacy of full self-ownership will help to comprehend the conception I prefer.

Chapter II: Inconclusive Arguments for the Self-Ownership Principle

Whereas chapter I was concerned with the specification of the self-ownership principle, I now turn its plausibility. I will make two separate claims. First of all, I will argue that the standard libertarian conception of the self-ownership principle, i.e. 'full self-ownership' or 'libertarian self-ownership', is plausible. By this I mean that there are powerful and convincing reasons to accept libertarian self-ownership as a strong candidate to explain our enforceable rights and duties towards one another. I will show this plausibility by exploring two popular arguments for full self-ownership: *the abductive argument* and *the fundamental argument*. Second, notwithstanding the fact that full self-ownership is attractive and plausible, I will claim that those two popular defences of libertarian self-ownership are insufficient to explain why we must prefer the self-ownership principle over a liberal conception of freedom. This is because liberals can either accurately accommodate these arguments for full self-ownership or simply use the same arguments to support their own conception of freedom.

It is important to note the substantive difference between the current chapter and the previous one. In chapter I, I explained the meaning of the self-ownership principle and argued that its prototypical libertarian conception is determinate. Although such a specification is important, I did stress that nothing in that chapter can serve as a defence of the principle. Namely, it is fully consistent to think that full self-ownership is determinate while rejecting the principle as an accurate expression of our enforceable rights and duties. The aim of this third chapter is different. Here, as well as in the next chapter, I will consider whether full self-ownership is justifiable, i.e. whether it is possible to provide a convincing argument in its favour. Thus, whereas chapter I dealt with the issue of specification, chapter II discusses the justification of libertarian self-ownership.

This chapter should be read in conjunction with the next chapter. Whereas I will here discuss and consider only two arguments for full self-ownership, and conclude that these arguments are, inevitably, partial and provide the principle with only a claim for plausibility, I will ultimately reject full self-ownership in the subsequent chapter. In chapter III, I will express the most powerful criticism against full self-ownership, the fanaticism objection, and argue that a plausible reply to this criticism necessarily backs away from the prototypical libertarian conception of the principle. As a result, I will propose a conception of self-ownership that I label *near-full means principle-based self-ownership*. For now it is important to keep in mind

that I will, in the present chapter, argue that full self-ownership is attractive and plausible, but, in the next chapter, will maintain that it should be rejected in the end.

The chapter develops as follows. First, I will introduce liberal freedom. This introduction will enable me to explain, later in the chapter, why the abductive argument and the fundamental argument for full self-ownership are attractive though inconclusive. Namely, these arguments are inconclusive between libertarian self-ownership and liberal freedom. Then, secondly, I will develop the *abductive argument* in favour of full self-ownership. This argument aims to show that libertarian self-ownership best explains our strong intuitions about the relationship we have with our person. Although the abductive argument is attractive, I will argue, in a third section, that liberals can also provide some plausible explanations for those intuitions and that the abductive argument is, therefore, inconclusive. Fourthly, I will set out the *fundamental argument* in favour of full self-ownership. This Kantian argument derives comprehensive and maximally stringent self-ownership rights from the special moral status of agents as end-setters and end-pursuers. This special moral status makes them separate and inviolable. Although the fundamental argument points at the correct foundation for the rights of agents and is attractive as a ground for full self-ownership, I will, fifthly, maintain that liberals quite plausibly use the same arguments to defend their less comprehensive and less absolute set of rights over one's person. Therefore, again, the argument in favour of the full-self-ownership is inconclusive. I will conclude that there are very convincing reasons to defend a set of enforceable rights and duties over our person that is comprehensive and in which the rights are at least very stringent, but that it is unclear, based on the abductive and fundamental arguments alone, whether libertarians or liberals prescribe the most plausible version of such a set.

1. Liberal freedom

In order to be able to evaluate the arguments in favour of the self-ownership principle, it is important to have a grasp of the content of the principle that is its main, and most popular, competitor. Following John Rawls (1999), I believe one important way to make advances in debates in political theory is by means of comparison.[52] In the present chapter I will,

[52] Rawls (1999) himself compared his Justice as Fairness with utilitarianism to prove the superiority of the former.

therefore, compare libertarian self-ownership with 'liberal freedom'. As it is impossible to set out *the one and only* or *the most* liberal conception of freedom, I will, for simplicity, accept Rawls' conception of liberty as the baseline for comparison. I believe this is justified because Rawls' theory of justice is widely seen as the most well-developed and powerful statement of contemporary liberalism (cf. Kelly, 2005, p. 36).

Rawls' first principle of justice, the liberty principle, is the natural starting point to introduce a liberal conception of freedom.[53] In the tradition of major liberal theorists like John Locke and John Stuart Mill, Rawls affirms individual liberty as the core value of his theory of social justice.[54] The importance of liberty in Justice as Fairness is expressed by the fact that the liberty principle enjoys lexical priority over the second principle, which combines the fair equality of opportunity principle and the difference principle (cf. supra, Introduction).[55] The latest version of the first principle reads:

> "Each person has an equal claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value" (Rawls, 1993: 5).

The principle serves two of Rawls' aims (Freeman, 2007, p. 45). Firstly, it defines a democratic ideal of persons as free and equal citizens who have the rights and liberties needed to influence political decisions and to participate in public political life. Secondly, it expresses the Kantian ideal of persons as free and self-governing moral agents who can set and pursue their individual conception of the good life.

The liberty principle is no defence of liberty in general or a defence of just any possible specific liberty. Rather, it gives priority to certain specified 'basic liberties'. Some liberties are more important than others and therefore 'basic'. These basic liberties, combined, ought to form 'a fully adequate scheme' which should be equally protected for all persons. For Rawls,

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[53] For statements and discussions of the liberty principle, see Rawls (1993, p. 5 and lecture VIII; 1999, section 11, chapter IV and section 82).

[54] Note that Rawls himself thought that the *priority* he gives to the liberty principle is the expression of a plausible reading of Mill: "If we read this passage [in Mill's *Principles of Political Economy*] to imply the notion of a hierarchy of interests, which leads to a lexical ordering, the view I express in the text [i.e. the view that the basic liberties ought to have priority over other considerations of justice because they protect our most fundamental aims and interests] is essentially Mill's" (Rawls, 1999, p. 476, fn. 13) .

[55] 'Lexical priority' refers to the ordering of words in a dictionary. In deciding the order of the words, the first letter of each word takes strict priority over its second letter, and so on (Rawls, 1999, pp. 37-38, fn. 23; Van Parijs, 2003a, p. 209, fn. 20).

there are five sets of basic liberties (Freeman, 2007, pp. 46-48; Pogge, 2007, pp. 82-83; Rawls, 1993, p. 291):

(1) Political liberties, like freedom of speech, freedom of the press, freedom of assembly, and the right to vote and to hold public office.
(2) Freedom of thought and liberty of conscience, among which the freedom of philosophical, evaluative and moral beliefs, and the freedom to express one's views on all subjects.
(3) Freedom of association, i.e. the liberty to associate with persons one chooses and to unite into groups of all kinds. Together with the freedom of conscience this freedom ensures the freedom of religion.
(4) Freedom and integrity of the person, including a protection against slavery, serfdom, psychological oppression, physical injury and abuse, and including a freedom of movement, occupation and a right to hold personal property.
(5) The rights and liberties covered by the rule of law, including a protection from arbitrary arrest and seizure, habeas corpus, the right to a speedy trail, due process, and uniform procedures conducted according to publicized rules.[56]

The basic liberties protect, most importantly, the physical and psychological integrity of persons. Arguably, this liberty to be free from, among other things, coercion and enslavement is essential for the protection and exercise of all other (basic) liberties. The liberty principle is quintessentially liberal as it ensures that the basic rights and liberties, like freedom of thought and association, are equally protected for all persons. Besides, the liberty principle is a democratic principle as it includes the equal political liberties, like freedom of speech, the right to vote and the like (Freeman, 2007, p. 46).

The reason why some liberties, the basic liberties, are more important than others has to do with the role those basic liberties play for the development and exercise of, what Rawls calls, 'the two moral powers'. Rawls assigns two moral powers to all normal and fully cooperating adults in society (Rawls, 1993, pp. 301-302). The first moral power is a capacity for a sense of right and justice. As cooperating members of society, all persons are assumed to have a capacity to honour fair terms of cooperation. In other words, all persons have a capacity to be reasonable members of society. The second moral power is a capacity for a conception of the

[56] For another example of a liberal statement of a list of basic liberties, see Mill (1859, chapter 1).

good. This is the capacity to form, revise and rationally pursue one's conception of what is a worthwhile human life. The possession of these two moral powers is what makes persons full and equal members of society in issues concerning political justice. In other words, they are the basis for equal citizenship. Therefore, a conception of social justice must ensure that persons can develop and exercise the two moral powers. Rawls claims that the basic liberties protected by the liberty principle are essential in this regard. They protect the two fundamental interests persons have in the development and exercise of the two moral powers. Unlike the liberty to choose one's favourite flavour of ice cream, the liberties to choose one's spouse or religion, to participate in political life or the right to be free from enslavement are especially important to develop and exercise the powers of reasonability (justice) and rationality (conception of the good).

Rawls' first principle of justice serves as an excellent example of a liberal conception of freedom and enables us to clarify some of the main differences between liberal freedom and libertarian self-ownership. One such difference is that liberals do not use the concept of 'ownership rights over oneself' to specify our rights and duties. As we have seen, libertarians use full self-ownership to refer to a determinate set of rights and duties with regards to one's person (and that of others), similar to the set of rights and duties that generally come with full liberal ownership over external resources (see chapter I). Liberals, on the other hand, stress that "it is essential to observe that the basic liberties are given by a list of such liberties" (Rawls, 1999, p. 53), rather than by reference to just one single idea like 'maximal freedom' or 'full ownership'. This strategy allows liberals (a) to put forward basic liberties that are unrelated to the concept of self-ownership and (b) not to accept as basic liberties all rights that come with ownership.

As an example of (a), some of the political liberties Rawls includes in his list, like the right to vote and the right to hold public office, can hardly be taken to be implied by the concept of self-ownership. Libertarians who accept that these liberties are very important need quite a bit of argumentative stretch, if possible at all, to ground them in the idea of self-ownership. The same is true, arguably, for some of the rights and liberties covered by the rule of law, like the right to a speedy trial. Also, as an example of (b), liberals do not standardly include the right to sell (parts of) one's person and the right to the income one can generate by such a sale in

the list of basic liberties.[57] The different strategy to specify the preferred rights and liberties provides the space to defend a conception of freedom with a distinct focus.

Another difference between liberal freedom and libertarian self-ownership is the distinction liberals make between basic liberties and other liberties. The fact that liberals specify a scheme of *basic* liberties implies that there exist other, less important, *non-basic* liberties. Whereas the basic liberties (almost) always trump other considerations of justice, like reasons of equality in the distribution of external resources, and can only be limited if necessary to protect other basic liberties, limitations of non-basic liberties are easier to justify. To decide whether or not a certain liberty is basic, liberals tend to evaluate the liberty based on how well it serves a person's most important interests. As we have seen, Rawls thinks that the most important interests of persons, as agents and as citizen, are the development and exercise of the two moral powers. Other liberals might take other interests as more important, and evaluate the importance of a liberty based on how well they serve those other, more fundamental, interests. What unites liberals, though, is that they can separate more important from less important liberties and that they tend to make this distinction by reference to the most important interests of persons. The distinction between important and less important liberties contrasts with the libertarian conception of self-ownership, which holds that all self-ownership rights are of equal import and thus of equal stringency. According to full self-ownership, my rights over my body parts, energies, talents and labour capacities are all equally, i.e. maximally, extensive and stringent.[58]

Although we can compare liberal freedom and libertarian self-ownership in many ways, and point out some similarities and differences, the indeterminacy of both principles withholds us from a full and complete comparison. In chapter I, I have explained that the main indeterminacy of full self-ownership follows from the fact that the enforcement and compensation rights, on the one hand, and the immunities to the non-consensual loss of any rights, on the other hand, pull in opposite directions. The more comprehensive and stringent one's enforcement and compensation rights, the less comprehensive and stringent one's immunities to the non-consensually loss of one's rights (and vice versa).

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[57] See, for example, Rawls (1993, pp. 365-367) and Freeman (2001) on the inalienability of the basic liberties in liberal theory.
Concerning the right to income that comes with full self-ownership, remember that I have shown that it is applicable only to a very limited set of cases (see chapter II).
[58] I will criticize this view in chapter III.

But also liberal freedom is indeterminate to some extent. The reason is twofold. First, the basic liberties form a balanced scheme of liberties. In this balanced scheme there is no single liberty or right of absolute stringency (Rawls, 1993, p. 358). There is no liberty for which an interference with that liberty would, automatically, be wrong. The wrongfulness of an interference with a specific basic liberty depends on how this basic liberty relates to the other basic liberties. In other words, the basic liberties ought to be balanced against one another and a basic liberty may be limited in order to protect the exercise of another basic liberty (Rawls, 1999, p. 178). The problem is that there is not one single way to balance the basic liberties and there are, thus, multiple justifiable liberal schemes of basic liberties (Kelly, 2005, p. 65). This generates an indeterminacy because, although liberals might give a list of basic liberties, it is not obvious how those basic liberties relate to one another and, thus, what the appropriate balance between those liberties is.[59]

> "It must, however, be emphasized that the account of the basic liberties is not offered as a precise criterion that determines when we are justified in restricting a liberty […]. There is no way to avoid some reliance on our sense of balance and judgment. As always, the aim is to formulate a conception of justice that, however much it may call upon our intuitive capacities, helps to make our considered judgments of justice converge" (Rawls, 1999, p. 180).

Secondly, and relatedly, the basic liberties that liberals defend are, if specified at all, often described in general and abstract terms. Such a general description provides a framework of liberties that a just society must accept, but also leaves room for a particular society to fill in the gaps within the framework based on the society's specific historical, social, political and economic traditions (Rawls, 1993, pp. 338-340). Rawls (1993, pp. 298, 336-338; 1999, pp. 171-176), for example, argues that a just 'basic structure' of a society (i.e. a society's most important social, political and economic institutions) has to be developed and shaped through a four-stage sequence. Whereas the two principles of justice are adopted in (1) the original position, they are to be specified further in (2) the constitutional, (3) the legislative and (4) the administrative and judicial stage. Each time a next stage is entered, more information about the society and its citizens becomes available that can be used to apply the two principles of

[59] Hart (1989 [1974]) was the first to formulate this criticism to Rawls' liberty principle.

justice in that particular society. It is, therefore, inevitable that there are different possible just and liberal societies.[60]

> "It is not always clear which of several constitutions, or economic and social arrangements, would be chosen [through the four-stage sequence]. But when this is so, justice is to that extent likewise indeterminate. Institutions within the permitted range are equally just, meaning that they could be chosen; they are compatible with all the constraints of the theory. […] This indeterminacy in the theory of justice is not in itself a defect. It is what we should expect. Justice as fairness will prove a worthwhile theory if it defines the range of justice more in accordance with our considered judgements than do existing theories, and if it singles out with greater sharpness the graver wrongs a society should avoid" (Rawls, 1999, p. 176).

Although there is inevitably and, according to most liberals, non-problematically, some indeterminacy in the idea of liberal freedom, liberals think a list of basic liberties without detailed specification can be sufficiently determinate to distinguish a just from an unjust society (Kelly, 2005, pp. 64-68). This is because most often it is "perfectly plain and evident when the equal liberties are violated", even if they are formulated in general terms (Rawls, 1999, p. 174). The list of basic liberties can still serve as a guideline for the development of a just constitution for a society. There are two main tests to check whether such a constitution is genuinely liberal: (a) the basic liberties have to be protected equally for all persons, and (b) the protection of the basic liberties must apply, at least, to what Rawls calls 'the central range of application' of those liberties, i.e. those rights and liberties that are necessary to protect the most fundamental interests of persons.

In this PhD I take up Rawls' challenge (see his quote two paragraphs ago) and check whether, in the end, libertarianism "defines the range of justice more in accordance with our considered judgements than do existing theories, and if it singles out with greater sharpness the graver wrongs a society should avoid". To do this, I will, in this chapter, compare libertarian self-

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[60] In Lecture VIII of Political Liberalism, Rawls aims to provide a criterion for how the basic liberties can be specified in the second, third and fourth stage of the sequence. This criterion refers to the special interest of persons in the development and exercise of the two moral powers. Therefore, liberties necessary for this development and exercise fall within 'the central range of application' of the basic liberties and are protected by the priority rule of the first principle of justice. Nevertheless, notwithstanding Rawls's further guideline, there remains significant space for differences in the specification of the basic (and the other) liberties in the different stages of the four-stage sequence, depending on the specific features of the society (Freeman, 2007, pp. 79-85; Rawls, 1993, pp. 338-340). Therefore, the point I make in the main text still stands.

ownership with liberal freedom. I will focus on two popular arguments for full self-ownership, the abductive argument and the fundamental argument, and test whether those arguments prove libertarian self-ownership to be more in accordance with our considered moral judgements and/or better placed to single out the graver wrongs in society than liberal freedom. As those arguments will prove unsuccessful, in that they are indecisive between both principles, the next chapter will take a different strategy to judge the coherency of libertarian self-ownership. That is, in the next chapter I will take full self-ownership as a given and test to what extent it can survive exposition to the most devastating criticism of the principle: the fanaticism objection. I will conclude, in chapter III, that a midway position between liberal freedom and libertarian self-ownership is plausible.

2. The abductive argument for full self-ownership

One popular way for libertarians to argue for libertarian self-ownership is to make use of the abductive argument.[61] The abductive argument for full self-ownership claims that we can all intuitively recognize some paradigmatic rights and wrongs, and that the self-ownership principle best explains (a) why those rights and wrongs are right and wrong, and (b) why they are 'paradigmatic cases' of right and wrong. I will here lay out and discuss the abductive argument for full self-ownership. I will start with a discussion of the paradigmatic wrongs. Thereafter, I will concentrate on some paradigmatic rights. I will end this section with an attempt to explain those intuitions and relate them to the relation agents have with their person (i.e. their body, mind and talents). I claim that the abductive argument shows the prima facie plausibility of full self-ownership.

2.1. Paradigmatic wrongs that support libertarian self-ownership

The first part of the abductive argument for libertarian self-ownership refers to our intuitions to some very grave wrongs. There are two paradigmatic wrongs that are popular among

[61] This section has been published, in a slightly different version, as Ossenblok (2017a).

libertarians to test our intuitions and to argue in favour of full self-ownership: (1) slavery[62] and (2) an enforced redistribution of human organs[63]. Consider the following two cases:

> **Slavery:** Imagine a society in which the legal system permits slavery. In this society it is legal, for a certain group of persons, to have other persons as their slaves. Slave owners (also called 'masters') have full liberal ownership rights with regards to their slaves and can, thus, dispose over them as they can over the external resources they fully own. A slave has no rights of her own, and her legal interests and claims coincide with those of her owner.[64]

> **Enforced Eyeball Redistribution:** Imagine a society in which half of the children are born with two eyes and the other half without eyes. Technology has advanced so that it is possible, when persons reach the age of 20, to take one eye of each sighted person and to distribute these to the eyeless. All end up with one eye and, thus, able to see. The surgery is painless, safe and costless. A governmental policy is in place which enforces the redistribution of eyeballs at the age of 20.[65]

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[62] For examples of libertarians who use a form of the anti-slavery argument for full self-ownership, see Nozick (1974, pp. 169, 172), Steiner (1977, pp. 44, 48), Feser (2004, p. 33), Rothbard (1978, p. 85), Narveson (1998, p. 9; 2001, pp. 67-68) and Roark (2013, pp. 58-59). For critical discussions of the anti-slavery argument, see, among others, Cohen (1995, chapter 9), Vallentyne (1998, p. 612), Taylor (2005, pp. 477-479) and Lippert-Rasmussen (2008).

[63] For examples of libertarians who use our intuitive rejection of a forced redistribution of human organs to argue in favour of full self-ownership, see Nozick (1974, p. 206), Narveson (2001, p. 67), Christman (1991, p. 40) and Feser (2004, p. 33). For interesting discussions and criticisms of this argument, see Wolff (1991, pp. 7-8), Cohen (1995, pp. 70, 243-244) and Lippert-Rasmussen (2008).

[64] Justice Ruffin provided a classic description of the slave-master relationship (*State v. Mann*, North Carolina, 1829): "The end [of slavery] is the profit of the master, his security and the public safety; the subject, one doomed in his own person and his prosperity, to live without knowledge and without the capacity to make anything his own, and to toil that another may reap the fruits. […] Such obedience is the consequence only of uncontrolled authority over the body. […] The power of the master must be absolute to render the submission of the slave perfect. […] This discipline belongs to the state of slavery. They cannot be disunited without abrogating at once the rights of the master and absolving the slave from his subjection" (as cited in Thomson, 1990, p. 224, fn. 9).

[65] It is important for my argument that the redistribution takes place at *the age of 20* (or later). This is because libertarians only grant full self-ownership rights to 'agents'. As I have explained in the introduction of this PhD, agents are those beings worthy of special moral consideration because they have the essential capacities to rationally set and pursue ends. I here assume that the reader accepts that most human beings that reach the age of 20 meet the threshold for agency. This acceptance is necessary to go from the intuition in *Enforced Eyeball Redistribution* to a defence of full self-ownership. An anonymous referee of *Ethical Perspectives* rightly pointed out that our intuitions might differ in cases where non-agents are concerned. In particular, it is unclear whether we would intuitively reject the enforced redistribution of (the genes for) eyesight of one 'human' blastula to another. Given my purpose to evaluate the abductive argument as it used by libertarians, I only deal with intuitions concerning agents.

Libertarians think that it is plain that our intuitions tell against the governmental policies in *Slavery* and *Enforced Eyeball Redistribution*. In both cases the policy installs a serious wrong, and our political theory must be able to explain those intuitions and condemn those policies.

There are two different routes libertarians take to go from these two cases, and the intuitions they provoke, to a defence of full self-ownership. The first, more ambitious, route, which I will call the *ambitious abductive argument*, holds that one can condemn the policies in *Slavery* and *Enforced Eyeball Redistribution* 'if and only if' one accepts libertarian self-ownership. The second, less ambitious, route, which I will label the *modest abductive argument*, thinks that full self-ownership provides an easy and unifying explanation of the wrongs in *Slavery* and *Enforced Eyeball Redistribution* and that it is therefore plausible. I will now argue that the ambitious abductive argument is seriously flawed and that the modest abductive argument is correct.

The ambitious abductive argument holds that we can reject many of the most serious wrongs, like slavery and a forced redistribution of human organs, if and only if we defend full self-ownership (e.g. Nozick, 1974, p. 169). Some libertarians, like Feser (Feser, 2004, p. 33) and Rothbard (1978, p. 85) simply state, without further argument, that there is no other way to explain what is wrong in *Slavery* and *Enforced Eyeball Redistribution* but by reference to the libertarian self-ownership.[66] The argument runs as follows (see also Vallentyne, 1998, p. 613):

(1) Policies like in *Slavery* and *Enforced Eyeball Redistribution* are unjust
(2) The self-ownership principle condemns those policies as unjust
(3) No alternative for full self-ownership can adequately account for the injustice

Therefore,

(4) The self-ownership principle should be accepted.

[66] Consider, for example, the following quotes from Feser (2004, p. 33, his italics): "The only way to explain why [slavery is wrong] is that in making someone a slave, a slave owner simply violates the slave's property rights in himself: No one *else* can properly own you, because *you* already own yourself, and a slave owner is in effect stealing from you", and, in relation to a case like *Enforced Eyeball Redistribution*, "but then why else would this be wrong, if not for the simple reason that people *own* their body parts, and indeed own themselves? Once again, unless we assume the thesis of self-ownership, we have no way for explaining *why* certain things are wrong that clearly are wrong."

Feser (2004, p. 33) concludes from this argument that "the thesis of self-ownership is, then, as plausible and fundamental a moral principle as there could be". But this argument is flawed. My discussion of the alternatives provided by liberal freedom, later in this chapter, will prove that proposition (3) is false. Contrary to what those libertarians claim, there do exist plausible alternatives to full self-ownership to reject the policies in *Slavery* and *Enforced Eyeball Redistribution*.

There exists, though, a (slightly) more ingenious version of the ambitious abductive argument (Nozick, 1974, pp. 169, 172). According to this version of the argument, each rejection of full self-ownership in favour of some other moral principle, like liberal freedom, leads to partial slavery. This is because if you do not fully own yourself, surely, or so the argument goes, someone else (or the government) now has those rights over your person that you lack (for this argument, see for example Feser, 2004, p. 35; Roark, 2013, p. 57). Consequently, the argument concludes that you are the other person's partial slave. I will shortly explain why this reasoning fails, but let me first further specify the thought.

For libertarians, the paradigmatic case of partial slavery is a non-contractual enforceable positive duty. Nozick (1974, p. 172), for example, thinks that non-contractual enforceable positive duties "institute (partial) ownership by others of people and their actions and labour. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in *other* people." Nozick's idea is that whenever you have a non-contractual enforceable duty to provide service to someone else (e.g. to give up one's second eye, to help a drowning child, to call an ambulance to ensure medical care for the injured,…)[67] you cannot do with your person whatever you could have done in the absence of the other person and therefore, or so the argument goes, your person is under the control of someone else. To be partially under the control of someone else is like being partially owned by someone else and, thus, to have the moral status of a partial slave. And because we are not partial slaves, we are full self-owners (see also Vallentyne, 1998, p. 612).

[67] For most libertarians, the prototypical non-contractual enforceable positive duty which they rejects is the duty to pay redistributive taxation. I do not consider this example in the text, because it is wrong that a rejection of such taxation follows from the income rights implied by full self-ownership. In chapter I, I have explained why full self-ownership grants only very limited and specific income rights. In the vast majority of cases, i.e. all those income generating actions that make use of external resources or in which the income consists of external resources, libertarians are wrong to ground their rejection of redistributive taxation in libertarian self-ownership.

There is, nevertheless, a fundamental flaw in this argument for full self-ownership. Let me restate the argument: libertarian self-ownership is necessary to reject certain paradigmatic wrongs because

(1) All possible alternatives reject full self-ownership and, thus, allow partial slavery, like in the case of a non-contractual enforceable duty.
(2) Partial slavery is wrong

Therefore,

(3) We have to reject all the alternative explanations.

Proposition (1) is false. It is not because one rejects full self-ownership that one has to accept partial slavery. For example, a non-contractual enforceable positive duty, the paradigmatic case of partial slavery according to libertarians, is vastly different from partial slavery. First, although it is true that an enforceable positive duty makes my control rights over my person less than full, Cohen (1995, p. 232) has pointed out that this does not automatically imply that I lose *all* control with regards to that duty. For example, imagine I witness a car accident and realize that you are seriously injured. Many people think that I now have an enforceable duty to call an ambulance to make sure you get the medical treatment you need. If this view is correct, and I indeed have an enforceable duty to provide you this service, the control I have over my person is temporarily limited because of your needs. Although this makes my self-ownership rights less than full, it does not imply that I now am your partial slave. Unlike a slave-owner you cannot decide exactly which actions I have to perform and which resources I have to employ to comply with this duty. So even although I cannot choose not to perform the duty, I still have, in contrast with the institution of slavery, a liberty to perform the duty as I see fit. Another way to make this point is to consider the contrast between slavery, on the one hand, and full self-ownership, on the other, as a continuum. At one extreme is slavery, at the other is full self-ownership. Although an enforceable positive duty moves a self-owner a bit in the direction of slavery, it is a vast exaggeration to hold that each step away from full self-ownership implies partial slavery. There are, arguably, many positions on the continuum that are distinct from full self-ownership but still do not resemble slavery in any way.

Second, and most importantly, it seems that what is essential to the institution of slavery, be it partial or full, is that others have rights with regards to the use and control of your person. For an enforceable positive duty to install upon me the status of a partial slave, thus, must entail

that others now have the rights which I lack due to the duty. That is, the duty must confer upon others the ownership rights over my person. But that I have a non-contractual enforceable positive duty to provide you a service does not necessarily entail that you now have the set of ownership rights over me that I lack due to the duty (Cohen, 1995, pp. 230-236; Vallentyne, 1998, p. 612; Williams, 1992, pp. 63-65).[68] Although I might have a duty to call an ambulance if you are in need, you do not necessarily have the correlative claim to that help, nor the right to waive my duty. It might simply be the case that *no one* has the ownership rights with regard to my person that I lack due to the duty. In short, besides 'me' and 'someone else', there is a third possible answer to the question 'who has the ownership rights over my person?', namely 'no one'. If this view is correct, a non-contractual enforceable positive duty does not necessarily install upon the duty-bearer the moral status of a partial slave.

The ambitious abductive argument, that starts from some paradigmatic wrongs and necessarily ends with full self-ownership, fails. It cannot show that partial slavery automatically follows from the rejection of full self-ownership and that, therefore, any alternative is inacceptable. To criticise an argument for a certain principle is, of course, very different from criticising the principle as such. It might still be true that libertarian self-ownership is best fit to explain our strong intuitions with regards to some of the gravest wrongs. It is just to say that we cannot settle this issue by reliance on the ambitious abductive argument.

The modest abductive argument in favour of libertarian self-ownership is more promising (e.g. Mack, 2002b; Roark, 2013, chapter 3). Whereas this argument does not claim that full self-ownership is necessary to condemn slavery and a forced redistribution of human organs, it does insist that our intuitive aversion to the policies in *Slavery* and *Enforced Eyeball Redistribution* speaks in favour of the plausibility of libertarian self-ownership.

The modest abductive argument in favour of full self-ownership claims that libertarian self-ownership is an attractive fundamental moral principle because it provides an easy and unifying explanation for the wrongfulness of many paradigmatic wrongs, among which are the institution of slavery and the forced redistribution of human organs (e.g. Mack, 2002b, pp.

[68] I thank Matthew Clayton to draw attention to the importance of this point. It is not because I lack a certain self-ownership right with regard to my person that someone else necessarily has that right. It simply might be the case that no one (not me, nor anyone else) has that type of right with regard to my person.

260-264). Consider, again, *Slavery*. Full self-ownership can explain forcefully what is wrong in this society. If all agents have full ownership rights over themselves, a situation in which those rights are disrespected completely is paradigmatically wrong. In a slave-master relationship the libertarian self-ownership rights of the slave are vastly violated by the slave-owner and by the legal system as a whole. Full self-ownership is, thus, well placed to condemn slavery. The same holds for *Enforced Eyeball Redistribution*. If all agents fully own themselves, this includes comprehensive and maximally stringent ownership rights over one's eyes and immunities to the non-consensual loss of those rights. A governmental policy that enforces a redistribution of eyes at age 20 is therefore vastly wrong.

At a deeper level, the modest abductive argument runs as follows. Quite plausibly, among the most fundamental wrongs one person can do to another are to kill, torture and enslave her. What these wrongs have in common is that they (fully or partially) take someone else's life (Mack, 2002b, pp. 261-262). They take the life of someone else by destroying their person, by breaking and manipulating their mind or by nullifying the control they have over their person. Ideally, our most fundamental moral principle can explain the wrongfulness of taking someone else's life. The self-ownership principle is able to condemn these acts in a very clear and forceful way. It is wrong to kill, torture or enslave someone else because by doing so one takes away something, a life, that belongs to someone else.

Moreover, full self-ownership can explain the impermissibility of other, less devastating, wrongs as well. This is because most standard wrongs are either due to a partial destruction of someone else's life or due to the wrongful exercise of control of one person over another. One important reason why it is wrong for me to cause you a physical or mental injury (e.g. to non-consensually redistribute one of your eyes, to strike your nose or to brainwash you) is that it partially destroys, and thus takes, your life. In similar vein, an important reason why it is wrong for me to coerce you to drink alcohol or to paternalistically interfere with you to stop you from drinking alcohol is that, either way, I claim control over what is yours, namely your person and its life. This is not to say that libertarian self-ownership is *necessary* to condemn these wrongs (other moral principles might also be well-suited to do so) but, as Eric Mack (2002b, p. 262) argues, "the thesis of self-ownership [provides] a deep and unifying explanation for why all these sorts of actions ought to be condemned".

According to the modest abductive argument for full self-ownership, *Slavery* and *Enforced Eyeball Redistribution* are just two of many paradigmatic wrongs for which libertarian self-

ownership provides a plausible ground for condemnation. Those cases should not, therefore, be seen as separate, stand-alone arguments for full self-ownership but rather as a way to confirm the plausibility of the principle. The more examples of (serious) wrongs we can give that full self-ownership can condemn for plausible reasons, the stronger our case for the principle's plausibility.

The modest abductive argument can only argue for the prima facie plausibility of full self-ownership, though, because it does not claim, contrary to the ambitious abductive argument, that libertarian self-ownership is necessary to condemn those wrongs. The modest abductive argument is open to the possibility that there are other principles, like liberal freedom, that can also condemn these wrongs for similar or other plausible reasons and that those other principles, thus, might also be plausible (cf. Roark, 2013, p. 41). Later in this chapter I will indeed claim that liberal freedom can convincingly reject many of the acts libertarians oppose and that the modest abductive argument is, thus, insufficiently strong to decide between libertarian self-ownership and liberal freedom.

2.2. Paradigmatic rights that support libertarian self-ownership

The second part of the abductive argument for libertarian self-ownership refers to our intuitions to some paradigmatic rights and liberties that any sensible theory must accept (see, for example, Kernohan, 1988, p. 74; Van Parijs, 1995, pp. 8-9). Namely, the self-ownership principle is not only an attractive and plausible moral principle to condemn many acts we intuitively classify as wrongs, it is also capable to explain why it is standardly permissible to use one's own person in the pursuit of one's ends and, thus, why we have an extensive sphere of personal liberty. Recall that in chapter I I have accepted Vallentyne's framework of self-ownership rights, derived from Honoré's analysis of liberal ownership. This framework holds that the self-ownership principle implies five ownership rights over one's person: a right to control, a right to transfer, a right to compensation, a right to enforce one's self-ownership rights and an immunity against the non-consensual loss of one's self-ownership rights or any other rights merely because one exercises any of the self-ownership rights. In this section, I will explain that many straightforward liberties are implied by those five self-ownership rights and that, therefore, accepting the concept of self-ownership (i.e. the self-ownership terminology) as a framework to think about our rights and duties is justified.

Many of the liberties most people accept necessarily imply certain rights of control over one's own person (e.g. Van Parijs, 1995, pp. 8-9, see also his fn. 8). We all think, for example, that agents have the rights to use and control their person in order to move from one spatial point to another, to interact with the world surrounding them, to communicate with other individuals and to reason about their past and current impressions and future plans. All these liberties imply certain control rights over one's person. Most importantly, agents need the enforceable claim-right against others not to interfere with the use and enjoyment of their person without prior consent. You have the liberty to move around, interact, communicate or think, only if you yourself can decide the terms based on which others can stop you from doing so. Therefore, in order for all these, and so many other, straightforward uses of our person to be liberties at all, agents need some rights of control over their person. To have a right to control one's person most essentially means to have an enforceable claim-right not to be interfered with the use one makes of one's person.

Some other standard liberties many of us defend imply rights to transfer (part of) one's person. It is commonplace that, very often, others may not interfere when an agent consensually puts her person into service for others. Such service can occur in different ways. You can, for example, give away an organ, help your parents move house, enter a labour contract or sell your intellectual property. Arguably, in most circumstances, an agent has an enforceable claim-right against interference when she gives away (e.g. voluntary organ donation), loans (e.g. to help her parents move house), rents (e.g. to enter a labour contract) or sells (e.g. to sell her claims over intellectual property) (part of) her person. The exercises of these liberties are an expression of the transfer rights included in the concept of self-ownership. Namely, they are examples in which an agent transfers (part of) her person (her body, mind, talents and energies) to someone else. Therefore, an agent must have some rights to transfer (parts of) her person to others in order to have the liberty to, for example, help others or to enter a labour contract.

Still other standardly accepted liberties imply the justification of parts of the other three self-ownership rights. In general, we believe that, in case one person physically or mentally aggresses against another, the victim can demand compensation. If you non-consensually smash my nose it is non-controversial that I can demand for compensation (via the appropriate procedures, e.g. court) and that enforced obtainment thereof would, in most circumstances, be justified. Equally non-controversial, if I had realized that you were about to smash my nose, I would have been justified to stop you from doing so (although not at any

cost). The right to self-defence can be explained by our self-ownership right to enforce our rights upon others. Also, most people think that it is me, rather than you, the state or 'no one', who is to decide whether or not to waive the rights of control, transfer, compensation and enforcement over my person. In interpersonal relationships this idea is expressed, for example, by the fact that we consider personal consent essential to make most penetrations of one person into the personal sphere of another permissible. If you want to embrace or kiss me, for example, you need my consent. Also, I do not lose my rights with regards to myself just because I exercise them. For instance, it is intuitive to think that it is impermissible for the government to restrict my liberty of movement (e.g. by imprisonment) in case I control and use my person so as to engage in a sexual relationship or to consensually enter into a labour contract. These ideas show that agents have a protection, or immunity, against others, not to have their rights with regards to their person changed non-consensually.

The general acceptance of all those examples of straightforward liberties shows that most people think we at least have some rights of control, transfer, compensation and enforcement, supplemented with immunities to the non-consensual loss of those rights, over our person. As Philippe Van Parijs (1995, p. 9) explains, "[t]hose who are serious about wanting a free society cannot help requiring that each person be granted ownership rights of herself". Kernohan (1988, p. 74) expresses the same thought when he states that "it cannot be denied that self-ownership is an important part of what we mean by personal liberty. The notion of self-ownership captures some of what is attractive about the notion of personal liberty or freedom of the person." This acceptance of at least partial ownership rights over our person justifies the use of the 'concept' of self-ownership (i.e. the self-ownership terminology). Nevertheless, *liberal* self-ownership can still differ substantially from the *libertarian* position that holds that agents have the most extensive and most stringent set of ownership rights over themselves (cf. chapter I). Liberals, that is, could defend partial (i.e. not maximally comprehensive) and less-than-maximally stringent self-ownership rights rather than full self-ownership rights. The intuitions pointed to in this section, thus, cannot serve as an argument for full self-ownership. What they do show is that discussions about libertarian self-ownership should not focus on the issue of 'ownership', as everyone, even those who do not like the self-ownership terminology, accepts that agents have at least some ownership rights over their person. Rather, discussions about self-ownership should focus on the debate about 'fullness'. The important question that remains is just how comprehensive and stringent the correct

conception of self-ownership is and, thus, what the correct limits of self-ownership rights are.[69]

2.3. Explaining our intuitions

The straightforward intuitions we have in cases of clear rights (like many standard liberties of the person) and wrongs (like *Slavery* and *Enforced Eyeball Redistribution*) show the prima facie plausibility of full self-ownership. Full self-ownership is, namely, very often well placed to judge these intuitive rights and wrongs as right and wrong. In this section, I will explain those intuitions and argue that libertarians can point at the special relationship agents have with their person (i.e. their body, mind and talents).[70] There is something about this relationship that, rightly, makes us believe that it is the agent herself who (generally) has the rights to direct her person in the way she chooses and to veto any use, control or interference by others.

A first feature that explains our intuitions in favour of extensive and very stringent self-ownership rights, and thus grounds the prima facie plausibility of full self-ownership, is the fact that agents stand in a relationship of "intimate, direct, immediate control" with regards to their person (McElwee, 2010, p. 215). You control your person in a way you, generally, do not control anything else. If you decide to move your head or limb, to think about coffee or homemade lasagne, or to read or speak, you can, in normal circumstances, do so immediately. We intimately control our body, mind and talents. This differs from the control we can exercise over external objects. The control over such objects only occurs through the control of my person. You need the control over your hand and mind in order to be able to control a

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[69] See Taylor (2005) for a similar observation.

[70] My argument here is highly inspired by McElwee's (2010) work on the topic (not himself a libertarian). The two arguments I use here, are his. Besides those two, he uses a third, the wellbeing argument. According to this argument, agents have a special claim to their person as they experience immediate positive and negative wellbeing through their body and mind. I believe this argument (a) is not open to libertarians and (b) should be rejected (for an influential critique against the wellbeing argument, see Dworkin, 1981a). In short, the argument should be rejected because the fact that something influences one's wellbeing seems to be a very bad reason to grant rights. For one thing, the fact that a rapist experiences wellbeing via the use of someone else's body does not give him a claim to the other's body. Therefore, I do not put McElwee's wellbeing argument forward in the text. Also, McElwee only focusses on body-ownership, whereas I do not see any reason why we could not apply his ideas to the ownership of one's whole person (including one's mind, talents, energies, etc.). One advantage of a focus on body-ownership, in contrast to self-ownership, is that the 'relationship' between an agent and her body is easier to imagine than the 'relationship' between an agent and her person. One might think an agent just 'is' her person. By speaking about the relationship between an agent and her person, I just mean the way an agent relates to the different constitutive features of her person, like her body, mind, talents and energies.

toothbrush in a way that allows you to brush your teeth. It is true, of course, that sometimes we are not in control of our person. You could be forced to the ground by a police man (lack of control over your body), or feel like you cannot stop thinking about that person you just met during lunch break (lack of mental control), or underestimate your physical power as you slam a door much harder than you intended (lack of control over your talents and energies). Nevertheless, standardly you indeed are in direct control of your person. Also, the control of your person is special because you are not similarly in control of my person, nor am I in direct control of yours.

A second feature of the relationship between an agent and her person that can explain and clarify our intuitions in favour of extensive and very stringent rights over our own person is that we desperately need our body, mind and talents. We cannot do anything without our person. When we act, we inevitably use it in an innumerable amount of ways. For example, we walk, speak, push and taste by making use of our body; we reason, structure, evaluate and choose by the employment of our mind; we create and excel by developing our talents. Anything we do involves the employment of our person. More importantly, given our nature as human beings, instead of ghosts or computer programs, we need our person to be agents at all. As will become clear when I discuss the fundamental argument in favour of the self-ownership principle, later in this chapter, what makes agents bearers of special moral consideration is, arguably, that they can set ends and pursue projects. But to be able to set ends and pursue projects we need to make use of our person. Because of this necessity, a feature that is generally not present in our relationship with external resources (we might need food, but not necessarily that specific piece of bread; whereas, in the current world, I do need my body because without it my existence as agent would terminate), agents arguably have a very strong claim over their body, mind and talents.

These two facts about the relationship agents have with their person might not exhaust the reasons that make this relationship special. The claim here is modest: those two reasons are sufficient to explain that the relationship between an agent and her person is special and why we have strong intuitions in favour of, at least, extensive and very stringent self-ownership rights. Because we have those intuitions and we can provide them with a plausible explanation, we can conclude that there indeed is something special about our person that justifies extensive and very stringent self-ownership rights. Because libertarian self-ownership implies such a set of rights, it has prima facie plausibility. This plausibility is only prima facie because there might exist moral principles that also imply extensive and very stringent self-

ownership rights without having to accept full self-ownership. In order to test this, I will, in the next section, consider to what extent liberal freedom differs from full self-ownership with regards to the obvious cases to which libertarians rely in the abductive argument.

3. Liberal accommodation of the abductive argument

Liberal freedom would be a non-starter if it would not be able to accommodate the abductive argument for full self-ownership. That is, it would be sufficient to reject liberal freedom if it turns out that this principle does not condemn the policies in *Slavery* or *Enforced Eyeball Redistribution*, or that it does not accept the standard and straightforward liberties to which libertarians might refer to defend the plausibility of full self-ownership. But of course, being the most popular and well-developed theory around, liberalism's conception of freedom points, in all standard and clear cases, to the same conclusions as libertarian self-ownership. This is why even though the abductive argument shows the prima facie plausibility of full self-ownership, it remains inconclusive towards the question whether or not to prefer libertarian self-ownership over liberal freedom. The abductive argument is, arguably, conclusive to the extent that it shows that a set of *extensive* and *very stringent* self-ownership rights is justifiable, a position also liberals accept (Taylor, 2005, p. 474, see also fn. 22), but it cannot show that the only justifiable set is the one prototypically defended by libertarians, i.e. a set of *comprehensive* and *maximally stringent* self-ownership rights. In this section I will discuss some of the rights and liberties liberals propose as alternatives for full self-ownership to accommodate the abductive argument.

The first libertarian strategy in the abductive argument is to point at some obvious wrongs and then to claim that libertarian self-ownership is either the only possible way to condemn those wrongs or, more modestly, that it is a plausible and forceful way to do so. In discussing this argument, we have focussed on *Slavery* and *Enforced Eyeball Redistribution*, but we could broaden the scope of obvious wrongs to include standard cases of killing, torture, rape and (other forms of) serious physical and mental harm. The second libertarian strategy is to focus on some obvious rights, namely liberties that the correct normative theory has to accept to get off the ground. These liberties include the freedom to move from one place to another, to associate with the people you choose and offer them your services. It is certainly true, as libertarians claim, that the self-ownership principle generates the right conclusions in all those cases, namely that they are paradigmatic cases of rights and wrongs. Libertarians are also

correct to hold that full self-ownership provides a simple and unifying explanation for all those rights and wrongs. Nevertheless, this is insufficient to justify libertarian self-ownership because liberal freedom also generates the right conclusions in those cases and can equally well provide an explanation for why those obvious rights are right and wrongs are wrong.

Liberals can take several routes to accommodate the obvious rights, like the freedom of movement and the freedom to control one's body, and to condemn the obvious wrongs, like slavery, the forced redistribution of bodily organs, killing, torture, rape and the like. I will now discuss three such routes. Note that I do not need to give an exhaustive list of liberal answers to make the point that liberals can, of course, accommodate the abductive argument without having to accept full self-ownership.

A first possible route for liberals is to point at the importance of a right to 'bodily integrity'. Rawls (1993, p. 335) emphasises the importance of the "liberty and integrity of the person". This basic liberty is quintessentially "violated, for example, by slavery and serfdom, and by the denial of freedom of movement and occupation" (Rawls, 1993, p. 335), but it also includes a protection against psychological oppression, physical injury and abuse, and implies a right to hold personal property (cf. supra).[71] Martha Nussbaum (1997) includes bodily integrity in her list of ten central human capabilities. This capability includes the rights to be "able to move freely from place to place; to secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction" (Nussbaum, 1997, p. 287). Those interpretations of the right to bodily integrity are very much in line with what the international human rights treatises state. They standardly accept, for example, freedom of movement and security of the person as part of what is implied by one's bodily integrity (e.g. The Council of Europe, 1950; The United Nations, 1948). The right to bodily integrity, thus, protects the sovereignty of a person over her bodily boundaries. It defends the view that it is the person herself who ought to have the primary say over what happens to her body.

Liberals can provide a plausible argumentation for the right to bodily integrity. Within Rawls' framework, for example, there are different possible explanation for the importance of this right. First, the freedom of movement and protection against slavery and violent assault are,

[71] It should be no surprise that Rawls emphasises the importance of this basic liberty, as slavery is the paradigmatic wrong Rawls aims to reject with his liberty principle (Lehning, 2006, pp. 11-12). It is, therefore, even more astonishing that some libertarians think a rejection of slavery automatically points in the direction of full self-ownership. For his rejection of slavery, see Rawls (1993, pp. 8, 33, 152, 196; 1999, p. 218).

arguably, essential for the adequate development and full exercise of the two moral powers. Moreover, Rawls (1993, p. 335) considers the liberty and integrity of the person, together with the rights and liberties covered by to the rule of law, as a necessary condition to guarantee the other basic liberties. The protection of the bodily integrity of a person is, therefore, part of her most basic interests. Secondly, parties that take part in a fair decision procedure, behind the veil of ignorance, are risk averse and, thus, will, for all kinds of obvious reasons, want the secure their personal control over their bodies and will make sure that they have the primary say over what will happen to their person. Thirdly, in specifying the all-purpose means, the social primary goods, Rawls (1993, p. 181; 1999, pp. 386-391) explains the importance of 'the social bases of self-respect'. Like the other primary goods, the social bases of self-respect is necessary to be able to set and pursue a conception of the good (Rawls, 1993, pp. 318-319). It is hard to imagine how a person could have any self-respect at all if others are at liberty to physically and sexually assault her, to enslave her or to limit her freedom of movement as they wish (Rawls, 1993, p. 82). The right to bodily integrity is, therefore, apart from being in the fundamental interest of persons and part of the set of liberties the parties would rationally choose behind the veil of ignorance, necessary to protect the social bases of self-respect.

A second route liberals can take to accommodate the abductive argument for full self-ownership without, at the same time, having to accept all the implications of that principle is to explicitly defend partial self-ownership.[72] In chapter I, I have already explained that if one defends partial self-ownership, one either argues that one or more of the five general ownership rights do not apply to the ownership of one's person, or that some of the relevant incidents of an ownership right are absent in the case of self-ownership. I also stated that partial self-ownership is for some libertarians a way to respond to some criticisms. Interestingly, partial self-ownership can also help liberals to secure some of the attractive parts of the self-ownership principle.

A form of partial self-ownership that some liberals are happy to accept is control self-ownership. Control self-ownership allows its defenders to accommodate many of the obvious rights, like freedom of movement and the liberty to use one's person to pursue a certain conception of the good, and wrongs, like violent physical and mental assaults, without having

[72] As I have explained earlier in this chapter, liberals always, implicitly, defend a conception of partial self-ownership, as all think we have, for example, certain rights of control with regards to our person. Here I note that liberals could also *explicitly* take the route of partial self-ownership.

to accept the more controversial implications of full self-ownership. These controversial implications are often linked to the right to transfer one's self-ownership rights to others. For example, many think the right to transfer implies a right to the full income a person can acquire through the use of one's person. Although I have significantly nuanced this right to income in chapter I, a liberal might be happy to explicitly reject it by offering a defence of control self-ownership only (e.g. Christman, 1991; Widerquist, 2010). A further controversial implication of the right to transfer is that it justifies the alienation one's self-ownership rights and, thus, for example, the rights to sell oneself into slavery or to sell one's bodily organs. A defence of control self-ownership could, for liberals, be a protection against such radical implications (e.g. Grunebaum, 2000 [1987]; Van Parijs, 1995, p. 234, fn. 4).[73]

Another way in which self-ownership could be partial and defensible for liberals, is to limit the implications of full self-ownership based on the non-contractual enforceable positive duties agents have to provide service to the needy (e.g. Grunebaum, 2000 [1987]). It is a controversial feature of full self-ownership that it rejects non-contractual enforceable positive duties. Nevertheless, a liberal could just defend something like libertarian self-ownership but hold that there exist non-contractual enforceable positive duties that limit the scope of the self-ownership rights. This, again, enables the liberal to accommodate the abductive argument without having to accept full self-ownership.[74]

A third route liberals can take to accommodate the abductive argument for libertarian self-ownership is to defend a right against severe interference in one's life. Something like this right might follow from Cohen's (1995, p. 244) suggestion that it is a "hostility to severe interference in someone's life", rather than libertarian self-ownership, that explains our intuitions in *Enforced Eyeball Redistribution*, but arguably also in other cases of obvious wrongs like slavery, torture, rape and other forms of serious physical and mental assault.[75]

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[73] Although Van Parijs (1995) writes as if he defends something very close to full self-ownership, it is implicit in his theory that his conception of self-ownership is partial in several ways. He explicitly rejects the alienability of the self-ownership rights (cf. reference in the text) and, arguably, implicitly rejects the income rights (1995, p. 9) and the rejection of enforceable positive duties that come with full self-ownership.

[74] Taylor (2005) sets out some of the dangers for liberals who defend partial self-ownership.

[75] To accommodate the obvious rights and liberties, like the freedom of movement, the freedom to control one's person and to provide service to others, the right against severe interference could be accompanied by a general presumption in favour of personal liberty. Insofar there is a presumption for personal liberty, to disrespect someone else's right to the freedom of movement, for example, might quickly be seen as a 'severe interference in someone's life' and therefore wrong because of the other's right against severe interference in her life.

A liberal must proceed carefully, though. The plausibility of this proposal depends on what one means with 'severe interference'. At least one way to understand the severity of an interference will not help liberals to accommodate the abductive argument. This way of understanding severe interference is based on a person's ability to set and pursue a broad range of conceptions of the good. The thought is that if interference A limits the ability of a person to choose between a range of options more than interference B, than interference A is more severe than interference B. This interpretation of severe interference will not help liberals to accommodate the abductive argument because, to a surprising extent, reliance on this conception of severe interference cannot explain our intuitive reactions. Also in cases where the interference has no severe impact on one's life, in terms of the ability to set and pursue ends, we have a strong intuition against such interference. Imagine that you have a paralyzed arm which plays no role whatsoever in your capacity to set and pursue ends and that is, thus, of no value for you other than aesthetically (see also McElwee, 2010, p. 217). I can easily replace your paralysed arm by a new prosthetic one which has the same aesthetic value as the original arm, say by pushing a button. Although this replacement would not constitute a severe interference in your life, measured by reference to your ability to set and pursue ends, it still seems wrong for me to enforce it without your consent. Or suppose someone is in a coma. It is known in advance that he will wake up blind. A compulsory redistributive scheme of eyeballs is in place that allows, in those circumstances, to transfer the eyes, unknowingly to the patient, to a blind person and to replace them with artificial ones (this example is from Feser, 2004, p. 47). Again the interference with the patient's ability to set and pursue ends would not be severe. Nevertheless, our intuitions tell against this alternative compulsory redistribution of eyeballs. Surely it is wrong for someone to non-consensually replace another's arm or eyes, even if the arm or eyes would be of no use anymore.

Unfortunately, Cohen (1995, pp. 243-244) does not suggest a conception of severe interference of his own. There are, though, broadly speaking, two options. One option for liberals is to use a moralized version of severe interference. This would entail that an interference in someone's life means to interfere with the rights of that other person. Interference A would be more severe than interference B if the former affects more rights, or more important rights, than the latter. This option would not be a distinctive strategy for liberals to accommodate the abductive argument, as this would let 'the right against severe interference' collapse in a version of the right to bodily integrity, partial self-ownership (cf.

supra, the first and second liberal route), or yet another right liberals might plausibly defend to protect an agent's primary say over what happens to her person. Another option is to use a non-moralized version of severe interference. I have already rejected one such non-moralized version, based on the ability to set and pursue ends. But it seems reasonable to expect that liberals are able to give other non-moralised versions of severe interference that are more successful in explaining our intuitions. The non-moralized version of severe interference would, then, be the way forward for liberals who want to accommodate the abductive argument based on a right against severe interference in one's life.

This concludes the discussion of the abductive argument for the self-ownership principle. I have argued that libertarians often use the abductive argument to defend full self-ownership. If they do so, they claim either that libertarian self-ownership is necessary to condemn some obvious wrongs and justify some obvious rights or, more modestly, that it is an attractive and plausible way to explain what is right and wrong in some obvious cases of rights and wrongs. I have made clear that the latter argument is a successful way to show the prima facie plausibility of full self-ownership. Nevertheless, in this last section, I have argued that the modest version of the abductive argument is inconclusive because it cannot show why we ought to prefer libertarian self-ownership over a liberal conception of freedom. Liberals, namely, can easily accommodate all the obvious rights and wrongs that libertarians use to develop the abductive argument. In what follows, I will consider another popular argument for the self-ownership principle, the fundamental argument, and argue that it is, again, inconclusive. Liberals successfully use the same argument to defend their conception of freedom. Therefore, we need a different strategy to test whether full self-ownership is, in the end, justifiable. In the next chapter, I will attempt one possible alternative strategy. I will test, in chapter III, whether libertarian self-ownership survives the strongest objection that can be made against it.

4. The fundamental argument for full self-ownership

A second argument in favour of the self-ownership principle that is very popular among libertarians is the fundamental argument.[76] The fundamental argument is Kantian in its nature.

[76] Versions of the fundamental argument are defended by, for example, Mack (1999, 2002b, 2005, 2009a), Nozick (1974), Vallentyne (2012a), Otsuka (2003), Steiner (1994), Roark (2013), Wendt (2018), Zwolinski

It derives full self-ownership rights from the idea that persons have a special moral status because of their capacity to set and pursue ends and that, therefore, they ought to be treated with proper respect. To treat a person with proper respect means, or so the argument goes, to treat her as a separate individual and a being with intrinsic, self-originating, value. One should not treat an agent solely as a means for someone else's wellbeing, but always respect the intrinsic value that follows from her separate existence and special moral status. Libertarians hold that full self-ownership is the principle that is best fit to translate those fundamental ideas about the special moral status of individuals as separate and independent end-setters and end-pursuers to a set of enforceable rights and duties. In this section, I will develop the fundamental argument in more detail. I will explain that the special moral status of persons and the importance of their separate existence entails their inviolability. The discussion of the fundamental argument for full self-ownership will make clear, again, that the idea is attractive and prima facie plausible.

4.1. The special moral status of persons

The fundamental argument for full self-ownership starts with the observation that there are beings, most certainly including the category of unimpaired adult human beings, that have a special moral status.[77] In what has been said so far and in what will be said from now on, I call beings with such a special moral status 'agents'. If we compare our treatment of agents with the treatment of objects and non-human animals, it is obvious that it is permissible to do certain things to the latter that we ought not to do to the former. While I am permitted to hit a football with my feet or to throw a stone in the pond, it is impermissible for me to act similarly towards my neighbour. In similar vein, it is permissible for me to coerce my sheep so that they make their way to the stable or shear them to make clothes that protect me against

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(2008b), Rothbard (1998) and Feser (2004). For a somewhat original, even more Kantian-inspired, version of the argument, see Taylor (2004).

[77] I shelve the difficult questions concerning the moral status of minors and severely impaired adults. I am aware that a complete account of full self-ownership rights should take up these difficult issues. Nevertheless, to provide an answer to these questions falls outside the scope of this PhD. For an interesting introduction to the questions and challenges that the development of a full account of moral status would encounter, see Jaworska and Tannenbaum (2013).

Here is one preliminary thought, though. Given what has been said earlier in this chapter, a view that grounds special moral status in either the possession of cognitively sophisticated capacities or membership of a cognitively sophisticated species is arguably correct. As we have seen, also a (temporary) coma patient has ownership rights with regard to her person. This, plausibly, suggests that membership of a sophisticated species is sufficient to have a special moral status.

the cold, but I ought not to treat my colleague in the same way. The difference can be explained by reference to the special moral status of agents. They have a certain moral standing that is 'higher' than, or at least different from, the moral standing of objects and animals.[78]

The special moral status of agents quite plausibly follows from some feature (or features) about them that objects and non-human animals lack. Different theories have pointed to different features that trigger the special moral status (Jaworska & Tannenbaum, 2013). Some point to intellectual capacities, including self-awareness, being future-directed in one's desires and plans or a capacity to value, to bargain, and to assume duties and responsibilities. Others focus on emotional capacities, like the capacity to care. Nevertheless, I believe Nozick was on the right track when he posited a Kantian account of the special moral status of humans based on the capacities to set and pursue ends. For Nozick (1974, p. 49) an agent is

> "a being able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being that limits its own behaviour in accordance with some principles or picture it has of what an appropriate life is for itself and others, and so on."

What this all comes down to is the idea that agents are purposive beings, i.e. that they have a capacity to set and pursue all kinds of ends.[79] We can set and pursue rather trivial ends like deciding what to cook for dinner, whether or not to go for a game of snooker in the evening and which present to buy for the wedding of a friend. But we can also reason about and act upon more fundamental ends, like whether or not to have a baby, to live according to some religious requirements and to pursue a certain kind of professional career. Unlike objects and (most) non-human animals, agents have this capacity to evaluate different options, pick some as the most preferable way to lead one's life and to act upon them. Arguably, this capacity of persons to rationally and autonomously set and pursue ends has some implications on how we can permissibly treat others (see below).

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[78] Objects are generally considered to lack any moral standing at all. Non-human animals do have moral standing. We ought not to torture sheep for fun, for example. Nevertheless, as I explain in the main text, their moral standing differs from that of agents.

[79] I borrow the descriptive terminology of persons as 'purposive beings' from Mack (1995) and Wendt (2018). The idea that the capacity to set and pursue ends grounds the special moral status of persons, though, can be found in a very wide range of publications (see, for example, the footnote at the start of section 4).

It follows from the special moral status of persons that each person's life and wellbeing has some special importance. If it is true that each agent has a certain moral status that is more demanding than the status of animals and objects, it must be true that there is something especially valuable, at least relative to the lives of animals and the existence of objects, about each agent's life and wellbeing. It seems that there is a value in such a life that is lacking in dogs and stones.

4.2. The separateness of persons

Libertarians plausibly argue that one essential way in which the special importance of each agent's life informs morality is in demanding respect for the separateness of persons (Nozick, 1974, pp. 32-33; Otsuka, 2011; Zwolinski, 2008b). Of course, it is a contingent fact of human nature that an individual only has her own life to live and that distinct individuals most often differ in the values they accept and use to set their own ends. The idea of the separateness of persons goes one step further, though, and links some normative conclusions to this factual description. This is because the special moral status of agents entails that each agent's life and wellbeing is important, as an independent source of value, irrespective of the value of the lives of others and irrespective of the aggregative value that might exist in a world that is shared by multiple individuals. If each agent is an independent source of value, the importance of each agent's life does not depend on other sources of value, like the lives of others or whether or not one's life contributes to the total sum of value. The life of each agent, thus, is of separate and freestanding importance. This has implications for the permissibility of certain projects.

First, in order to respect the separateness of persons we have to accept that agents have a privilege, or a personal prerogative, to pursue their own good (Mack, 2005, 2009a; Zwolinski, 2008b). To respect the separateness of persons, namely, entails to respect and accept that distinct persons can (and probably will) set and pursue all kinds of different ends. We could categorize all possible ends in several ways, but one helpful distinction here is between ends that are (mainly) self-focussed and ends that are (mainly) other-focussed. Ends that are self-focussed aim at increasing one's own good and wellbeing. To watch a game of football of your favourite team, to go to your favourite restaurant, to respect the directives and traditions of your own religion and to marry the person you love the most are examples of mainly self-focussed ends. Ends that are other-focussed aim to increase the good of others. To volunteer

for a charity, to help your old neighbour with her daily groceries and to donate your spare kidney are, arguably, mainly other-focussed ends. As an agent's own life and wellbeing is of special importance to her, it is rational for her to predominantly pursue self-focussed ends. It is rational, for example, to visit your friend rather than your old neighbour during leisure time. Respect for the separateness of persons requires morality to accept the rationality of self-focussed ends and, moreover, the permissibility of pursuing such projects. If (a) your life is of separate and freestanding importance, and (b) you are the one who lives your life, and (c) it is rational to pursue ends that increase your own wellbeing, then (d) it should be permissible to pursue your own good.

The opposite position of what I am arguing here is agent-neutral act consequentialism.[80] Agent-neutral act consequentialism holds that agents are morally required to act so as to maximize the good consequences, and that the consequences are to be evaluated from the perspective of a neutral observer (as opposed to the perspective of the agent herself) (Sinnott-Armstrong, 2015). Examples of such consequentialism can be found in Kagan (1989) and Singer (1993). Agent-neutral act consequentialism holds that we can only act upon our self-focussed ends, or pursue our own wellbeing, if we are morally required to do so. We are morally required to pursue our own wellbeing if this would result in the maximally best outcome overall. Very often, though, agent-neutral act consequentialism will require us to act upon other-focussed ends, i.e. ends that aim to increase the good or wellbeing of others. This is because the increase in (total or average) wellbeing by spending our resources on the good of others will often be higher than spending those on our own rational projects. So, for example, if I could spend my Saturday afternoon either by watching a movie or by doing groceries for my immobile old neighbour, agent-neutral act consequentialism holds that I am morally required to do the latter as this would, let us assume, provide the most good overall. More appalling, but consistently, if an agent can save someone else from death by giving up all her limbs, this theory requires her to do so. In being overly demanding, in that agents are always required to act in order to produce the most good rather than leaving agents a liberty to pursue their own projects, agent-neutral act consequentialism does not respect the separateness of persons. Rather than recognising the separate and freestanding importance of each agent's life, this theory, in the end, considers each life as a resource for the production of agent-neutral value. Depending on the circumstances, it implausibly requires that some agents

[80] For an introduction on the different versions of consequentialism, see Sinnott-Armstrong (2015).

impose tremendous costs and sacrifices upon themselves in order to benefit others. As we have seen, respect for the separateness of persons, by contrast, requires a privilege or personal prerogative to pursue one's own projects. Moreover, the less agents are required to pursue the good of others and the more extensive their privilege to pursue their own wellbeing, the better the separateness of persons is respected.[81]

Second, respect for the separateness of persons requires us not to "treat a person as a mere means to an end which lies outside that person" (Zwolinski, 2008b, p. 152). This idea has two implications. First of all, it implies that it is impermissible for me to treat another as a mere means for the pursuit of *my personal ends*. Whereas I can use a ball or stone merely as a means to have fun by kicking or throwing it around and whereas I can use a sheep merely as a means to protect myself against the cold by shearing it, it is impermissible to use another agent merely as a means for my own projects. The separate importance of this other person's life requires me not to treat her as if she only has the moral status of an object or an animal. I ought to respect the fact that her life is not just up for grabs to use for any of my personal projects but, rather, that she has her own life to lead with her own rational ends to pursue.

A second implication of the idea that we are required not to treat others as a mere means to an end which lies outside that person is that it is impermissible for me to treat a person as a mere means for the *ends of third persons*. Just like I ought not to treat a person as a mere means for my own ends, I ought not to treat her as a mere means for the ends of still someone else or for some group of other persons. Because we are separate individuals with our own lives to lead, I have no right to decide on, and enforce an idea of, how your life should be used to produce some good for other persons. This is a straightforward implication of the idea of the separateness of persons, even if the good your life can produce for some other person or group of persons would be far greater than the good your life can produce for yourself. As Nozick (1974, p. 33) explains:

> "There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and

[81] I should recall here that this PhD investigates libertarianism as a theory of justice which is concerned with the enforceable duties agents owe to one another. Such a theory is consistent with a defence of agent-neutral act consequentialism as the proper theory of unenforceable interpersonal morality. That is, a libertarian can consistently defend that an agent has no enforceable duty to help the needy and, at the same time, hold that all agents have a unenforceable duty to help because of consequentialist reasoning. For more on justice as the enforceable duties agents owe to one another, see the introduction of this PhD.

> benefits others. Nothing more. What happens is that something is done to him for the sake of others. […] To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."

The moral requirement that I ought not to treat someone as a mere means to the ends of someone else gives rise to certain negative duties. Most clearly, it makes it impermissible for me to physically harm and coerce an agent or to deceive or brainwash her in pursuit of my own ends. Many libertarians, moreover, think that the requirements of the separateness of persons can accurately be translated into libertarian self-ownership rights. Those rights, namely, grant agents an extensive sphere of liberty to set and pursue their own ends and protect them against unwanted interference in their purposive activities.

Note that the argument for libertarian self-ownership grounded in the separateness of persons is incomplete. There is still a gap to fill in order to go from the separateness of persons to a justification of the complete set of full self-ownership rights. For example, the fact that we are separate individuals can only partially explain why it is impermissible for you to paternalistically interfere in my life. That is because paternalistic interference is often done for the benefit of the agent interfered with herself, rather than as a means to the benefit of others. Nevertheless, equally obvious, the separateness of persons does give a strong reason to defend some rights of non-interference, i.e. those claim-rights that protect a person from being treated as a mere means to an end that lies outside herself, that are at the core of libertarian self-ownership. Rather than being complete, the fundamental argument is a collection of ideas that, together, suggest the prima facie plausibility of libertarian self-ownership.

4.3. Side constraints and the inviolability of persons

There is a further feature of full self-ownership that libertarians have to be able to justify in order for the fundamental argument to be plausible at all, which is that libertarian self-ownership rights serve as "side constraints upon action" (Nozick, 1974, p. 30) and that they, thereby, reflect the inviolability of persons (Narveson, 1998, pp. 25-26; Nozick, 1974, p. 31). For a right to be a side constraint means that "in deciding which of the available options for action one should pursue at any given time, one should eliminate from consideration those options that would involve one's violating any individual's moral rights" (Arneson, 2011, p. 17). In other words, if rights serve as side constraints, those actions that would imply a rights

infringement are excluded from the set of moral options, as such infringements would be impermissible.[82] So if you have a claim against me not to paternalistically interfere in your life, I should, when deciding how to act, not consider as options all those acts that would imply a paternalistic interference in your life. Side constraints, thus, literally constrain the set of actions I can justly perform (Nozick, 1974, p. 29).

The central feature of side constraints is that they trump other moral considerations and may, thus, not be infringed. For a right to function as a side constraint means that even if the infringement of the right would, for instance, cause significant benefits for the right-holder herself or for non-right-holders, the right survives and an infringement of the right would be impermissible and, thus, a rights violation. For example, if my claim against you not to hit me in the face serves as a side constraint upon your actions, you are not permitted to do so even if such a hit in the face would cure your mother from a severe disease.[83]

Side constraints have been criticized for being irrational (Scheffler, 1988a, 1988b). Namely, a defence of side constraints is vulnerable, or so the criticism claims, to the 'paradox of deontology'. The idea is that if it is so important that rights are not infringed, as side constraints deontologists claim, why can one not permissibly infringe the rights of one person if such an infringement would result in the non-infringement of similar rights of many more persons? For example, consider *Rocket*:

> **Rocket**: Andy, being in a park, launches a rocket in order to kill five persons at the other side of the lawn. Beth witnesses Andy's attack and can either (a) do nothing or (b) push Chris in the trajectory of the rocket. If Beth chooses (b), Chris will die and the five will be saved.

A libertarian holds that Beth has to refrain from pushing Chris in front of the rocket because Chris's rights over himself serve as side constraints and may not be infringed. But is it not irrational, one may ask, to defend a view that stresses the importance of rights not being infringed and still defend an option (option (a) in *Rocket*) that results in more rights infringements rather than less? If respect for rights is that important, it might seem more

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[82] Recall from chapter I that a right can be infringed either permissibly or impermissibly. Only an impermissible infringement constitutes a rights violation.

[83] Note that side constraints can be absolute or non-absolute (cf. the discussion of the stringency of rights in chapter I). Libertarians who defend full self-ownership defend absolute side constraints and claim that no other moral consideration can ever override a libertarian self-ownership right.

logical to take the non-infringement of rights as a moral goal rather than as a side constraint, and thus to hold that infringements of rights should be minimized (Scheffler, 1988a).

Nozick (1974, pp. 28-30) anticipated this criticism, set it out himself and labelled the suggested alternative 'utilitarianism of rights'. If one accepts a utilitarianism of rights, the view that the non-infringement of rights is a moral goal, one accepts that the rights of some can be permissibly infringed in order to prevent the infringement of many more rights of others. Notwithstanding Nozick's anticipation and ultimate rejection of a utilitarianism of rights (cf. infra), some still believe that the paradox of deontology is one of the strongest arguments against side constraints (Alexander & Moore, 2016). Libertarians, though, are very well-equipped to respond to the paradox-criticism. Moreover, their response strengthens the argument for side constraints and, more generally, the fundamental argument for libertarian self-ownership.

Libertarians can take two different routes in response to the paradox-criticism, only one of which is successful. The first, unsuccessful, route holds that the most plausible way out for libertarians is "to conceive of rights as giving agent-relative reasons to each actor to refrain from doing actions violative of such rights" (Alexander & Moore, 2016, section 2.2) and, moreover, to take the non-violation of rights as an agent-centred goal that ought to be maximized (Scheffler, 1988a).[84] The thought is that a libertarian should take rights to be constraints on the actions of each agent and see rights-infringements as a bad that each agent should avoid to bring about by an action of herself.

If libertarians accept this view, they can both explain why in *Rocket* Beth has a duty not to push Chris in the trajectory of the rocket and make their theory consistent with ordinary rationality. If rights provide agent-relative reasons for non-infringement, Beth may not push Chris, as the latter's rights over his own person give Beth agent-relative reasons not to infringe them. Even if Andy will be infringing, and clearly violating, the self-ownership rights of the five when the rocket hits its target, Beth still has independent reasons, based on Chris's

[84] Agent-relative reasons and agent-centred goals are reasons for action that are grounded in the perspective of the agent herself rather than in the perspective of an impartial spectator. 'Each agent ought to maximize her own wellbeing' is an example of an agent-relative reason or goal. A reason or goal is agent-neutral, on the other hand, if it is grounded in the perspective of an impartial spectator. 'Each agent ought to maximize the total amount of wellbeing in society' is an agent-neutral reason or goal, as it does not matter who's wellbeing is maximized. Consequentialism is generally grounded in agent-neutral reasons, as 'the good' it wants to maximize is defined by agent-neutral, or impartial, considerations (e.g. maximize the amount of happiness in society).
Note that although Scheffler suggests this view as a possible alternative, he does not defend it and does not think it can be successfully defended by deontologists either (see Scheffler, 1988a, pp. 253-254).

rights, not to act wrongly towards him. Also, rights so construed enable libertarians to accept the standard rationale that if something is bad (like violating someone else's rights) it is better that less rather than more of this bad occurs (cf. Scheffler, 1988a). If rights give agent-relative reasons and an agent-centred goal not to infringe them, it is, following standard rationality, better for an agent to bring about less rather than more rights infringements. If those agent-relative reasons are sufficiently strong, it might follow that agents have a duty to minimize the occurrence of rights-infringements that they themselves bring about by their actions.

Nevertheless, as Otsuka (2011) explains, there is a fundamental flaw in the suggestion that libertarians can overcome the paradox of deontology if they accept that agents should minimize their own rights infringements. This is because side constraints do not only require an agent (e.g. Beth) not to infringe someone's (e.g. Chris) rights to prevent *another agent* (e.g. Andy) from infringing even more rights. Side constraints also require not to infringe someone's rights to prevent *oneself* from infringing more rights. Imagine that, unlike in *Rocket*, it is Andy himself, rather than Beth, who could, after having launched the rocket, push Chris in its trajectory to save the five (see Otsuka, 2011, p. 43). It seems that if rights only give agent-relative reasons, Andy is permitted to push Chris as this would minimize his rights infringements. But if Chris's rights are side constraints, as libertarians claim, and they thus limit Andy's available options for action, Chris's rights over himself still protect him against Andy's push. The suggestion of agent-relative reasons to minimize rights infringements, thus, contradicts with the idea of side constraints. Therefore, libertarians should reject the suggestion to interpret rights as giving agent-relative reasons and an agent-centred goal to minimize one's own rights infringements.[85]

The second, more plausible, route for libertarians to show that side constraints are not irrational, and thus to overcome the paradox-criticism, is one based on the special moral status of agents and the inviolability that this status demands (cf. Nozick, 1974, chapter 3; Otsuka,

[85] For similar views, see Thomson (1985, p. 1399) and Kamm (2016a, see for example her 'Strong Claim 3', p. 38). Thomson considers a case in which a doctor causes organ failure in five persons, killing them all unless she kills one healthy person in order to transplant organs from the latter to the five. Even although the five would die because of the doctor's actions, Thomson stresses that the doctor has no more right to kill the healthy person than would an otherwise innocent doctor. Kamm uses another hypothetical example to express the same opinion. She consider a trolley driver heading towards five persons who are trapped on a track. The driver will kill the five unless she pushes a button that would dislodge a mechanical device that will topple a fat man, standing on a bridge over the track, to fall on the track. The trolley would hit the fat man and, by so killing him, stop moving towards, and save, the five. Kamm thinks it is impermissible for the trolley driver to push the button. Both examples express the view I defend in the main text. That is, one's own killing of a person is not made permissible merely because one can thereby prevent oneself from killing even more persons.

2011). As we have seen, libertarians ground the full self-ownership rights in the special moral status of agents. Because agents are purposive beings, in contrast to (most) animals and objects, they ought to be respected as separate individuals with their own life to lead and may not be treated as a mere means to an end that lies outside themselves. Interestingly, to accept deontological side constraints best reflects this special moral status of agents as separate end-setters and end-pursuers. That is because a morality based on side constraints respects the value of each agent's purposive capacity. If this capacity indeed is very valuable, as libertarians plausibly claim, its importance must be reflected by one's structure of rights. Rights reflect the purposive capacity of agents, most clearly, insofar as they protect the inviolability of agents. And, as we have seen, this is precisely what side constraints do. Side constraints make sure that, even if the ends of someone else (e.g. Beth) would produce more good overall (e.g. if Beth opts for (b): save the five from being killed), rights still protect and respect one's (e.g. Chris's) capacity to set and pursue one's own ends.

Moreover, the greater one's inviolability, the higher one's status as a separate purposive being. For example, compare the following two structures of rights, which are otherwise similar:

> **A**: One is only permitted to kill one agent if the amount of killings that one can thereby avoid exceeds two.
>
> **B**: One is only permitted to kill one person if the amount of killings that one can thereby avoid exceeds one million.

It is clear that the inviolability of agents in structure *B* is greater than the inviolability of agents in structure *A*. In structure *B* one can only be killed permissibly if the amount of killings to be avoided exceeds one million, whereas in structure *A* one can already be killed permissibly if the killing of only two other persons could thereby be avoided. It follows, from this greater inviolability, that the rights in structure *B* reflect a higher moral status of agents as separate purposive beings because permissible disrespect for their capacity to set and pursue ends will be more rare than in structure *A*. In other words, greater inviolability reflects a higher moral status because less can be done to a person to generate good outcomes overall (Otsuka, 2011).

This concludes my discussion of the fundamental argument for libertarian self-ownership. I have explained that a plausible manner to ground full self-ownership is a Kantian argument,

already partially set out by Nozick, based on the special moral status of agents as separate purposive beings. What makes agents worthy of special moral consideration is that they can rationally set and pursue ends for themselves. This autonomous capacity requires all of us to respect other agents as separate beings with their own lives to lead and this, plausibly, implies that we ought to respect the liberty of all to set and pursue their own ends. Moreover, proper respect for this special moral status can only be reflected by a side constraints morality. Side constraints respect the purposive capacity and the high moral status of agents by granting them a certain inviolability. It is plausible that the elements and requirements that follow from this argument can be accurately translated for each agent to a set of full ownership over oneself. Such rights, namely, guarantee a very strong protection of one's liberty to set and pursue one's own ends and against a range of non-consensual interferences with one's person that express standard disrespectful treatments.

5. Liberal accommodation of the fundamental argument

Although the fundamental argument demonstrates the prima facie plausibility of libertarian self-ownership, it is, just like the abductive argument, inconclusive. Liberals, namely, also accept the fundamental argument and, moreover, use it in their favour. In this section, I will explain, in contrast to what some libertarians seem to believe (e.g. Feser, 2004; Mack, 2009a; Nozick, 1974), that the fundamental argument cannot show the superiority of the libertarian project over liberal freedom. Moreover, it seems that the fundamental argument in favour of the self-ownership principle is a copy of, or at most an extended version of, Rawls' argument for the original position in *A Theory of Justice*.

A first thing to note is that libertarians and liberals have a common opponent. Just like libertarians do in the fundamental argument for full self-ownership, liberals consider agent-neutral act consequentialism, which has utilitarianism as its most famous exemplar, as the theory that has to be refuted to show the plausibility of their own theory. Rawls (1999, p. xviii), most famously, aims "to offer an alternative systematic account of justice that is superior […] to […] utilitarianism".[86] Just like libertarians, liberals offer a deontological

[86] Whereas Rawls' Justice as Fairness offers a forceful alternative for utilitarianism, Scheffler (2003a), interestingly, points at some similarities between the two theories. These similarities exist of (a) a common aim to provide a more systematic structure of justice than offered by intuitionism, (b) a shared believe that common-sense morality is subordinate to a higher criterion or principle, and (c) the idea that the character of distributive

theory as an alternative to agent-neutral act consequentialism. Also liberals think the right has priority over the good (Rawls, 1999, pp. 27-28). Whereas agent-neutral act consequentialism defines the good independently from the right, and then considers the right to be that action that maximizes the good, liberals hold that "the question of attaining the greatest net balance of satisfaction never arises in [a liberal theory of justice]; this maximum principle is not used at all" (Rawls, 1999, p. 27). On the contrary, although the right may take the good into account, it must be grounded in other values as well, like equality of concern and respect and, as we will see shortly, the separateness of persons (Kelly, 2005, p. 41). In doing so, liberals acknowledge and accept that it is common sense to distinguish rights and liberty from the desirability of increasing aggregate social welfare and to prioritize, if not give absolute weight, to the former (Rawls, 1999, p. 24).

Apart from having a common opponent, libertarians and liberals also, secondly, use the same argument to refute that opponent. Just like libertarians do in the fundamental argument, liberals stress the importance of the separateness of persons, i.e. the idea "that individuals have ultimate moral significance and cannot be sacrificed for the good of others, individually or collectively" (Kelly, 2005, p. 41). The importance of this value follows from the nature of individuals as autonomous agents with their own individual ends. Liberals think that there is a plurality of rational ends that individuals might want to pursue and that, therefore, different persons should not be considered as a means to maximize some 'objective' collective good. Agent-neutral act consequentialism, Rawls (1999, p. 24) argues, "does not take seriously the distinction between persons" because it unreasonably allows to unilaterally sacrifice the basic rights and liberties of some to improve the welfare of others (see also Kelly, 2005, p. 35; Scheffler, 2003a, p. 440).

> "Each member of society is thought to have an inviolability founded on justice or, as some say, on natural right, which even the welfare of every one else cannot override. Justice denies that the loss of freedom for some is made right by a greater good shared by others. The reasoning which balances the gains and losses of different persons as if they were one person is excluded. Therefore in a just society the basic liberties are

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justice is holistic rather than interpersonal (cf. their focus on institutions). As these similarities have no bearing on my argument in the main text, I leave them aside.

> taken for granted and the rights secured by justice are not subject to political bargaining or to the calculus of social interests."[87] (Rawls, 1999, pp. 24-25)

And to sum up, Rawls (1999, p. 25) writes that

> "if we assume that the correct regulative principle for anything depends on the nature of that thing, and that the plurality of distinct persons with separate systems of ends is an essential feature of human societies, we should not expect the principles of social choice to be utilitarian."

It seems, thus, that post-Rawls libertarians have either copied Rawls's argument against agent-neutral act consequentialism (e.g. Feser, 2004; Nozick, 1974) or accepted it as their basis to develop a further argument (Mack, 1999, 2005, 2009a; Otsuka, 2011). It follows that both liberals and libertarians are happy to grant persons the capacity to reason about, and choose among, a whole range of different rational ends and to derive from this capacity a special moral status as a separate being, the good of whom ought not to be balanced against the good of others.

It is probably unsurprising, then, that, as we have seen (cf. supra: the liberal accommodation of the abductive argument), libertarians and liberals defend many of the same rights and liberties (see also Lomasky, 2005, p. 180; Zwolinski, 2008b, p. 161). Moreover, both consider the defence of these rights and liberties as the key feature of their theory and, therefore, grant them a special priority. Whereas libertarians defend full self-ownership rights as side constraints on action, liberals defend a liberty principle that has priority over other considerations of justice. Those priority rules, thus, protect libertarian and liberal rights, respectively, against a consequentialist calculus.

Notwithstanding all those commonalities between libertarians and liberals in their rejection of agent-neutral act consequentialism, they do differ in the immediate implications that they think follow from a rejection of utilitarianism based on the moral status of agents as separate, autonomous individuals. Libertarians think they can derive a set of rights and duties that

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[87] A similar statement can be found very early in *A Theory of Justice* (Rawls, 1999, p. 3): "Each person possesses inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by the many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests."

defines the just treatment of others immediately from the basic idea that we are separate beings able to set and pursue rational ends (cf. supra; see also Mack, 2014, section 2.2). It follows from this idea that an agent may not be treated as a mere means for an end that lies outside that person and this, in turn, requires to respect many, if not all, of the liberties and claim-rights implied by full self-ownership. Liberals, on the other hand, think the separateness of persons requires to treat agents with a particular form of concern and respect, often related to the idea of a social contract (Kelly, 2005, chapter 3). Rawls (1999, see in particular, for example, p. 25) explicitly argues that the separateness of persons requires respect for the agreement, or social contract, that separate individuals would make under fair circumstances. Those fair conditions of negotiation are created behind the veil of ignorance in the original position.

It is not obvious, I believe, which implication, libertarian self-ownership rights or respect for a fair contract, most logically follows from the special moral status of agents and the separateness of persons.[88] Mack (2014, section 2.2) is probably right when he claims that, if one only states the argument in a positive way without further comparisons with other theories, the fundamental argument "offer[s] [libertarians] as much of a foundation for adopting [a] natural rights stance [as it offers liberals] for adopting [a] contractarian stance". This strengthens the idea that the fundamental argument on its own is inconclusive. Although it provides libertarian self-ownership with some moral foundations, it must be accompanied with other arguments, like intuitive arguments (e.g. in hard cases) or comparative arguments (e.g. a further and closer comparison with liberal freedom), to make sure full self-ownership is justifiable after adequate reflection.

6. Conclusion

The aim of this chapter was to develop and to evaluate two popular arguments for libertarian self-ownership: the abductive argument and the fundamental argument. The abductive argument holds that full self-ownership is either (a) necessary to explain many of our

[88] For a libertarian critique against liberalism's contractualism as an implication of the separateness of persons, see Zwolinski (2008b). Zwolinski (2008b, pp. 160-161) questions, for example, why, given his attachment to the separateness of persons, Rawls strips away any characteristic that could distinguish separate persons in the original position (cf. Nozick, 1974) and why he only lets classes of persons, rather than separate individuals, be represented in the original position.

intuitions with regards to straightforward rights and wrongs (ambitious abductive argument) or (b) a plausible, deep and unifying explanation of many of those intuitions, leaving open the option that there are other plausible explanations as well (the modest abductive argument). The abductive argument for libertarian self-ownership is attractive but inconclusive. It is attractive because it can justify the use of the *concept* of self-ownership to express many of the standard rights and liberties necessary to pursue one's own projects. Everyone who defends a form of individual liberty defends at least, implicitly or explicitly, some partial self-ownership rights. Moreover, the abductive argument shows, based on our intuitions with regards to the obvious rights and wrongs, that a conception of self-ownership that consists of *extensive* and *very stringent* rights is, overall, plausible. That is because very often, indeed, we believe it is the person herself who ought to decide how her person is to be employed.

Nevertheless, the abductive argument is inconclusive for two reasons. Firstly, it cannot show that our intuitions necessarily point to the libertarian conception of self-ownership, that consists of *comprehensive* and *maximally stringent* rights. Although full self-ownership provides an easy, unifying and attractive explanation for our intuitions, the abductive argument is *sufficient* only to justify a more liberal, less comprehensive and less stringent, conception of self-ownership. Secondly, liberals have several plausible routes to accommodate the intuitions to which the abductive argument refers. They can successfully point at the importance of a right to bodily integrity, defend partial self-ownership or defend a right against severe interference. Therefore, the abductive argument only provides proof for the *prima facie* plausibility of libertarian self-ownership.

The fundamental argument for libertarian self-ownership claims that support for the self-ownership principle can be found in the special moral status of agents as purposive beings, capable to rationally set and pursue their own ends. This special moral status, together with the idea that all agents are separate in that they all have intrinsic moral value and have their own individual ends to pursue, grounds a duty in everyone not to treat others in certain specified ways. Given the special moral status of agents and the separateness of persons, all agents should refrain from coercive or harmful interference in the lives of others, and respect the dominion of all agents over their own person. I have argued that this argument is convincing as a justification for *extensive* and *very stringent* self-ownership rights. Nevertheless, it is doubtful whether the fundamental argument can, in the end, ground *full* self-ownership rights as liberals can plausibly make use of the same argument to ground less-

than-full liberties. Therefore, like the abductive argument, the fundamental arguments is only capable to show the prima facie plausibility of libertarian self-ownership.

This chapter should be read in conjunction with the previous one and with the next. Chapter I dealt with the *specification* of full self-ownership. I argued that libertarian self-ownership is determinate. This chapter, as well as the next, focused on the *justifiability* of full self-ownership. Chapter II claims that the two most popular arguments for libertarian self-ownership are attractive but inconclusive. They indeed show that full self-ownership is attractive and plausible but are insufficient to show the superiority of libertarianism over liberalism. The next chapter, therefore, takes a different strategy. I will take, there, full self-ownership as a given and subject it to its most forceful criticism: the fanaticism objection. This will help to evaluate the overall plausibility of libertarian self-ownership.

Chapter III: In Defence of Near-Full Means Principle-Based Self-Ownership. Response to the Fanaticism Objection

The aim of this third chapter is, like the previous one, to test the plausibility and justifiability of libertarian self-ownership.[89] My discussion in chapter II showed that it is impossible to construct a complete and conclusive argument for *full* self-ownership grounded in our standard intuitions or in some basic moral values and principles. We were only able to provide a positive, constructive argument for *extensive* and *very stringent* self-ownership rights. As we would like to know whether libertarian self-ownership is plausible, I will change strategy in this chapter. Rather than to develop an argument for full self-ownership from scratch, I will take this conception for granted and proceed from there. Progress will be made by criticizing libertarian self-ownership.

I will consider one of the most convincing objections against full self-ownership: the *fanaticism objection*. The fanaticism objection holds that libertarian self-ownership is fanatical as it cannot explain (a) why small rights-infringements are sometimes permissible, (b) why some very grave rights-infringements can be justifiable when they occur as a side effect of (rather than as a means for) pursuing the greater good, and (c) why some non-contractual positive duties can be permissibly enforced. Many think these implications are implausible. Surely, or so it is claimed, some infringements of self-ownership rights are permissible if the consequences of infringing a right are sufficiently good. Equally obvious, the critics claim, some duties to help others are permissibly enforceable.

I will argue that the fanaticism objection against libertarian self-ownership is valid. A plausible theory about our enforceable rights and duties with regards to the use and control of each other's person must accept that it is sometimes permissible to infringe self-ownership rights. I will claim that the permissibility of a rights-infringement is a function of (a) the importance of the right that is infringed, (b) the good consequences that follow from the infringement, and (c) whether the infringement occurs as a means or as a side effect of pursuing a benefit for others. This means that I will back away from full self-ownership.

[89] Recall that I use 'full self-ownership' and 'libertarian self-ownership' interchangeably. It are different names for the same conception of the self-ownership principle. In particular, full or libertarian self-ownership implies comprehensive and maximally stringent (or absolute) self-ownership rights.

Nevertheless, or so I will argue, backing away from full self-ownership does not imply a rejection of the self-ownership principle altogether. Rather, I will argue for a more moderate conception of that principle: *near-full means principle-based self-ownership* (near-full MPSO).

On the one hand, this conception of self-ownership is 'near-full' rather than 'full'. It accepts that different rights are of varying stringency, that (almost) no single right is of absolute stringency and that, in some circumstances, the needs of others provide a sufficient justification to force an agent to provide service to the needy and, thus, to override the agent's self-ownership rights. On the other hand, this conception of self-ownership is 'means principle-based'. It accepts that there is something especially wrong with being used as a means for the benefit of others and that an agent's self-ownership rights, therefore, must provide special protections against such uses. This implies that, if the infringement of self-ownership rights is sometimes permissible, infringements that occur as a means are harder to justify than infringements that occur as a side effect. I will explain that the acceptance of 'the means principle' not only follows from an analysis of our considered judgements, but that it can also be coherently defended by means of a standard 'rationale' for self-ownership. That is, our special moral status as separate purposive beings provides a moral ground for means principle-based self-ownership rights. Near-full MPSO offers an attractive and plausible answer to the fanaticism objection, or so I will claim.

In accepting these modifications to libertarian self-ownership, near-full MPSO slightly moves away from full self-ownership in the direction of a standard liberal conception of freedom, like Rawls's (cf. Chapter II). Nevertheless, near-full MPSO does not collapse in a standard liberal conception of freedom. It remains a strong deontological principle because the set of permissible rights infringements and enforceable positive duties is still severely limited. I will explain that our special moral status as separate purposive beings justifies a strong presumption against rights infringements.

The chapter develops as follows. In the first section, I will quickly repeat and discuss some of the core features of the self-ownership principle. A good understanding of these features will help to grasp the fanaticism objection. Then, in the second section, I will set forth the fanaticism objection and claim its decisiveness. We should reject full self-ownership as (a) it leads to morally required paralysis as it cannot justify many standard, day-to-day rights infringements that are necessary to live a minimally free life, (b) it cannot explain the

permissibility of certain serious incursions that occur as a side effect of pursuing a significantly greater good and (c) it holds that any enforcement of a positive duty is impermissible. These three positions (a, b and c) are fanatical. Section three considers Nozick's attempt to respond to the fanaticism objection. Nozick suggests that it might sometimes be permissible to infringe a self-ownership right, or 'cross a boundary', if due compensation is paid to the right-holder. In line with the arguments of Mack (2011) and Sobel (2012), I will argue that this suggestion is problematic as it opens the door for paternalism and misses the point of libertarian rights altogether. A better suggestion to partly respond to the fanaticism objection is offered by Otsuka (2003). In a fourth section, I will discuss and elaborate his idea to strengthen the self-ownership principle by incorporating the means principle and, more specifically, the Doctrine of Double Effect (DDE) into one's conception of self-ownership. As Otsuka only quickly stated the idea without specifying its content or providing an argument for its coherence, my aim is to fill those gaps. Nevertheless, in the end, I will criticize Otsuka's conception of self-ownership as (a) it only focusses on very grave rights violations, (b) it is preoccupied by protecting agents against being harmed rather than protecting them against having one's rights infringed, and (c) it is indeterminate. Therefore, in section five, I will defend an alternative conception of self-ownership, near-full MPSO, which improves Otsuka's initial suggestion. The most plausible conception of self-ownership accepts very stringent and comprehensive rights and recognizes that the stringency of those rights is partly determined by whether or not an agent is used as a means for the benefit of others. I will defend this conception against two possible criticisms and claim, in the end, that it is genuinely libertarian. I will conclude, sixth, that near-full MPSO is an attractive and plausible response to the fanaticism objection.

1. Some key features of full self-ownership

In chapter I, I extensively discussed the meaning and content of libertarian self-ownership. The main features of this conception of the self-ownership principle turned out to be the comprehensiveness of the rights and the absoluteness of their stringency. That is, if one defends full self-ownership, one holds that the set of ownership rights that apply to one's person (e.g. control rights, transfer rights, enforcement rights, etc.) is *comprehensive*, or *maximally extensive*, and that all parts of one's person are protected by those rights. This implies that an agent does not only have ownership rights over what might be seen as

essential parts of one's person, like one's brain, heart or capacity to communicate, but also over more peripheral parts like one's hair, nail tissue or the capacity to whistle the melody of Beethoven's Für Elise. As our complete person is covered by full self-ownership, all parts of our body, mind, talents and energies are protected against interference from others. Any interference with the sovereign use and control of an agent's person is, therefore, a relevant infringement of her self-ownership rights.

Moreover, libertarian self-ownership holds that the rights agents have over their person are *maximally stringent* or *absolute*. This means that, at least insofar as the control and transfer rights are concerned, one can never permissibly infringe those rights.[90] Full self-ownership implies that each infringement of a right is wrongful and, thus, a rights violations. If one defends absolute rights, no other moral considerations exist that are sufficiently weighty to loosen the stringency of those rights in order to make an infringement permissible.

Two further features of full self-ownership are relevant for the purposes of this chapter (for a similar analysis, see Sobel, 2013; Zwolinski, 2016, pp. 73-74). One extra feature that helps to understand the fanaticism objection is that theorists who defend libertarian self-ownership aim to use this *single principle* to cover all, or almost all, enforceable rights and duties we have with regards to our person. No other considerations or principles are relevant to determine the content of our individual rights and duties with regards to our person and the person of others. This means that this one principle has a broad range of application, reaching from the simple use of our body to move from one space to another, to cough or to let one's hair being cut, to more substantial uses like exercising one's freedom of expression or freedom of conscience. The idea is that one single principle tells us all we need to know about the protections we have against interference with the use and control of our person.

Another relevant feature of the prototypical libertarian conception of the self-ownership principle is that it considers all interferences with one's person are *equally* relevant. All infringements of our self-ownership rights are, irrespective of, for example, the kind of interests that are compromised by the infringement, the seriousness of the harm the infringement generates or the amount of good that the infringement would bring about,

[90] Recall from chapter I that there is some inherent indeterminacy with regards to de enforcement rights, compensation rights and immunities to the nonconsensual loss of one's rights. Those rights necessarily conflict, as absolute enforcement and compensation rights would severely weaken the immunities to the nonconsensual loss of one's rights, and vice versa. That is why I use the phrase "at least insofar as the control and transfer rights are concerned".

equally problematic. All rights infringements share the same moral valuation. Therefore, all rights generate the same degree of protection.

All this can be summarized as follows: theorists who defend full self-ownership hold that the protections against infringements of self-ownership rights are (1) the only morally relevant considerations to determine the enforceable rights and duties we have over our person, (2) broadly applicable to all parts of our person, (3) all equally morally relevant, and (4) of absolute stringency. These four features are all relevant to understand the fanaticism objection.

2. The fanaticism objection

Many authors have, in varying lengths, expressed a version of the fanaticism objection (Arneson, 2005, 2010; Freeman, 2001; Fried, 2004; Lippert-Rasmussen, 2008; Nagel, 1981 [1975]; Sobel, 2012, 2013, 2016; Thomson, 1981; Zwolinski, 2016). The general thought is that full self-ownership provides *too much protection* against interferences with one's person. As we have seen in the previous section, a defender of full self-ownership holds that any incursion by another agent upon any part of one's body, mind, talents or energies is equally wrongful. The critics hold that this position is fanatical, as surely some interferences with the control and use of one's person are more wrongful than others, while still other interferences are not even wrongful at all. That is, some infringements of one's self-ownership rights are morally permissible.

2.1. Tiny infringements and morally required paralysis

The critics are clearly correct on this issue. Consider the following example:

> **Careful Shopper:** A careful shopper, Careful Shopper, walks along Oxford Street, London. Being the busiest shopping street of the city and having only a narrow pavement at each side of the road, Careful Shopper tries to avoid infringing the self-ownership rights of other shoppers. Most of the time she succeeds, and does not bump

into anyone. Nevertheless, today is one of those days that she cannot avoid to slightly touch the arm of another shopper, Other Shopper.[91]

Libertarian self-ownership states that when Careful Shopper non-consensually touches the arm of Other Shopper, she infringes the rights of the latter. Because, according to this conception of self-ownership, all infringements of self-ownership rights are at the same time violations of these rights, Careful Shopper acts impermissibly. She has a duty to avoid violating the self-ownership rights of others and should take measures that stop herself from doing so. If she cannot avoid violating rights, libertarian self-ownership prescribes that she is not permitted to shop at Oxford Street anymore.[92]

A person who has already taken measures to avoid violating the rights of others is Extremely Careful Shopper:

> **Extremely Careful Shopper:** Extremely Careful Shopper is like Careful Shopper, but takes extra measures whenever he walks into a busy shopping street, like Oxford Street. He walks very slowly, tries to make eye contact whenever he passes close to another shopper and wears a fluorescent jacket to make sure others notice him from a distance. Probably because of those measures, Extremely Careful Shopper has, so far, never infringed the rights of anyone else during shopping. Nevertheless, because he needs to move his body in order to shop, he cannot help but to install a small threat of

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[91] This example is inspired by, though different from, Mazor and Vallentyne's 'jogging case' (forthcoming, see also chapter I).

[92] One could argue that there is no violation of libertarian self-ownership rights in *Careful Shopper* as it is custom that if one walks in a crowdy street, one implicitly accepts that others might slightly touch you in passing by. This line of thought was suggested to me by Patrick Loobuyck and accepted by Hillel Steiner (in a paper and in private conversation during the *Why Private Property?*-conference, Université Libre de Bruxelles, June 2017) as the natural way out for libertarians.

I have three things to say in response of this idea. First, if libertarians need to refer to customs to explain why certain infringements of self-ownership rights are permissible, this move implies that the permissibility of the rights infringements cannot be derived from full self-ownership itself. This is precisely the point I make by setting out *Careful Shopper*. Second, a full self-owner must, of course, not comply with a custom. Reference to customs assumes that everyone accepts the custom. But even if everyone else implicitly accepts the proviso on walking in busy streets, I might not, by virtue of my full self-ownership rights, and demand that others do not touch my person in Oxford Street. Third, and most importantly, moral principles, including principles of justice, standardly serve as a baseline to evaluate customs, rather than the other way around (i.e. that the content of the moral principles should be determined by customs). For imagine we live in a society in which there is a custom to anesthetise and then circumcise young adults without their consent. Rather than to adapt our interpretation of the self-ownership principle in order to accommodate this custom, we should, of course, refer to the self-ownership principle to condemn the custom itself. If so, we cannot say that full self-ownership is consistent with *Careful Shopper* by reference to customs. Rather, full self-ownership, as a principle of justice, serves as a guide to evaluate the custom in Oxford Street. And as full self-ownership holds that each infringement of a right is at the same time a rights violation, it judges the acts of Careful Shopper unjustifiable. For those reasons, my point in the main text still stands.

> a rights infringement to all others in Oxford Street, as there is always a chance that he will non-consensually bump into someone or sweep another's arm. Extremely Careful Shopper, thus, imposes a risk on all others that their self-ownership rights will be infringed.

Standardly, full self-ownership is not only taken to protect against actual interferences with one's person, but also against threats of such interferences (e.g. Nozick, 1974, chapter 4; Otsuka, 2003, p. 15). The reason, one might think, is that such threats generate fear and stress upon the threatened agent and are, therefore, impermissible incursions upon the latter's person (e.g. Nozick, 1974, chapter 4, especially p. 65-71). But this argument is unconvincing. To cause fear and stress to others seems insufficient to infringe their rights (Sobel, 2012, pp. 44-45). Fear and stress cannot, on their own, change the status of an act and cannot be sufficient reason to make an act a rights infringement. For example, secularization might cause fear and stress for Christians, but this does not imply that atheists infringe the former's self-ownership rights. It is within the rights of atheists not to practice Christianity, and the rational fear of Christians to be part of a religion that is becoming extinct (at least in some societies) does not have any implications for the content of the rights and duties of atheists.

A better reason to consider threats as a rights infringement is that, standardly, if I own something, it is me, rather than someone else, who is to decide to which risks the thing I own is to be exposed. For example, if I own myself, it is me rather than someone else who ought to be in a position to decide whether or not to play Russian roulette with my person. It seems plausible that I violate the self-ownership rights of another agent if I threaten to shatter her leg even if, in the end, I do not actually do so. To threaten another is to infringe her right to decide for herself which threats to be exposed to.

But if this is true, not only Careful Shopper, but also Extremely Careful Shopper is violating the rights of others. Although he has taken measures to avoid incursions upon the bodies of others as much as possible, he still is a source of threat, merely by moving his body in proximity to others. Him moving his body implies the risk of non-consensually touching the body of others. This means that full self-ownership not only forbids Careful Shopper, but also Extremely Careful Shopper to walk around in Oxford Street, or any other street. This, surely, is an implausible implication. In daily life, all agents permanently infringe the rights of others in very similar ways as Careful Shopper and Extremely Careful Shopper.

Like Careful Shopper, we all non-consensually invade the person of others. Another case in which we do so is when we pollute the air. For example, each time we drive our car or kindle a hearth, to name two instances, we generate small amounts of pollution that result in other persons being non-consensually interfered with, as they breathe air that is slightly more polluted and harmful than it would have been had I not performed those acts.[93] Early on, Rothbard (1978, p. 319) acknowledged the wrongful nature of air pollution because of its inconsistency with full self-ownership rights:

> "The vital fact about air pollution is that the polluter sends unwanted and unbidden pollutants – from smoke to nuclear radiation to sulfur oxides – *through* the air and into the lungs of innocent victims […]. All such emanations which injure person or property constitute aggression against the private property of the victims. Air pollution, after all, is just as much aggression as committing arson against another's property or injuring him physically. Air pollution that injures others is aggression pure and simple."

Similarly, if we consider threats of incursions, like in *Extremely Careful Shopper*, we must admit that there is an endless amount of acts that we perform every day that are, implausibly, impermissible according to libertarian self-ownership. Whenever we move, be it by foot, bicycle, car or plane, we generate a threat for others. There is always a chance that, for whatever reason, my body or vehicle ends up crashing the body of someone else. Mack (2011, p. 113) correctly concludes, like other libertarians, that the self-ownership principle "systematically diminish[es] each person's sphere of permissible and morally protected action; it […] systematically morally preclude[s] individuals from activities that rights are supposed to protect".[94] Whereas the aim of the self-ownership principle is to secure a sphere of liberty for all agents to set and pursue their own projects (cf. chapter II), full self-ownership in effect withholds everyone from doing anything at all. Therefore, the 'full' or 'libertarian' conception of self-ownership should be rejected.

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[93] On the problem of pollution for libertarians, see Arneson (2005, pp. 266-267), Fried (2004, pp. 77-78), Nozick (1974, pp. 79-81), Railton (2003), Sobel (2013) and Zwolinski (2016, p. 79).

[94] Zwolinski and Nozick, for example, come to the same conclusion as Mack:
"If unwanted 'boundary crossing' against one's person or property constitutes aggression and if all aggression, no matter how trivial, constitutes a violation of rights, then it is difficult to avoid the conclusion that almost *everything we do* in modern, civilized society involves the violation of rights" (Zwolinski, 2016, p. 81).
"Since an enormous number of actions do increase risk to others, a society which prohibited such uncovered actions would ill fit a picture of a free society as one embodying a presumption in favor of liberty, under which people permissibly could perform actions so long as they didn't harm others in specified ways" (Nozick, 1974, p. 78).

Sobel (2012, 2013, 2016) correctly argues that one problem with libertarian self-ownership is that it conflates trivial rights infringements with very serious ones.[95] Libertarians consider all incursions upon one's body *equally impermissible*. But this is implausible. First, there are parts of my person that are more relevant, and require better rights protection, than other parts. Surely, an incursion upon my vital organs, like my brain, heart, lungs or eyes, is more problematic than an incursion upon more trivial parts of my person, like my hair, nail tissue or flakes of skin. Second, not all incursions that violate the same protections with regards to one's person are equally problematic. For example, if I am an imprudent shopper, firmly bumping into people all the time, my behaviour violates the same control rights of others as the behaviour of Careful Shopper and Extremely Careful Shopper does, but is clearly more problematic. Or imagine that I shave off all your hair while you are asleep. That is clearly more wrongful than if I would have pulled out only one hair. Both acts are impermissible because of your control rights over your hair, but it is ridiculous to hold that they are equally problematic.

2.2. Significant infringements as a side effect

Interestingly, the fanaticism objection does not only concern the problematic position of libertarian self-ownership with regards to trivial rights infringements such as (tiny) risks of negligible incursions (like in *Extremely Careful Shopper*) or occasions of very small actual infringements (like in *Careful Shopper* or in cases of remote air pollution). Full self-ownership also provides too much protection against more serious boundary crossings. I will give two examples of more serious incursions that libertarian self-ownership implausibly rejects: (a) serious harms (or killings) as a side effect of saving many others from similar harms (or killings) and (b) the enforcement of certain positive duties to others.

A first set of more serious rights infringements that the self-ownership principle implausibly rejects are serious harms as a side effect of saving many others from similar (or even more serious) harms (Otsuka, 2003, p. 13). Consistent with the so called Doctrine of Double Effect, I will argue, later in this chapter, that sometimes serious instances of doing harm, even harms

[95] That is why he calls the criticism 'the conflation problem'. Nevertheless, the objection I express in this section is not only relevant to the position of libertarian self-ownership with regards to *trivial* infringements, as Sobel seems to believe, but also to its position with regards to more *serious* infringements (cf. infra). That is why I prefer to use a different term: the fanaticism objection.

as serious as killing another, are permissible. This is another occasion in which I will depart from full self-ownership. To set the floor, consider *Bystander*:

> **Bystander**: A runaway trolley is heading downhill. Its brakes have failed to work and it is about to run over and kill five persons down the track who are unable to escape. A bystander stands next to the track and the only way she can stop the trolley from killing the five is to push a button so the trolley will be directed to a side track. On this side track is a sixth person who will be killed by the trolley if she pushes the button.[96]

Most people hold, intuitively, that it is (at least) permissible for the bystander in *Bystander*, to turn the trolley to the side track, so that one instead of five will end up dead. If this intuition is correct, it would imply that the one agent on the side track has no enforceable right not to be killed in *Bystander*. I believe that the intuition is indeed particularly strong and plausible.[97]

Nevertheless, full self-ownership cannot accommodate this intuition (Otsuka, 2003, p. 13; Pincione, 2007, pp. 411-412). According to libertarian self-ownership, the bystander would violate the rights of the one person on the side track if she turns the trolley. The one on the side track, namely, has the self-ownership right against everyone else, including the bystander, not to be killed. As we have seen in the last chapter, the best argumentation for the libertarian self-ownership takes the special moral status of persons as separate and independent purposive beings to imply that this right serves as a side constraint on action. Side constraints express the inviolability of agents, which implies that the rights of an agent may not be infringed even if such an infringement would lead to a better outcome overall. Recall that, in *Rocket* (chapter II, section 4.3.), it was also impermissible for Andy and Beth to push Chris in the trajectory of the rocket (that was launched by Andy) in order to avoid the death of the five persons at the other side of the lawn. The idea was that better outcomes cannot justify rights infringements. So even if turning the trolley would lead to the death of only one instead of five, the self-ownership rights of the one function as side constraints and, thus, morally forbid the bystander to turn the trolley (Narveson, 2001, p. 324 holds this position). This implication of libertarian self-ownership is extremely counterintuitive and

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[96] This example is, originally, from Thomson (1985, pp. 1395-1396). For her recent position on the trolley problem, which differs from the earlier position, see Thomson (2008, 2016).

[97] But Thomson (2008), for example, thinks our intuition here is misguided and argues that the bystander is not permitted to turn the trolley. For a rejection of Thomson's view, see Tadros (2011, chapter 6). Recent discussions about the substance and relevance of our intuitions in trolley cases can be found in Kamm's *The Trolley Problem Mysteries* (2016b; see also Ossenblok, 2017b).

fanatical. Our intuitions clearly state that it is permissible to severely harm (or even kill) an agent as a side effect of saving many more others from a similar harm (cf. infra).

2.3. Significant infringements to enforce positive duties

A second set of significant rights infringements that full self-ownership implausibly rejects are those infringements needed to enforce certain very weighty non-contractual positive duties (Arneson, 1991, p. 54; 2005, p. 267; Freeman, 2001, pp. 110-111, 131). Most people, and even many libertarians, rightly think that agents have certain non-enforceable obligations to help others in need if they can do so at little cost to themselves.[98] For example, we arguably have a duty to donate blood now and then in order to help those in severe need of extra blood, to help injured persons if we witnesses a car accident and to help a child who got lost to find her parents. The standard libertarian position is distinctive in that it rejects the *enforceability* of any non-contractual positive duty. Whereas most people think that, subject to certain conditions, some (though not necessarily all) positive duties are permissibly enforceable, full self-ownership prescribes that enforcement of such a duty (which standardly implies the use of coercion, or the threat thereof) is always unjust (cf. chapter I).

This position is fanatical, again. Some duties to provide service to others are so weighty that they justify the use of coercive interference to ensure that an agent complies with her duty. A standard example is the duty of a parent to satisfy the basic needs of his child, like providing nutrition, education and health care. We may, arguably, coerce a parent to provide such basic care for her children (given that he has the means to do so). But Rothbard (1998, pp. 100-101) argues that a consistent defender of libertarian self-ownership must hold that it is impermissible to force a parent to provide basic care for her child and he is one of the few libertarians willing to bite this sizable bullet. This clearly is a crazy implication of full self-ownership.

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[98] Most, though not all, libertarians take this position. Vallentyne (2012a) *might* be an exception here. Although he is not very clear about his position, he seems to defend libertarianism as a complete moral theory, i.e. a complete theory about the rights and duties we owe to each other. In doing so, he rejects the existence of positive duties. Nevertheless, many libertarians defend the position described in the main text and accept libertarianism as a theory about the *enforceable* duties agents owe to one another. They accept that we have certain non-contractual positive duties, but think those duties cannot be permissibly enforced.

Nevertheless, libertarians might not have to bite this bullet. Namely, with regards to the duties of parents to their children, there might be a way out for libertarians. A defender of full self-ownership might argue, by means of some argumentative stretch, that procreation entails voluntary forfeiture of certain self-ownership rights, like those rights that protect against being interfered with if one does not take up one's duties towards the child. In this way, procreation could be considered to be a kind of voluntary contract so that the enforcement of the duty to provide basic care for one's child is not a rights infringement.

In other cases, though, there does not seem to be a plausible way out for the consistent libertarian. Consider the following famous example:

> **Drowning Child**: Sander is walking in a park, enjoying his new walking shoes. In passing by a pond, he witnesses a drowning child. Sander could easily help the child and save her from drowning, but this act would destroy his shoes. Not willing to give up his new shoes, he turns around. Lisa, a bystander, cannot help the child herself but she realizes what is happening and decides to force Sander to help the child. Lisa threatens to break Sander's finger if he does not act according to his non-contractual positive duty towards the child.[99]

With regards to this case, a consistent defender of full self-ownership must hold that it is impermissible for Lisa to enforce Sander's duty. The former's threat to infringe the latter's self-ownership rights is unjust, as each infringement of a right is, at the same time, a violation of that right. This implication is intuitively unacceptable. If the stakes are sufficiently high, like the foreseeable death of a child, and the costs are sufficiently low, like the destruction of one's shoes, there seems to be a point at which a non-contractual positive duty is enforceable (for a similar argument, see Arneson, 2010, pp. 183-185).[100] Sometimes, that is, forcing one to provide service to others is justifiable.

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[99] The drowning child example is originally expressed, in different wording, by Singer (1972). His use of the drowning child case aims to show our non-enforceable duty to help the needy. I believe, though, that our intuitions are sufficient strong to point at an enforceable duty of assistant towards the child.

[100] If the reader believes that our intuitions in *Drowning Child* are insufficiently clear to ground the idea that there are enforceable positive duties, consider the following, even more horrendous, situation:

> **Nuclear Bomb***:* A nuclear bomb will blow up the city of Antwerp unless you push a button that is located just next to your hand. You know which difference your actions would make and pushing the button would require a minimal cost to yourself. You decide not to push the button.

In conclusion, libertarian self-ownership is fanatical. The combination of some essential features of the view, i.e. (1) that it is the only relevant principle to determine our rights over our person, (2) that it protects both essential and trivial parts of our person, (3) that it protects all parts of our person equally, and (4) that it takes rights to be of absolute stringency, leads to extreme implications and makes it, therefore, implausible. Namely, (a) it leads to generalized and morally required paralysis as any (threat of an) infringement, however small or trivial, is impermissible, (b) it cannot explain the permissibility of harms that occur as a side effect of saving others and (c) it cannot explain the permissibility of enforcing certain positive duties. We should, therefore, reject libertarian self-ownership and aim to attenuate full self-ownership rights in order to bring the best conception of self-ownership in line with our considered moral judgements. I will now consider and reject Nozick's proposal to respond to the fanaticism objection.

3. Nozick's cross and compensate

To partly overcome the fanaticism objection, Nozick (1974, chapter 4) suggests the principle of "cross and compensate" (Sobel, 2012). Nozick believes that this principle can, on the one hand, protect many of the deontological rights agents have with regards to their person and, on the other hand, attenuate self-ownership rights so as to avoid generalized paralysis. According to cross and compensate, not all non-consented-to interferences, incursions, or boundary crossings constitute rights violations. Nozick's main claim here is that incursions upon one's person are permissible if due compensation is paid to the subject of the boundary crossing.[101] In what follows I will call the boundary crosser Eline and the person whose boundaries are crossed Ischa.

Am I permitted to force you to push the button if you are unwilling to do so and you motivate your freedom of choice by reference to your self-ownership rights? Obviously the answer is 'yes', even if I can only make you push the button by breaking your arm or proclaiming a threat of imprisonment in case you withhold.

[101] To be fair to Nozick, I must note that he does claim that not all incursions can become permissible if they are accompanied by appropriate compensation. Some clear cases of boundary crossings do not fall within the scope of cross and compensate, or so Nozick argues. Nevertheless, the exceptions to cross and compensate that Nozick mentions need not detain us here. One reason is that the point I want to make in this section will also be clear without such an extra discussion. Another reason is that both Mack (2011) and Sobel (2012) convincingly argue that Nozick is wrong, on his own terms, to limit the application of cross and compensate only to certain boundary crossings and not others. These authors claim that, to be consistent, Nozick should apply cross and compensate to all incursions upon the person of others. Nozick's exceptions can either be translated as an application of cross and compensate (see also Arneson, 2005, pp. 264-265) or they are implausibly based on the concept of fear, which cannot play the role Nozick attributes to it (Sobel, 2012; cf. supra).

According to cross and compensate, Eline is permitted to act in ways that non-consensually interfere with the person of Ischa, or cross his boundaries, if Eline makes sure Ischa will *not* end up worse off than he would have been had the incursion not taken place. The thought is that if Eline infringes some of Ischa's self-ownership rights (e.g. if Eline causes a threat of infringement by driving her car in the street where Ischa is doing his groceries, or if Eline non-consensually cuts Ischa's hair), the infringement is permissible if Eline duly compensates Ischa (in that he is not worse off because of the infringement). The proper baseline for comparison to determine whether or not Ischa is made worse off by such a boundary crossing is, for Nozick, a subjective account of wellbeing. If Eline non-consensually interferes with Ischa's person, Eline should compensate Ischa to the extent that the latter would be indifferent between (a) having none of his rights infringed and (b) having his rights infringed and being compensated. Note that, within Nozick's framework, rights can still be absolute. That is, one can still have an absolute right that 'others refrain from infringing one's rights without providing due compensation'. What the view does imply, though, is that one has no right that 'others refrain from infringing one's rights if appropriate compensation is paid'.

The plausibility of cross and compensate follows from two ideas, which are only quickly developed by Nozick (Sobel, 2012, pp. 40-41). The first is pareto-optimality. If Eline is willing and able to compensate Ischa, because she has non-consensually interfered with Ischa's person, to such an extent that Ischa would be indifferent between not being interfered with and being interfered with in combination with the appropriate compensation, we can assume that a situation in which the interference takes place is pareto-optimal. In the new situation, after the interference took place and compensation was paid, no one is, by hypothesis, worse off. Ischa is not worse off as due compensation is paid. Eline is not worse off either, as she would otherwise not have chosen to cross-and-compensate. Presumably, because she chooses to cross-and-compensate, Eline is better off after doing so. Pareto-optimality is an intuitively attractive idea. What could be wrong with a change of situation in which no one is made worse off and some are made better off?

The second possible argument for cross and compensate is that it is the only way to deal with very small actual incursions, like in *Careful Shopper* or in cases of small amounts of pollution, and with very small risks of insignificant incursions, like in *Extremely Careful Shopper*. Nozick (1974, p. 78) admits that to take full self-ownership to the letter would diminish the freedom of agents immensely and would be inconsistent with the purpose of generating a normative framework in which agents can set and pursue their own ends. Cross

and compensate transforms this implication of libertarian self-ownership into a structure of rights which guarantees much more freedom to pursue one's own projects.

Although those two arguments are attractive indeed, there are several serious problems with Nozick's proposal. That is, certain implications of cross and compensate throw overboard some of the most attractive features of libertarian self-ownership and, moreover, it seems to miss the point of libertarian rights altogether. One problem with Nozick's proposal is that it opens the door for (very extensive forms of) paternalistic interference (Mack, 2011, pp. 107-108; Sobel, 2012, p. 47). Recall that the idea of cross and compensate is that a boundary crossing is permissible if proper compensation is paid. Proper compensation is compensation that makes the agent whose boundaries were crossed (Ischa) indifferent between the new situation (boundary crossing + compensation) and the old (no boundary crossing + no compensation). Now, I have explained that the proper baseline for comparison, to determine whether a person is at least as well off as before the interference, according to Nozick, is a subjective account of wellbeing. This means that it is Ischa himself, the subject of the boundary crossing, who is to determine whether or not, according to his own preferences and insights, he is at least as well off as before. But if this is true, Eline can permissibly interfere with Ischa whenever she knows for sure that Ischa will consider himself at least as well off as before. This is the case even if Ischa, for some reason (e.g. because he wrongly thought he would, according to his own subjective judgements, be worse off after the interference and compensation), explicitly told Eline not to interfere. As long as Ischa considers himself at least as well off after the interference, it does not matter whether or not Ischa consented to the interference. A combination of cross and compensate and a subjective account of wellbeing, thus, opens the door for extensive forms of paternalistic interference.

Note that with an objective account of wellbeing, determined by a 'neutral observer' based on some 'objective criteria', the problem of paternalism would even be bigger for cross and compensate. Eline would be permitted to paternalistically interfere with Ischa and compensate him whenever Ischa would be at least as well off, objectively, as he would have been without the interference. But in this case, paternalistic interference is permissible even if Ischa explicitly dissented from the interference in advance *and* he considers himself (wrongly so, according to the objective criteria) worse off because of the paternalistic act. As Mack (2009b, p. 125) explains, "if agents' self-ownership rights are protected only by liability rules [i.e. rules that state that rights can be permissibly infringed if due compensation is paid, like Nozick's cross and compensate], there is no room for the *principled* anti-paternalist claim that

an agent must be allowed to engage in self-harming action even when coercive interference would genuinely protect him from self-harm" (original italics).

The problem of this implication of cross and compensate is not that paternalism is inconsistent with full self-ownership. The fanaticism objection showed that full self-ownership is implausible, and any conception of self-ownership that aims to overcome this objection will have to "back away" from libertarian self-ownership (Sobel, 2012). What is problematic, though, is that the rejection of paternalism is one of the attractive features of libertarian self-ownership and it is a high cost to pay for an alternative conception of self-ownership to lose that advantage. Standard cases of paternalistic interference, like coercively stopping another from drinking alcohol, smoking tobacco or, in a more extreme case, opening a bank account, are vastly disrespectful to agents.[102] They deny the special moral status of each agent as a separate and independent purposive being capable to rationally set and pursue her own ends, as these interferences claim that some have the right to determine what others should take as their ends. We often accept such coercive interferences with regards to children and animals. For example, it is permissible to coercively stop a five-year-old from drinking a bottle of wine. Similarly, it is permissible to paternalistically interfere with my dog's aim to eat all the pies and cakes that were left over from my birthday party, even by pushing him away or locking him up. But to do so to an agent would be extremely disrespectful to her moral status and, thus, wrong. Standard cases of paternalistic interference, in other words, treat agents as having the moral status of children or, worse, that of animals (Taylor, 2004, pp. 72-74).

This problematic implication of cross and compensate, that it permits paternalistic interference, points at an even more profound issue. Nozick's proposal, namely, puts aside the core attraction of the self-ownership principle. What is fundamentally attractive about the principle is that the ownership rights over one's person guarantee a framework in which one is free to set and pursue one's own ends independent from other agents. One can use and control one's body, mind, talents and energies as one sees fit, as long as one respects the ownership rights of others, and one is free from interference by others. But cross and compensate allows for interferences of all sorts, be it paternalistically or non-paternalistically motivated, that straightforwardly contradict with this core idea of the self-ownership principle (Mack, 2011,

[102] In Belgium, it lasted until 1976 for married women to have the legal right to open a bank account without the permission of their husband.

pp. 107-109; Rothbard, 1998, p. 250; Sobel, 2012, p. 46). For instance, cross and compensate allows me to non-consensually shave off your hair while you are asleep and then compensate you so that you are indifferent in the end (arguably, almost everyone can figure out a form of compensation that would suffice to make one indifferent to having one's hair shaved). But there is not much left of the right to control one's own person if others are permitted to engage in such invasive acts only at the cost of compensation. Therefore, cross and compensate allows far too much interference. Any reasonable conception of self-ownership should guarantee more protection against non-consensual interference than Nozick's proposal is capable to provide.

Last but not least, what is wrong with cross and compensate not only comes down to its implications, which are incompatible with any sensible conception of self-ownership. Cross and compensate also desperately fails to capture the point of libertarian rights. It fails to capture what the wrong-making feature of aggression, incursions and boundary crossings is. As Mack (2011, pp. 108-109) points out:

> "in condemning imposed slavery on the basis of self-proprietorship or self-ownership the Lockean-Nozickean does not mean merely to say that slaves do not receive due compensation for their enslavement. They do not mean to say that, if only we could be sure that a slave is receiving at least as much compensation as would have induced him to agree to enslavement, we could be confident that this enslavement is permissible."

Cross and compensate misses the point of libertarian rights. It evaluates the wrong of a boundary crossing solely on the basis of whether or not a certain level of wellbeing has been retained. But the attractiveness of libertarian rights is that it grants control rights that protect the choice of the agent over how to use her person. What is most relevant is that an agent can do with her person what she thinks is in line with her individual ends. The effects of respect for self-ownership rights on one's wellbeing is, at most, of secondary importance. Self-ownership rights essentially protect the agent as the sovereign ruler of her person. Only rights that are protected by a property rule, in contrast to rights protected by a liability rule, properly

protect the rational and choice-making capacities of agents, which grant their special moral status as independent purposive beings and their inviolability (Mack, 2011, pp. 108-109).[103]

4. Otsuka's means principle-based self-ownership

A more plausible suggestion to overcome the fanaticism objection is made by Michael Otsuka (2003, pp. 13-15). Otsuka defends a conception of the self-ownership principle which I will label *means principle-based self-ownership* (MPSO). MPSO holds, broadly speaking, that a proper conception of self-ownership accepts that there is something especially wrong with using another as a means for the benefit of others. Whilst certain incursions upon the person of others may be permissible, for instance if they occur as a side effect of pursuing the greater good, incursions that take place as a means for the good of others are paradigmatically wrong (Otsuka, 2003, pp. 69-70) and very difficult, if possible at all, to justify. If it can be successfully defended, MPSO provides a partial response to the fanaticism objection because it does not prohibit all harmful or forceful interferences with the person of others. Interferences that come about as a side effect of pursuing the greater good may be permissible. At the very least, MPSO holds that boundary crossings as a side effect are *easier to justify* than similar crossings that occur as a means to achieve a greater good.

In this fourth section, I will critically discuss Otsuka's version of MPSO. First, I will set out Otsuka's MPSO. Then, I will elaborate on the foundations of Otsuka's MPSO and explain its attractiveness. Thereafter, I will argue that a conception of self-ownership grounded in the Doctrine of Double Effect is promising. Nevertheless, in a last section, I will point at some weaknesses of Otsuka's MPSO. This provides the ground for a new conception of MPSO, near-full MPSO, that will be developed and defended in section five.

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[103] The reader might be a bit confused by now. For in the rest of this PhD I write as if Nozick defends (something very close to) full self-ownership, while in this section it seems that Nozick is backing away from the self-ownership principle substantially. So what is Nozick's position? Well, in the whole of *Anarchy, State, and Utopia*, except for chapter 4, Nozick writes as if he defends full self-ownership. That is why most commentators consider him as one of the standard full self-ownership theorists (e.g. Cohen, 1995; Feser, 2004; Thomson, 1981; Wolff, 1991, see also chapter I of this PhD). In chapter 4 of his book, though, he somewhat inconsistently defends cross and compensate. I think we best understand Nozick as defending full self-ownership, period. Nevertheless, as he foresaw some of the problems with this principle he (unsuccessfully) tried to attenuate those rights by an inconsistent defence of a limited version of cross and compensate. Most charitable to him, I take full self-ownership to be part of Nozick's core project and cross and compensate as a stand-alone, implausible, suggestion.

4.1. The general idea

Otsuka (2003, p. 15) argues that a libertarian right of self-ownership, apart from a right to the income of one's labour, most essentially consists of the following right:

> "A very stringent right of control over and use of one's mind and body that bars others from intentionally using one as a means by forcing one to sacrifice life, limb, or labour, where such force operates by means of incursions or threats of incursions upon one's mind and body (including assault and battery and forcible arrest, detention, and imprisonment)."

I will refer to this right as *Otsuka's MPSO*. Otsuka's MPSO differs from full self-ownership in at least two ways. First, Otsuka's MPSO defends 'very stringent' rather than 'maximally stringent' or 'absolute' self-ownership rights. This means that Otsuka's MPSO, in contrast to full self-ownership, accepts that some self-ownership rights can be permissibly infringed.[104] Second, Otsuka's MPSO provides special protection for agents against intentionally being used as a means in certain specified ways. In the concept of full self-ownership, recall, there is no such reference to 'being used as a means', let alone that libertarian self-ownership considers 'being used as a means' especially problematic.

Note that these two distinguishing features of Otsuka's MPSO relate to one another. That is, given that Otsuka's MPSO gives *special* protection against being used as a means in certain specified ways (i.e. the second distinguishing feature), it must be true that other rights are less special and, thus, at least sometimes, permissibly infringeable (i.e. the first distinguishing feature). Otsuka defends 'very stringent' rather than 'absolute' self-ownership rights so as to distinguish between rights that deserve special protection and rights that do not deserve special protection. In other words, for Otsuka, rights against intentionally being used as a means are special in that they are of (close to) absolute stringency, whereas rights against being used as a side effect are less stringent.

Otsuka's MPSO opens the door for the permissibility of incursions in cases like *Careful Shopper*, *Extremely Careful Shopper*, *Bystander* and many other (risks of) boundary crossings (e.g. pollution). Consider, for example, *Careful Shopper*. In *Careful Shopper*, Careful Shopper invades the person of Other Shopper by slightly touching his arm. Arguably,

[104] On the difference between permissibly infringing a right and impermissibly infringing, or violating, a right, see chapter I.

touching Other Shopper's arm is not a means for Careful Shopper to generate good consequences for himself or for other agents. Rather, touching Other Shopper's arm is a side effect of an act (walking from one shop to another in Oxford Street) by which Careful Shopper pursues a good outcome (buying clothes for herself). Otsuka's MPSO provides *special* protection for agents against intentionally being used as a means in certain forceful and coercive ways, so interferences that occur as a side effect are *easier to justify*. Therefore, Otsuka's MPSO can explain why the infringement in *Careful Shopper* is permissible insofar 'being able to shop and buy clothes' is seen as sufficiently important.[105]

Consider, now, *Bystander*. If the bystander pushes the button, he coercively interferes with the one person on the side track. Nevertheless, this boundary crossing is a side effect of an act which pursues the greater good (i.e. saving the five on the main track) rather than a means to save the five. The fact that the one on the side track is being killed does not help, in any way, to save the five. Even if the one would not have been there, pushing the button and diverting the trolley to the side track would have saved the five. Therefore, Otsuka's MPSO accommodates the permissibility of turning the trolley, as killing the one is a side effect of pursuing the greater good rather than a means to do so. If the good pursued (i.e. saving the five) is sufficiently valuable, Otsuka's MPSO can explain why certain incursions upon an agents person are sometimes permissible. For Otsuka, not all incursions are equally wrongful. Insofar as they occur as a side effect, some harms and incursions are permissible.

I will now develop Otsuka's MPSO further. This development serves to better delineate and comprehend its meaning. I must note that development is mine, not Otsuka's. Otsuka only very briefly grounds his MPSO (Otsuka, 2003, pp. 13-15).

4.2. The harmful means principle

As Otsuka's MPSO is grounded in a requirement not to use others as a means in certain specified ways, one might naturally think that this principle is a derivative of Kant's second formulation of the Categorical Imperative. In this formulation, Kant (1785, p. 38) famously wrote: "Act [in such a way] that you use humanity […] always at the same time as an end, never merely as a means." In one way, it would be no surprise if the reader would consider

[105] The same reasoning applies to *Extremely Careful Shopper*.

this statement as the ground for libertarians who defend MPSO, as it was Nozick (1974, pp. 30-31) himself who linked Kant's Categorical Imperative with libertarian rights. Nevertheless, it is important to clearly distinguish Otsuka's MPSO from Kant's *mere means principle*. This will become clear when we improve our knowledge of the latter.

Derek Parfit (2011, p. 227) suggests that we best understand Kant's mere means principle as follows:

> "[W]e treat someone merely as a means if we both use this person in some way and regard her as a mere tool, someone whose well-being and moral claims we ignore, and whom we would treat in whatever way would best achieve our aims."

There are at least two reasons not to focus on Kant's mere means principle in order to try to understand Otsuka's MPSO. First, it is difficult to find out how Kant himself interpreted his mere means principle. As Cohen (1995, p. 240, fn. 15) argues, not to treat someone merely as a means seems to be insufficient to treat her at the same time as an end. Nevertheless, Kant does not specify what, exactly, it means to treat someone as an end. Second, as Parfit (2011, chapter 9) shows, taken literally this mere means principle is implausible. One objection is that the mere means principle, taken literally, permits too much. If a slave-owner sanctions her slaves for their unproductivity by use of her bare hand instead of a whip because she believes the latter would cause too much pain, she is not treating her slaves *merely* as a means as she takes their wellbeing into account. On the other hand, if Kant's mere means principle is not taken literally it, again, is unclear what the principle entails (Parfit, 2011, p. 227).[106]

More convincingly, Otsuka's MPSO is grounded in the 'means principle' as discussed in contemporary moral and legal philosophy. Parfit (2011, p. 229) helpfully labels this principle the *harmful means principle*. The harmful means principle holds in its most basic form that "whilst it may be permissible to pursue the good where this will have, as one of its side effects, some lesser harm to others, it is not permissible to pursue the good where others will be used as a means to achieve that good" (Tadros, 2011, p. 114). Some leading defenders of

[106] One could argue, third, that libertarians cannot use Kant's mere means principle as a ground for self-ownership as Kant thinks the mere means principle is consistent with enforceable positive duties while libertarians standardly reject such duties (cf. Cohen, 1995, pp. 239-240). Nevertheless, as I argued earlier in this chapter, I consider the libertarian's rejection of the enforceability of any positive duty problematic. Therefore, this argument is unfit for my purposes.

the harmful means principle are Quinn (1989), Tadros (2011, 2015) and Kamm (1996, 2007, 2016b). Thomson (2008, 2016) is an influential critic of the view.

The harmful means principle is a better ground for a conception of self-ownership than Kant's mere means principle for two reasons. First, as we will see shortly, it is independently attractive. It is able to explain many of our considered moral judgements. Second, it avoids the difficulties, as they were just mentioned, with Kant's mere means principle. The harmful means principle does not hold that it is impermissible to harm others *merely* as a means. Moreover, as I will explain later, it accurately captures the libertarian's aversion of enforceable positive duties. To enforce a positive duty implies the use of another as a means for the greater good of others and, as the harmful means principle shows, such harmful acts are very hard to justify.[107] For those reasons, the harmful means principle is more consistent with libertarian self-ownership than Kant's mere means principle.

The harmful means principle accurately captures many of our firm intuitions about the wrongfulness of certain acts. For example, it can explain why we may not kill a healthy person and redistribute his organs in order to save five others who are about to die because of organ failure. This is wrong even though it is permissible not to provide a severely ill person, who is about to die, with a certain drug (that is in short supply) if one knows this drug can ensure five others, say, in the room next door, to survive (this example is from Foot, 2002 [1978], p. 24). It can also explain the trolley problem. As we have seen, in turning the trolley in *Bystander*, the bystander harms the one on the side track as a side effect of saving the five. The killing of the one is an unfortunate consequence of an act that produces the greater good. As the harmful means principle explains, such harms in pursuit of a greater good may be permissible. Indeed, saving the five in *Bystander* is, arguably, permissible. But consider the following well-known alternative trolley case:

> **Bridge**: A runaway trolley is heading downhill. Its brakes have failed to work and it is about to run over and kill five persons down the track who are unable to escape. A small man stands on a bridge over the track and the only way he can stop the trolley from running over the five is to push the person standing next to him off the bridge, making him fall in front of the trolley. As his neighbour is bigger, the neighbour's

[107] But given the force of the fanaticism objection I will, in the end, defend the position that some positive duties are permissibly enforceable and that, consequently, some coercive uses as a means (those needed to enforce the duty) are justifiable.

> body, rather than the small man's, is the only one that would have the preferable impact of stopping the trolley, thereby saving the five. Nevertheless, the impact of the trolley would kill the big neighbour.[108]

Would it be permissible for the small man to push his big neighbour off the bridge, in front of the runaway trolley? Obviously not. Most people intuitively think that it would be clearly wrong to do so. Again, the harmful means principle can explain why. It is wrong to push the big neighbour in front of the trolley as this act would harm her as a means for the pursuit of the greater good. In *Bridge*, the harm to the one is a necessary means to generate the greater good of saving the five. It is essential that the big neighbour falls in front of the trolley, because otherwise it would not stop and run over the five. This is different from the one on the side track in *Bystander*. Hitting the one on the side track, in that case, is not necessary to save the five. Even more, it would have been better if the one on the side track was not there at all. Killing the one is just an unfortunate consequence of turning the trolley. But in *Bridge*, it is necessary, and not merely unfortunate, that the trolley hits the big neighbour in order to stop it from running over the five. By pushing his big neighbour, the small man would clearly harm the former as a means. This plausibly explains why pushing a person off the bridge in *Bridge* is impermissible while turning the trolley in *Bystander* is permissible.

4.3. The Doctrine of Productive Purity

Victor Tadros (2011, p. 116 and chapter 7) helpfully explains that there are, broadly speaking, two distinct versions of the harmful means principle. A first, defended by Frances M. Kamm, is the Doctrine of Productive Purity (DPP). This doctrine holds that, in order to determine whether someone is harmed as a means, we need to focus on the causal relations between the harm done to the one and the harm done to the five. Kamm (2007, chapter 5; 2016b, Lecture II) explains that in cases where the lesser harm comes about as a side effect of one's act, like in *Bystander*, the harm is 'causally downstream' from the act that produces the greater good. The act causes the harm to the one. Turning the trolley causes the one on the side track to be killed. In contrast, in cases in which others are harmed as a means, like in *Bridge*, the harm to the one *itself* is what produces the greater good. Throwing the big neighbour of the bridge is not caused by the act that saves the five. It is itself the act that saves the five and thus is a

[108] This case is originally from Thomson (1985).

causal means to the greater good. Kamm captures those ideas about the (im)permissibility of certain harmful acts in her Principle of Permissible Harm (PPH) (for her latest statement, see Kamm, 2016b, p. 66). The distinctiveness of Kamm's view lies in the fact that it determines the permissibility of harm based on certain objective features of the action. What is relevant for permissibility, she thinks, is whether or not the lesser harm is, factually, causally downstream to the act that produces the greater good.

There are two problems with DPP and the accompanying PPH. First, it has some counterintuitive implications (Hurka, 2016). Imagine the following case:

> **Grenade**: A runaway trolley will kill five persons unless we explode a grenade that (we foresee) will kill an innocent bystander as a side effect (Kamm, 1996, p. 151; 2016b, p. 15).

With regards to *Grenade*, Kamm's principle has implausible implications (Hurka, 2016, pp. 141-142). Kamm suggest that the permissibility of throwing the grenade depends on the means by which the bystander is killed. Namely, if the bystander is killed by a loose piece of the bomb, the killing of the one is impermissible. This is because the killing of the bystander is not causally downstream from the act that saves the five (i.e. destroying the trolley). Rather, the harm to the one results from a causal means to stop the trolley (i.e. the grenade). Nevertheless, if the bystander is killed by a loose piece of the trolley itself, the killing is permissible. This is because the destruction of the trolley by the grenade itself is the act that stops the trolley and, thus, the killing of the bystander would be causally downstream from the act that produces the greater good (i.e. stopping the trolley by destruction). This implication is implausible. Whatever one thinks about the permissibility of throwing the grenade in *Grenade*, surely it does not depend on whether the fatal stroke is done by a piece of the bomb or a piece of the trolley. It is hard to believe that the permissibility of killing an innocent bystander depends on such an arbitrary fact.

As most if not all moral principles have some counterintuitive implications, the second criticism against DPP is even more decisive. Kamm's proposal desperately lacks some deeper normative foundations able to explain why causal relationships are morally relevant (Hurka, 2016; Tadros, 2011, pp. 153-154). Why does it matter whether the lesser harm comes about causally downstream to the act that produces the greater good rather than it being (the result of) the means that generates the greater good? As we have just seen, our intuitions say that it does not always seem to matter. In *Grenade*, killing the bystander by a loose piece of the

grenade seems to be morally similar to killing the bystander by means of a loose piece of the trolley. Kamm fails to give a plausible explanation of the moral significance of causal relations, other than that her distinction between 'harms that are causally downstream to the act that produces the greater good' and 'harms that are the means to the greater good' accurately captures our intuitions in many cases (like in *Bystander* and *Bridge*, but also many other cases). But reliance on intuitions alone is insufficient to proof the plausibility of a moral principle. Most philosophers will only be satisfied by a principle if it is also attractive in itself. Such deeper attractiveness arises if the principle can be linked with, and grounded in, some of our deeper convictions about morality (for similar criticism against Kamm's PPH, see Hurka, 2016; Kagan, 2016; Tadros, 2011, chapter 7; Thomson, 2016). As DPP lacks such theoretical framework, it is inaccurate both as a guideline for permissible harm and as a ground for means principle-based self-ownership.

4.4. The Doctrine of Double Effect

A second version of the harmful means principle, the famous Doctrine of Double Effect (DDE), is more plausible than DPP and provides a more attractive ground for Otsuka's MPSO. The most influential modern statement and defence of this doctrine is by Warren S. Quinn. Quinn (1989, p. 335) explains that DDE "discriminates against agency in which there is some kind of intending of an objectionable outcome as conducive to the agent's end, and it discriminates in favour of agency that involves only foreseeing, but not that kind of intending, of an objectionable outcome. […] The pursuit of a great enough good might justify one but not the other." So whereas the Doctrine of Productive Purity focusses on objective features, like the causal relationship between different harms, the Doctrine of Double Effect stresses subjective features and states that the permissibility of a harmful act depends, at least in part, on the intentions and motivations of the agent doing the harm. A harm to another that is intentionally brought about by an agent as a means to pursue the greater good (e.g. *Bridge*) is harder to justify than a harm done to another unintentionally, as a side effect of acts that further the greater good (e.g. *Bystander*) (Quinn, 1989, p. 344).[109]

[109] For a recent criticism of DDE and, more specifically, of the idea that intentions matter for permissibility, see Scanlon (2008). Scanlon argues that while intentions do not determine the permissibility of a harmful act, they do play a role in the moral assessment of the agent's deliberation. An agent's reasoning can be deficient because of his intentions, but this has no impact on the permissibility of an act, or so he claims.

In most moral dilemmas, DPP and DDE come to the same conclusions and both accord well with many of our considered judgements (e.g. in most standard Trolley Problem cases). Nevertheless, there are some cases in which their judgements differ, and in which DDE seems to provide a more attractive answer. Thomas Hurka (2016, p. 138) considers the case, originally brought up by Quinn, of a munitions factory which is a legitimate military target to bomb, but which has civilians living nearby who will be killed by the bombing. DDE plausibly claims that the permissibility of the attack depends on whether those civilians are killed as a side effect of destroying the factory (*Strategic Bomber*) or as a means to demoralize the enemy (*Terror Bomber*) (Quinn, 1989). Only if the civilians are killed as a side effect, and not as a means for demoralization, the attack might be justifiable. Nevertheless, DPP, like in *Grenade*, implausible holds that the killing of the civilians is permissible if brought about by a flying piece of the factory, while impermissible if they are killed by a flying piece of the bomb.

More importantly, though, contrary to DPP, DDE can be grounded in a more fundamental moral theory (Quinn, 1989; Tadros, 2011, chapters 6 and 7). That is because we can derive the plausibility of DDE from an analysis of what it means to have the moral status of a separate purposive being. In the previous chapter we saw that, arguably, a set of very stringent and extensive self-ownership rights follows from this moral status. Namely, the special moral status of an agent generates for all others a duty of non-interference with the body, mind and talents of an agent. DDE can similarly be grounded in this moral status. If one intentionally harms another as a means for the greater good, like in *Bridge* or *Terror Bomber*, one vastly disrespects the moral status of the other as a separate end-setter and end-pursuer. By intentionally using another as a means, one treats the other like one would treat an object or an animal. Objects and animals are, subject to the appropriate structure of ownership rights over worldly resources (cf. part II of this PhD), available for use by agents. If one could push one dog in front of a runaway trolley in order to prevent five other dogs from being killed, one would be permitted to do so. But to use another person as a means for the pursuit of some good is to treat the other as a resource that is available for use. It neglects the fact that the other is an independent, separate agent with her own ends to set and pursue and that this purposive capacity generates a status in all agents that ought to be respected. As Tadros (2011, p. 153) explains, "the idea that it is wrong to co-opt another person into the plans that we have seems a natural implication of the idea that people have a status that is grounded in their independence from each other".

Intentionally harming one as a means is relevantly different from harming one as a side effect, because the former kind of harm fails to respect the special moral status of agents in a way that the latter does not. If one harms another as a side effect of an act that pursues the greater good, the victim of the harm is not treated with the same disrespect as a victim of an intentional harm that serves as a means. That is, agents harmed as a side effect, in contrast to agents intentionally harmed as a means, are not considered to be resources available for use in the pursuit of some good. For example, in *Bystander*, the bystander does not consider the one on the side track to be a resource available for use to further some of his ends. The bystander does not co-opt the one on the side track into his own plans. The ends of the bystander, i.e. saving the five, would be equally well-served if the one on the side track would not have been there. This is different from *Bridge*. If the small man intentionally pushes his big neighbour in front of the trolley, the latter is considered to be a resource available for use, and the small man would thereby violate his duty to respect the special moral status of his neighbour and not to treat other agents like objects or animals. Furthermore, if one is used as a means, the person used is coerced to take the ends of the other or the greater good as her personal end. "To use someone is to incorporate them into one's plans and projects, or to manipulate them to serve one's ends" (Tadros, 2011, p. 140). In contrast, if one is harmed as a side effect, one is not compelled to take the ends of someone else or the greater good as one's own ends (Tadros, 2011, pp. 136-137). This, again, explains why the former disrespects the special moral status of agents as separate purposive beings in a way that the latter does not. Interestingly, the special moral status of agents leads both to the affirmation of very stringent and extensive self-ownership rights (cf. chapter II) and to the harmful means principle as conceived by the Doctrine of Double Effect. Otsuka is right, thus, to ground his conception of the self-ownership principle in the Doctrine of Double Effect and to stress the importance of intentions for permissibility (Otsuka, 2003, p. 15, see especially fn. 15). Incursions upon the mind and body of agents that occur as an intentional means for some greater good are harder to justify than unintentional incursions that occur as a side effect of one's actions.

4.5. Means Principle-based Self-Ownership as a plausible libertarian principle

It appears, then, that means principle-based self-ownership indeed is a consistent and plausible conception of self-ownership. First, MPSO accurately captures some of the core ideas of libertarian self-ownership. Namely, like full self-ownership, it condemns many

standard cases of coercive interference. For example, an agent can rape another agent for different reasons. He can rape her for sexual pleasure, as a way to demoralize the victim and her family, to conform a certain power relationship, and so on. But what instances of rape often come down to is that the person who commits the rape intentionally uses the other as a means for his own ends and, thereby, disrespects the moral status of the other as an independent and autonomous end-setter who ought to be in a position in which she can decide for herself who to have sexual intercourse with. The same idea applies to other incursions upon another's person. One can torture another, simply hit her in the face, break her arm, stop her from using her freedom of speech or brainwash her for all kinds of reasons, but often such acts will be done by the aggressor as a means to further his own ends or the (so conceived) greater good. MPSO correctly condemns such incursions and is able to explain why they are paradigmatically wrong.

Moreover, second, MPSO is also on a par with libertarian self-ownership with regards to two of its other standard implications: paternalism and the strong aversion of enforceable positive duties. Paternalistic interference often aims to change the conduct of another agent so as to further that agent's overall wellbeing. If Eline paternalistically stops Ischa from smoking tobacco or drinking alcohol, standardly Eline's reason to do so is to protect Ischa from impairing his overall wellbeing. Paternalistic interferences, so understood, fit well into the framework of MPSO. That is, if Eline paternalistically interferes with Ischa, she takes Ischa's overall wellbeing to be 'the greater good' to be pursued, and she intentionally uses Ischa's person as a means to achieve this good end. She considers Ischa, thus, to be a resource for the greater good and the value of his life to be exclusively determined by the amount of wellbeing it brings about. Such treatment is vastly disrespectful, even if the greater good that is pursued by Eline is intimately linked with Ischa's person.

MPSO, as conceived so far, can also explain why the set of positive duties that can be legitimately enforced is very limited. That is because to enforce a positive duty quite literally entails to intentionally use one person as a means for the good of others. For example, when I use force against you in order to make sure you help my grandmother with her groceries, it is self-evident that I intentionally use you as a means for my own ends, the ends of my grandmother and/or the greater good. The fact that I necessarily use you as a means if I enforce a positive duty provides a very weighty reason against the permissibility of such an act. Nevertheless, given the force of the fanaticism objection I will, later in this chapter, explain that this reason can be outweighed by other considerations (e.g. in *Drowning Child*).

Second, MPSO is more plausible than full self-ownership as it can explain the permissibility of certain incursions upon another's person, like in *Careful Shopper* and *Extremely Careful Shopper*. In neither case the other shoppers in Oxford Street are intentionally used as a means. Rather, the aim of Careful Shopper and Extremely Careful Shopper is to shop in Oxford Street, and them being a threat to the bodily integrity of others (Extremely Careful Shopper) or actually infringing the bodily rights of others (Careful Shopper) is an unintentional, albeit foreseeable, side effect of pursuing their ends. MPSO tells us that such incursions are easier to justify than other kinds of invasions of another's person. Similarly, incursions that are a consequence of sending small amounts of pollution in the air (e.g. by driving one's car) rarely intentionally use another as a means. Rather, standardly, those forms of harm-doing are foreseeable but unintentional and therefore plausibly meet the permissibility-criteria of MPSO. These are considerable advantages of MPSO over full self-ownership. MPSO correctly attenuates the self-ownership rights in order to partly overcome the fanaticism objection. Therefore, MPSO is a serious contender for libertarians as an alternative conception of the self-ownership principle.

4.6. A critique of Otsuka's MPSO

Although Otsuka's MPSO shows the way forward for libertarians who aim to respond to the fanaticism objection, his conception of self-ownership is still open for criticism. In this section, I will now specify some problematic features of Otsuka's MPSO. Thereafter, in section five, I will suggest an alternative version of MPSO.

Recall Otsuka's MPSO. According to this conception, a libertarian right of self-ownership most essentially consists of:

> "A very stringent right of control over and use of one's mind and body that bars others from intentionally using one as a means by forcing one to sacrifice life, limb, or labour, where such force operates by means of incursions or threats of incursions upon one's mind and body (including assault and battery and forcible arrest, detention, and imprisonment)." (Otsuka, 2003, p. 15)

I believe there are three problems with Otsuka's MPSO. First, Otsuka's MPSO seems to focus *only* on the wrongfulness of *very grave* occasions of harm-doing and coercive interferences. Otsuka defines his right of self-ownership by reference to a "sacrifice [of one's] life, limb, or

labour", where such sacrifice is enforced through severe (threats of) incursions like "assault and battery and forcible arrest, detention, and imprisonment". But this seems to move away too much from the general purpose of the self-ownership principle. One core idea of libertarians, namely, is that an agent owns her person, which consists of her body, mind, talents, energies etc. This includes a protection against interference with the essential parts of one's person, like one's brain, mind, and (other) vital bodily organs, but also against interference with less essential parts of one's person, like the capacity to whistle Beethoven's Für Elise, to think about homemade lasagne and the right to regulate access to one's appendix. It is true, of course, that the latter protections are less essential to, for example, set and pursue one's own ends. Nevertheless, it is still wrong for you to coerce me not to whistle Für Elise. Even although the loss of this capacity could hardly be conceived of as a loss of my "life, limb, or labour" and that coercion might take place in less invading ways than via "assault and battery and forcible arrest, detention, and imprisonment", other things being equal, you simply do not have the right to decide for me whether or not to whistle a particular melody. It is disrespectful to decide for me what to whistle and what not to whistle, as it is *my* life, *my* person and *my* capacities that you interfere with. A correct conception of the self-ownership principle, thus, does not only protect against severe coercive or harmful interferences with an agent's person, but also against less severe, more trivial forms of interference. Of course, this is not to say that less important rights are of the same stringency than more important rights. Indeed, they are not of equal stringency (cf. infra). It is to say, simply, that, in the absence of countervailing reasons, an agent has a claim against coercive interference with any part of her person, both essential and less essential ones. Otsuka's MPSO fails to provide this comprehensive protection.

Second, although it is not explicit in his definition, it seems that Otsuka's main aim is to provide a right against certain *harmful interferences* with one's person. Therefore, it is not clear whether he can accommodate straightforward intuitions with regards to *non-harmful interferences*. For example, imagine the following case:

> **Comforting Drug:** Floor lives in a society in which people have a predisposition for depression. Being an inventive pharmacist, Floor invents a drug which comforts people in that it triggers an increase in the level of experienced happiness. Floor decides to mingle the drug with the centralized water supply system, so that everyone unknowingly takes some of the drug by drinking water from the tap or taking a shower.

Is it permissible for Floor to, unknown to everyone else, mingle the drug with the centralized water supply system? I believe we have strong intuitions which state that this is clearly impermissible. Arguably, the reason for this is that agents have a right to control their own person, which implies a claim to decide whether or not to consume a certain product. Therefore, unless everyone else consents, Floor has a duty to refrain from mingling the drug with the water.

It is not obvious, though, whether Otsuka's MPSO can accommodate Floor's duty not to interfere with the persons of others via the water they drink from the tap. Although Floor clearly intentionally uses everyone else as a means for the greater good (compare, also, with the discussion of Eline's paternalistic interference with Ischa), she does not do so by forcing others to sacrifice their life, limb, or labour. Moreover, she does not interfere by means of an assault, battery, forcible arrest, detention or imprisonment. I believe that this case causes trouble for Otsuka's MPSO because it is an example of non-harmful, or even beneficial, interference. Nevertheless, Floor's act in *Comforting Drug* is an incursion upon the person of others that any sensible theory must condemn. Admittedly, a very charitable and flexible reading of Otsuka's MPSO might be able to condemn Floor's interference (see the earlier discussion on MPSO and paternalism). Nevertheless, ideally our conception of self-ownership provides clear and strong guidance for condemnation in these cases. Even if interferences with one's person by others are non-harmful, they can be equally disrespectful for the moral status of agents as separate and independent purposive beings. Agents ought to be sovereign over their own person. Therefore, it does not matter whether or not the interference is harmful.

Third, Otsuka's MPSO is *indeterminate* with regards to many incursions and boundary crossing that clearly are wrong. For one thing, it is indeterminate with regards to incursions that occur as a side effect of one's actions (Sobel, 2012). Recall that the reason why it is permissible, according to Otsuka's MPSO, to turn the trolley in *Bystander* is that the killing of the one on the side track was an unintentional, albeit foreseeable, side effect of creating a greater good (i.e. saving the five). Similarly, Careful Shopper and Extremely Careful Shopper only unintentionally generated (a threat of) a very small incursion upon others and them walking along Oxford Street is, therefore, justifiable. Those same acts would be harder to justify (if justifiable at all), according to MPSO, if the actors intentionally use the subjects as a means for the greater good. But one might claim that Otsuka's MPSO not only permits *some* unintentional incursion upon the person of others, but that it must permit *all* such

unintentional forceful interferences, as the only actions it explicitly condemns are those that intentionally use others as a means in certain invasive ways. If this reading is correct, Otsuka's MPSO is implausible as some unintentional incursions are clearly wrong. Sobel (2012, p. 56) criticizes Otsuka's MPSO in this way and suggests the following example to make his point:

> **Reckless Renovation**: an agent blows up his house in order to build a new one. In doing so, she unintentionally, although foreseeably, destroys some of her neighbour's body.[110]

Sobel correctly holds that even though the boundary crossing in *Reckless Renovation* was unintentional, this incursion is clearly impermissible. Any plausible conception of self-ownership must protect the neighbour's rights over himself against such harmful acts. As Sobel thinks Otsuka's MPSO cannot provide such a protection for the neighbour, he rejects MPSO. I think Sobel's reading of Otsuka is a bit uncharitable, as Otsuka clearly states that his conception of self-ownership is consistent with condemning unintentional incursions that occur as a side effect of one's actions.[111] Nevertheless, it is true that Otsuka does not provide a framework to determine which interferences as a side effect are permissible and which are not. Otsuka's MPSO is, thus, indeterminate with regards to the protection self-ownership rights provide against incursions upon one's person that occur as a side effect of the acts of others.

Moreover, Otsuka's MPSO is also indeterminate with regards intentional incursions and boundary crossings that occur as an end (in contrast to incursions as a means or as a side effect) (Lippert-Rasmussen, 2008, p. 88, fn. 6). Incursions as an end are done with the sole intention to invade the person of others. There is no other end or greater good involved in motivating those incursions. For example, if I kill, torture or rape you simply because I want you to feel the pain, I harm you as an end rather than as a means for a greater good. This

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[110] The name and the wording of the case is mine.

[111] Just before he sets out his definition of MPSO, Otsuka explains that his preferable conception of self-ownership is "less than full because it does not prohibit all unintentional incursions upon one's body" (Otsuka, 2003, p. 15). This statement is at the very least consistent with condemning some (though not all) unintentional incursions upon one's mind and body. Even more, according to a minimally charitable reading, Otsuka here defends a position that protects the rights of self-owners against many unintentional incursions upon their person, quite plausibly including the protection of the neighbour against his body foreseeably being partly destroyed in *Reckless Renovation*. In personal conversation (e-mail correspondence, 19/03/2015), Otsuka confirmed that he thought the neighbour's self-ownership rights are violated in Sobel's case. He also thought that a structure of rights consistent with MPSO could explain this rights violation.

category of paradigmatic wrongs does not fit in the description of 'incursions as a means' and is, therefore, not captured by Otsuka's MPSO. Because of this failure to capture invasions of the person of others that occur as an end, Otsuka's MPSO is indeterminate with regards to the wrong-making features of harms that are done to others because of malicious motivations. But obviously, any sensible conception of the self-ownership principle should clearly condemn invasions, like seriously harming someone else by killing, torturing or raping her, that are simply done for the purpose of the harm itself. Moreover, it seems that there is lost something of significance in Otsuka's MPSO, as a core attractive feature of the self-ownership principle precisely is that it can condemn these wrongs in a clear and unifying manner (cf. chapter II).

To conclude, Otsuka's MPSO is clearly on the right track as it accepts that not all incursions and forms of coercive interferences are equally impermissible. That is, incursions that occur as an unintentional side effect of another agent's actions are easier to justify than incursions that use an agent as a means for some other end. This conception of self-ownership is an improvement of the standard libertarian conception as the former, in contrast to the latter, can explain why it is, arguably, permissible to cross the boundaries of agents in cases like *Bystander*, *Careful Shopper*, *Extremely Careful Shopper*, and small forms of pollution. Nevertheless, Otsuka's MPSO is still problematic because (a) it only protects against severe incursions upon one's person, (b) it only seems to focusses on harmful boundary crossings and (c) it is indeterminate with regards to the protection it offers against incursions that occur as a side effect (e.g. *Reckless Renovation*) and as an end (e.g. harming an agent for the sake of harming her). Therefore, I will suggest an alternative version of MPSO in the next section.

5. Near-full means principle-based self-ownership

In a recent article, Ketan H. Ramakrishnan (2016) develops a new account of the means principle. He defends a view, which he labels *Utility*, that holds that the best way to explain the wrong in cases like *Bridge* and *Terror Bomber* is that "it is especially difficult to justify infringing a person's rights on the basis of her usefulness to others" (Ramakrishnan, 2016, p. 134). So, in *Bridge*, it is wrong to push the big neighbour in front of the trolley to save the five because, by so infringing his rights, he would be used for the benefit of others. Pushing the big neighbour is wrong even though in other cases, like in *Bystander*, saving the five is a sufficient justification for infringing the rights of the one on the side track. In other words, according to Utility, a *pro tanto* justification for infringing an agent's rights (e.g. saving five

others) loses much of its weight if the person whose rights are infringed is thereby used as a means for the benefit of others (Ramakrishnan, 2016, p. 148).

This account of the means principle is of much help for libertarians and can ground an improved MPSO. The main reason for this is that it links the means principle with the *stringency of rights*, rather than with harm-doings, incursions or other forms of coercive interferences. That is, Utility starts from an *independently justifiable and specifiable set of rights* and, then, applies the means principle as a way to determine the stringency of those rights. As Ramakrishnan (2016, p. 157, fn. 33) explains, "the larger point is that Utility only pronounces on the moral status of various actions when supplemented by an *independent account of the claims we have in various circumstances*" (my italics). Rights infringements that occur as a means for the benefit of others are *harder to justify*. Therefore, rights that protect an agent against being used as a means are *more stringent* than other rights.

Unsurprisingly, I will suggest that near-full self-ownership is a good candidate to serve as the "independent account of the claims we have in various circumstances". That is, if we accept the arguments of chapter II, we can accept that very stringent and comprehensive (in contrast to full) self-ownership rights, or near-full self-ownership rights, are independently justifiable and specifiable. If we apply Ramakrishnan's Utility to this set of near-full self-ownership rights, we come to the following conception of self-ownership:

> **Near-full means principle-based self-ownership (near-full MPSO)**: Agents have near-full self-ownership rights, the stringency of which depends, in part, on whether, by infringing one's rights, an agent is being used for the benefit of others. In particular, it is especially difficult to justify infringing a person's self-ownership rights on the basis of her usefulness to others.

Let me explain near-full means principle-based self-ownership further. I will first explain 'near-full self-ownership' and will, second, apply Utility in order to come to near-full MPSO. Thereafter, I will, third, show that near-full MPSO is an improvement over Otsuka's MPSO and, fourth, defend this newly developed conception of the self-ownership principle against two possible criticisms.

5.1. Near-full self-ownership

Near-full MPSO starts from an independently justifiable and specifiable set of very stringent and comprehensive self-ownership rights. This means that it backs away from full self-ownership immediately, as it accepts that not all rights are of maximal or absolute stringency. The thought is that there are *pro tanto* justifications to infringe self-ownership rights, some of which are sufficiently weighty to justify an infringement of a right *all things considered*. Near-full MPSO, thus, accepts that it is crazy to defend the view that it is impermissible for you to pull out one of my hairs if doing so would be necessary and sufficient to make a medicine that will cure a child from a deadly disease. Sometimes self-ownership rights are permissibly infringeable. Note that several libertarians defend something like near-full self-ownership rather than full self-ownership (e.g. Narveson, 2001; Vallentyne et al., 2005; Zwolinski, 2008b, 2016).

The question is, of course, when a moral consideration becomes a *pro tanto* justification for the infringement of a self-ownership right. It is hard to spell out a full account of what kind of reasons are *pro tanto* justifications, but inevitably it has to be related to the consequences of the infringement. Vallentyne, Steiner and Otsuka (2005, p. 207) explicitly accept this idea as they claim that a rights infringement might be permissible if the harm of the incursion is trivial and the benefits to others enormous. Nevertheless, their proposal provides no systematic framework of how to balance consequences against rights protection (Sobel, 2012, 2013).

In their role as critics of libertarianism, Arneson (2005, 2010) and Sobel (2013), highly influenced by the work of Thomson (1981; 1990, chapter 6), propose an obvious way to *moderate* full self-ownership rights in a unified way.[112] Most importantly, a plausible conception of self-ownership must accept that, under certain conditions, it is permissible to infringe the self-ownership rights of an agent if such an infringement would result in a significant benefit for others (Arneson, 2010, p. 192). This general idea can be specified by the following two components. First, the permissibility of a rights infringement depends, in part, on the consequences of the infringement for other agents. In other words, the harm that one can prevent, or the good that one can bring about, by infringing a right is relevant to determine whether or not the infringement is justified. If the consequences of not infringing a right are sufficiently bad, then infringing the right is permissible. This first component can explain why it is wrong to non-consensually pull out one of my hairs because you want to

[112] It must be noted that, in the end, both Arneson and Sobel reject the concept of self-ownership altogether.

check its colour from closer distance but that it is justified to do so if you need my hair to save someone from dying. Only in the latter case the consequences are sufficiently bad to justify a rights infringement.

Second, near-full self-ownership accepts that not all self-ownership rights are equally important. Some self-ownership rights are more important than others as they protect more essential parts of our person (e.g. certain important body-parts or capacities). Moreover, the more important a right, the more difficult it is to justify an infringement. In other words, more important rights are more stringent than less important rights. This second component explains why it is permissible for you to cut off some of my superfluous nail tissue, but impermissible to cut off my arm, if this would be necessary to save your leg from being broken. Although both my superfluous nail tissue and my arm are protected by my self-ownership rights, my rights over my arm are more important and, thus, more stringent than my rights over my nail tissue. Standardly, more is at stake if my arm is in danger. Therefore, my ownership rights over my arm provide better protection against forceful interference than my ownership rights over my superfluous nail tissue.

Note that these two components of near-full self-ownership interact (Arneson, 2010, p. 192; Sobel, 2012, pp. 52-53; Thomson, 1990, chapter 6). The more essential a self-ownership right, because more is at stake if the right would be infringed (cf. second component), the better the consequences have to be to make an infringement of that right permissible (cf. first component). Whether or not an infringement is permissible is, thus, a function of the two components. Determining the permissibility of infringing a right is therefore a question of balancing rights and consequences.

An important question, of course, is how to determine which consequences are worse than others and which rights are more important than others. How do we know whether 'what is at stake' is morally important rather than morally negligible? To enhance the coherence of near-full self-ownership, the most plausible way to solve this issue is to answer those questions by reference to the special moral status of agents as separate purposive beings (for a similar suggestion, see Roark, 2013, pp. 61-62). That is, we need to recognize that the reason why agents have very stringent and extensive self-ownership rights is that they (a) express the proper respect for agents as separate purposive beings and (b) have instrumental value for the ability of agents to set and pursue ends and, thus, to make use of the capacities that ground her special moral status. The rights to control and use one's person, for example, are very often

necessary to set and pursue ends and to live one's life as one sees fit. Nevertheless, the instrumental value of certain self-ownership rights for one's purposive capacities is negligible. For example, the control right to whistle Beethoven's Für Elise or the rights over the hairs that were left at my pillow this morning can hardly be taken to be of any relevance at all for my capacity to set and pursue my own ends. Quite plausibly, then, the permissibility of a rights infringement is a function of the extent to which the infringement (a) shows disrespect for the right-holder's separate existence and negatively affects her purposive capacities and (b) enhances the purposive capacities of other agents. If the disrespect for the moral status of an agent is sufficiently small and the positive effects for the purposive capacities of others are sufficiently great, the infringement is permissible.

5.2. Utility applied to near-full self-ownership

If we now apply Ramakrishnan's *Utility* to near-full self-ownership, we can see how this novel means principle affects the stringency of the near-full self-ownership rights. That is, as *Utility* prescribes, *pro tanto* justifications to infringe self-ownership rights loose much of their weight if the infringement result in using an agent as a means for the benefit of others. The reason is that it is very difficult to justify the infringement of a person's self-ownership rights on the basis of her usefulness for others. For near-full self-ownership, the strength of *pro tanto* justifications is, in general, determined by the importance of the right and the good consequences the infringement would bring about. *Utility* adds an extra consideration to determine the strength of a *pro tanto* justification, which is based on whether or not the right-holder is used as a means.

Note that near-full MPSO increases the protection against certain rights infringement. It raises rather than lowers the moral barriers (compare with Quinn, 1989, pp. 346-347). *Pro tanto* justifications that are sufficient to make an infringement permissible in some cases (e.g. saving the five in *Bystander*), are not sufficient in cases where the infringement is a means to benefit others (e.g. saving the five in *Bridge*).

5.3. Improvements over Otsuka's MPSO

Near-full MPSO is more plausible than Otsuka's MPSO. The former solves the problems identified with the latter. Recall that those problems are that Otsuka's MPSO (a) only protects against very severe incursions upon one's person and, thus, seems to neglect all kinds of less severe, though still problematic, rights violations, (b) gives (at least) the impression to solely focus on harmful boundary crossings, while libertarianism standardly aims to protect against all kinds of coercive interferences with one's life, even against the kind of interferences that are beneficial to the agent whose life is interfered with, and (c) is indeterminate with regards to the protection it offers against incursions that occur as a side effect and as an end.

Those three problems are all solved by near-full MPSO because of the simple fact that it starts from an independently justifiable and specifiable set of near-full self-ownership rights. It is only after such a set of rights is constructed that the means principle applies and adds some extra stringency. Otsuka's MPSO, on the other hand, sees the protection against being used as a means (in certain specified ways) as constitutive to the set of rights itself, rather than as a tool to determine their stringency.

Consider the first problem with Otsuka's MPSO: it only protects against severe incursions. This is not the case with near-full MPSO. The reason is that near-full MPSO starts from an extensive set of self-ownership rights which also protect against less severe boundary crossings (cf. chapters I and II). If you stop me from whistling Beethoven's Für Elise, this is problematic because I have an extensive set of very stringent self-ownership rights over my person. Unless you have very good reasons to stop me whistling, you have an enforceable duty not to interfere with my ends. Otsuka's MPSO, as we have seen, has far more difficulty with explaining the protections agents have against less severe incursions.

A similar reasoning applies to the second problem that was identified with Otsuka's MPSO. As we have seen, for Otsuka's MPSO it is difficult to explain what is wrong in cases where the interference generates a benefit for the agents interfered with, like in *Comforting Drug*, as no "sacrifice [of] life, limb, or labour" occurs is such situations. Nevertheless, a sensible conception of self-ownership can explain why Floor has a duty not to mingle her drug with the centralized water supply system. Near-full MPSO is able to provide such an explanation. Because it starts from an independently justifiable and specifiable set of self-ownership rights, it can explain that Floor has a duty to respect those rights and to let agents live their life as they see fit. That is, because the prior set of rights accepts that agents are the sovereign over

their own person, it can explain why Floor must obtain universal consent before mingling the drug with the water.

Most importantly, near-full MPSO eliminates the indeterminacy inherent to Otsuka's MPSO. That is, Otsuka's MPSO cannot explain why certain incursions that occur as a side effect or as an end are impermissible, even though the incursions are paradigmatic cases of rights violations. Near-full MPSO is much more determinate with regards to such cases. Consider *Reckless Renovation* again. It is clearly wrong to blow up your house if it will, foreseeably, partly destroy your neighbours body. Whereas Otsuka's MPSO cannot explain what is wrong with letting one's house explode in this case, near-full MPSO provides such an explanation. Namely, the neighbour's independently justifiable and specifiable self-ownership rights protect her against being harmed in this way. It is true, of course, that the infringement of the rights of the neighbour occur as a side effect of an act that benefits someone else. But near-full MPSO does not hold that all infringements as a side effect are permissible. Recall that near-full MPSO raises rather than lowers the moral barriers. In other words, it states that infringements as a side effect are *easier to justify* than infringements as a means. It does not hold that all infringements as a side effect are permissible. The permissibility of any infringement depends, as we have seen, on the weightiness of the counterbalancing reasons (or *pro tanto* justifications). Arguably, renovating one's house is insufficiently weighty as a reason to justify the partial destruction of another's body.

The same kind of reasoning applies to harms as an end. Recall that Otsuka's MPSO cannot explain why one has a duty not to, for example, hit another in the face merely because one enjoys the suffering of the other. Obviously, Otsuka wants to condemn such forms of incursions, but his statement of MPSO does not help to do so. Near-full MPSO, on the other hand, can explain why harms as an end are cases of wrong-doing. Namely, a harm as an end violates the independently justifiable and specifiable near-full self-ownership rights of others. The pleasure one experiences from seeing others suffer hardly counts as a *pro tanto* justification at all. Because of this lack of counterbalancing moral reasons, near-full MPSO is even able to explain why harms as an end are *paradigmatic cases* of wrong-doing.

6. Objections to near-full MPSO

6.1. The excessive protection objection

One possible objection against near-full MPSO is that it is vulnerable to a version of the fanaticism objection. Whereas the aim of this chapter is to show that near-full MPSO is a plausible way for libertarians to respond to the fanaticism objection, it might be thought that near-full MPSO is fanatical itself. It could be argued that my preferred conception of self-ownership is fanatical because, or so the critic claims, it rejects all non-contractual enforceable positive duties. For in the end, as we have seen, to enforce a non-contractual duty to provide service to another implies to use an agent as a means for the benefit of others. Recall that if I force you to do groceries for my grandmother (i.e. provide her a service), I use you for the benefit of others. Given your very stringent and comprehensive self-ownership rights over your person, my use of force would infringe your rights, and the *pro tanto* justification for this infringement would refer to your usefulness for my grandmother. But as we have seen, near-full MPSO states, based on *Utility*, that this *pro tanto* justification loses much of its weight precisely because it refers to your usefulness for others. Enforcing a position duty, thus, conflicts with the bar raised by near-full MPSO against having one's rights infringed as a means to the benefit of others. But this seems fanatical, as surely there are non-contractual duties to provide service to others than are permissibly enforceable. The case of *Drowning Child* springs to mind most obviously. Surely Lisa can threaten to break Sander's finger if the latter does not save the child from drowning at the cost of his new shoes. Near-full MPSO is fanatical as it provides excessive protection for agents against being used as a means for the benefit of others. Call this the *excessive protection objection*.

I believe that the *excessive protection objection* misconceives near-full MPSO. Although it is true that near-full MPSO provides *more* protection against being used as a means for the benefit of others, it does not hold that this protection is *absolute*. Arguably, no single right or principle is absolute. This is accepted by some libertarians as well. Zwolinski (2016, p. 74), for example, writes that "there is always an exception" to an absolutist view. Also Steiner (1994, p. 199) thinks "we're loath to assign indefeasible status to *any* rule or status". So, plausibly, it is sometimes permissible to use an agent as a means for the benefit of others.

For example, if we would systematically raise the amount of workers on the track in *Bridge*, there might as well be a point at which we would consider it permissible for the small man to throw his big neighbour in front of the trolley. It is unclear how many workers there should be to switch our judgement, but five workers seems clearly insufficient to justify the infringement by reference to the usefulness of the big neighbour while one million workers seems sufficient. Or imagine that, in contrast to *Bridge*, throwing the big neighbour off the

bridge, in front of the trolley, so as to save the five workers down the track, does not cause death to the big neighbour. Rather, it causes some lesser harm (e.g. loss of a limb). Surely we can imagine lesser harms, like losing a finger or having a scratch on one's arm, that are sufficiently small to justify infringing the self-ownership rights of the big neighbour as a means for the benefit of the five workers on the track.

Near-full MPSO is, thus, not fanatical. If the benefits to others, created by infringing a right, are sufficiently great, and the disrespect and harm to the right-holder, caused by infringing her right, is sufficiently small, the infringement can be justified even if the justification is grounded in the usefulness of the right-holder to others. Therefore, in *Drowning Child*, near-full MPSO can accommodate the permissibility of infringing the self-ownership rights of Sander by forcing him to save the drowning child.

6.2. Near-full MPSO is not a libertarian principle

A critic might object, second, that near-full MPSO is not a libertarian principle. On the one hand, it could be thought that the acceptance of near-full, rather than full, self-ownership rights backs away from libertarianism. That is, the critic might think that as long as one does not defend the absolute stringency of self-ownership rights, one is not a libertarian. On the other hand, the critic could hold that libertarianism is defined by the rejection of enforceable positive duties, and that if one accepts that it is sometimes permissible to force an agent to provide service to another, one is not a libertarian.

In general, this kind of criticism is irrelevant, as there is normally nothing especially worthy about defending a *libertarian* principle. What is important, of course, is to defend the *correct* principle, whether or not it is libertarian. Nevertheless, given that the purpose of my PhD is to investigate the plausibility of libertarianism, I should take this criticism seriously. If near-full MPSO indeed is both the most plausible conception of self-ownership and not a libertarian principle, it would show that libertarianism is implausible. Nevertheless, I believe near-full MPSO can still consistently and coherently be labelled 'libertarian'.

Near-full MPSO can accurately be conceived as an libertarian principle for two reasons. First, it defends rights as highly stringent side constraints on action and, in doing so, respects the special moral status of agents as separate and purposive beings (cf. chapter II). That is, it holds that the mere fact that an act generates more good than bad is insufficient to justify a

rights infringement. For example, near-full MPSO can explain why it is impermissible for you to cut off one of my limbs in order to save someone else's life. The mere fact that being saved from death is better than having one's limbs cut off is not enough to justify the infringement. Moreover, as near-full MPSO accepts a strong presumption against rights infringements (on this presumption, see Narveson, 2001; Zwolinski, 2016, p. 87), it does not drastically differ from libertarian self-ownership in its implications. It still captures the idea that agents have a very high moral status which grants them some kind of inviolability. Nevertheless, it does not conceive of agents as being fully inviolable and as having an infinitely high moral status. This is a plausible adjustment of full self-ownership, as the fanaticism objection shows that to defend absolute side constraints is a form of "rights fetishism" (Roark, 2013, p. 61). Much more attractive is the view that "rights are side constraints that give way under pressure of consequences. In other words, people are inviolable, up to a point" (Arneson, 2005, p. 256). Near-full self-ownership, so understood, qualifies rather than rejects full self-ownership.

Second, the way near-full MPSO relates to the enforcement of positive duties is, I believe, both libertarian-friendly and consistent. For one thing, near-full MPSO is libertarian-friendly because it explains why it is so difficult to justify the enforcement of a positive duty. Namely, near-full MPSO shows that to force an agent to help someone else is to infringe the self-ownership rights of the former for the benefit of the latter. The former is thereby used as a means. This is problematic because agents are not tools. They have a moral status that requires special respect, and one important way to respect this status is not to co-opt agents into one's own plans, or into the plans of someone else, but rather to respect them as beings capable to set and pursue their own ends. This is not to say that one has a duty never to use another agent as a means, but it is to say that one needs very weighty reasons to do so. So, rather than being a move away from libertarianism, near-full MPSO explains, in a consistent and unifying manner, what is so problematic about forcing someone to come to the help of others. It captures the quintessential libertarian idea that "libertarians do not allow anybody to be sacrificed for anybody else's benefit" (Narveson, 1998, p. 19).

Moreover, for near-full MPSO to accept that it is sometimes permissible to force an agent to provide service to someone else is consistent with some of its other implications. That is, like other self-ownership rights, rights that protect against being used as a means should be seen as very stringent rather than absolute. Again, arguably no right or principle is absolute as there is always an exception to the rule. Just like there are *pro tanto* justifications for infringing rights as a side effect, it is consistent to hold that there are *pro tanto* justifications to infringe rights

as a means for the benefit of others. A plausible set of such *pro tanto* justifications are *non-enforceable* duties to provide service to others. For example, many think parents have (at least) a non-enforceable duty to feed their children. Only few libertarians would be willing to reject the existence of such duties. Near-full MPSO simply states that our non-enforceable positive duties might sometimes be sufficiently weighty, like in the case of *Drowning Child*, to justify the infringement of an agent's self-ownership rights. This is true even if this infringement occurs as a means for the benefit of others. It is consistent to hold that, once we accept that no rule can ever be absolute, any right can be permissibly infringed if the countervailing reasons are sufficiently weighty. Note that I do not claim that *if* it is permissible to force an agent to provide service, *then* she had *no right not to be forced* to provide this service in the first place. That is, one might think that if one can permissibly force an agent to comply with a positive duty, this agent had an enforceable duty to provide service and, thus, no enforceable right *not* to comply with the duty. Rather, consistent with standard libertarianism, near-full MPSO holds that agents always have a right against being forced to provide service, but that this right can sometimes be permissibly infringed. Even if the right is permissibly infringed, the right is still there and leaves a trace.

7. Conclusion

The aim of this chapter was twofold. On the one hand, it expressed and defended the fanaticism objection against libertarian self-ownership. This objection shows that libertarians indeed are fanatical insofar they defend full, i.e. absolute and maximally extensive, self-ownership rights. Full self-ownership is implausible as it holds that all rights infringements are impermissible and, therefore, rights violations. This leads (a) to morally required paralysis, as we constantly (threaten to) infringe the rights of others in daily life activities, (b) to the implausible position that infringements as a side effect of pursuing the greater good are as wrongful as infringements that occur as a means to that same good and (c) to the implausible rejection of any enforcement of a non-contractual positive duty.

On the other hand, after having refuted Nozick's suggestion to attenuate rights (cross and compensate), this chapter developed an alternative conception of self-ownership, near-full means principle-based self-ownership. Near-full MPSO can both plausibly respond to the fanaticism objection and retain the core attraction of full self-ownership. It is a further development and improvement of the conception of self-ownership proposed by Otsuka.

Near-full MPSO holds, on the one hand, that agents have very stringent and extensive self-ownership rights (as defended in chapter II) which protect against many non-voluntary interferences with one's person. Such interferences can occur as an end, as a means or as a side effect. Near-full MPSO defends a strong presumption against all such interferences. Given that those rights are only 'very stringent' (rather than 'absolute'), rights infringements might be permissible if (a) the disrespect shown for the separate existence of the right-holder is limited and the negative effects for her purposive capacities are sufficiently small and (b) the effects of the infringement on the purposive capacities of others are sufficiently great. The means principle, as defined by Ramakrishnan's Utility, adds, on the other hand, some extra stringency to certain self-ownership rights. In particular, it explains that it is very difficult to justify infringing the rights of an agent based on the usefulness of the agent for others. In other words, it is very hard to justify using an agent as a means for the benefit of others. Rights that protect against being used as a means are, according to near-full MPSO, more stringent than rights which protect against being used as a side effect.

Near-full MPSO is a plausible response to the fanaticism objection. It can overcome all three criticisms implied by that objection. First, it can explain why very small infringements of the self-ownership rights of agents might be permissible (e.g. *Careful Shopper*, *Extremely Careful Shopper*, small forms of pollution). One reason is that near-full MPSO defends very stringent rather than absolute self-ownership rights. This opens the door for permissible rights infringements if the counterbalancing reasons are sufficiently weighty relative to the importance of the right that is infringed. Another reason near-full MPSO can accommodate the permissibility of small rights infringements is that it accepts that infringements as a side effect are easier to justify than infringements as a means.

Second, near-full MPSO can explain why even significant rights infringements might sometimes be permissible (e.g. *Bystander*, *Strategic Bomber*). This is because this conception of self-ownership recognizes the moral difference between infringements that occur as a side effect and infringements that occur as a means. Only the latter, but not the former, co-opts agents into plans that are not theirs and uses agents as tools for the benefit of others. Only the latter, thus, show a special kind of disrespect to the moral status of agents as separate and independent purposive beings. This explains that some, even significant, infringements of rights as a side effect of pursuing the good might be permissible.

Third, near-full MPSO can accommodate the fact that, in certain extreme circumstances, it is permissible to force agents to come to the service of others (e.g. *Drowning Child*). Even although the enforcement of a positive duty always uses an agent for the benefit of others, no moral rule or principle is absolute and, therefore, countervailing reasons can be sufficiently weighty to overrule the initial near-full MPSO rights not to be used as a means. Nevertheless, fully in line with the standard rationale for libertarianism, near-full MPSO is able to explain why it is so hard to justify forcing one to come to the service of others.

At the end of this theoretical and highly abstract chapter, one might wonder what all the fuss is about. Why should we be bothered to specify and justify the most plausible conception of the self-ownership principle? Do not all conceptions, be it full self-ownership of near-full MPSO, have more or less the same implications in practice? Of course, in being a conception of the self-ownership principle, the vast majority of practical implications of near-full MPSO are very similar to those of full self-ownership. That is, like full self-ownership, near-full MPSO grants agents extensive rights to use, control and transfer their own person. Agents have a very extensive liberty to move around, express their opinion, worship the god they like the most, interact with whom they choose, sell their labour capacities to someone willing to buy them, give away some of the products of their talents, consume what they prefer, etc., as long as they respect the same rights of others. It is only in extreme cases, it seems, that some differences between full self-ownership and near-full MPSO appear. Only if significant good can be done by infringing a self-ownership right and/or the right concerned is relatively unimportant, near-full MPSO is willing to relax the stringency of those rights.

Still, the argument of this chapter is of great importance. That is because the fanaticism objection shows that full self-ownership is counterintuitive, extreme and an obstacle for normal human interaction. It is counterintuitive and extreme because it cannot explain, for example, why it is sometimes permissible, in a just war, to kill innocent civilians as a side effect of an act that helps to weaken the enemy and to win the battle. Also, full self-ownership cannot accommodate the very plausible idea that it is justified to force an agent to provide help if she witnesses a car accident. In many legal codes it is forbidden not to provide such first aid. Near-full MPSO can explain why these legal codes are right in doing so. Near-full MPSO opens the door for redistributive taxation as well. Whatever one's ideas about the world-ownership principle (cf. part II of this PhD), the fact that self-ownership rights are not of absolute stringency means that there is room for a (admittedly small) tax on the labour income of agents to redistribute resources to the poorest and most needy agents of the world.

That is, arguably, the needs of the poor provide a sufficiently strong justification for the infringement of the income rights of self-owners. The fanaticism objection also shows that full self-ownership is an obstacle to normal human interaction as it leads to morally required paralysis. Namely, the moment agents start to move around in relative proximity to each other, they cause a threat to each other. Full self-ownership implies, implausibly, that it is impermissible to generate such threats. Also, full self-ownership bars normal human interaction as it forbids all forms of pollution, be it generated by emissions, kindling a hearth or smoking a cigarette. Near-full MPSO has no such extreme implications and is, therefore, more plausible, more practicable and more in line with the libertarian aim to provide a moral framework in which agents can freely set and pursue their own ends.

Chapter IV: Self-Ownership and World-Ownership

As we have seen in the introduction of this PhD, a libertarian theory of justice holds that agents (a) own themselves in a full or near-full manner and (b) have the right (or Hohfeldian power) to acquire property rights over external resources. In chapters I, II and III, the focus was on the first building block of libertarianism: the self-ownership principle. I have delineated the concept and argued that it is determinate (chapter I). Thereafter, I have partially defended a conception that consists of an extensive set of very stringent ownership rights over oneself (chapter II) and rejected full self-ownership in favour of near-full means principle-based self-ownership (chapter III). This fourth chapter and the next, fifth and sixth, turn to the second building block of libertarianism: world-ownership. What rights can agents acquire over resources that are external to their person, like an apple tree, raw oil, a car or a laptop?

This chapter will look at the relationship between self-ownership and world-ownership. That is, it will consider what, if anything, a defence of the self-ownership principle tells us about the ownership rights agents can acquire over external resources.[113] Stated differently: does a defence of self-ownership inform the content of a plausible world-ownership principle? Libertarians give different answers to this question. Some think that the self-ownership principle is all there is for a theory of justice and that it, thus, provides us with all the necessary knowledge to justify and specify ownership rights over external resources (Feser, 2005; Narveson, 1998, 2001; Rothbard, 1978, 1998). Consequently, those libertarians do not accept that their defence of self-ownership should be accompanied by a separate world-ownership principle. The content of the most plausible world-ownership principle is completely determined, according to those libertarians, by the implications of the self-ownership principle. Others believe that the self-ownership principle gives us some information to specify the rights agents have to acquire external resources, but that an independent principle of world-ownership is still needed to supplement the self-ownership principle (Mack, 2002b, 2010; Roark, 2013). In other words, these authors think that although a defence of self-ownership partly informs the world-ownership principle, the latter still deserves a separate justification and specification. A third group of libertarians holds that the

[113] Everything I will say in this chapter and the next two applies to both full self-ownership and near-full means principle-based self-ownership. Therefore, I will speak in more general terms about 'the self-ownership principle', 'self-ownership' or '(near-)full self-ownership'.

self-ownership principle is (almost) completely separable from the world-ownership principle. That is, those libertarians argue that self-ownership has (almost) no implications for the content of the ownership rights over external resources that agents can justly acquire and that, therefore, the self-ownership principle is consistent with a broad range of ideas about the just division of the external world (Otsuka, 2003; Steiner, 1994; Vallentyne, 2000, 2012a; Vallentyne et al., 2005, p. 208; see also Cohen, 1995).[114]

In the present chapter, I will defend three claims. First, self-ownership is a merely formal concept, which means that it has (almost) no implications for the rights agents can acquire over external resources. This first claim blocks a natural route for libertarians who aim to derive ownership rights over external resources from a defence of the self-ownership principle. This route is based on the idea that some *inherent feature* or *conceptual truth* of self-ownership informs the world-ownership principle. Second, the fact that self-ownership is a purely formal concept is not only a problem for right-libertarians, as is commonly assumed, but also for most left-libertarians. Both right- and left-libertarianism are consistent with some agents having no rights over external resources at all and, therefore, lacking any substantive (or effective) rights to control and use their person in the pursuit of their projects. Third, any plausible libertarian theory must guarantee substantive self-ownership rights for all agents (at all times) and, with that purpose in mind, defend, as part of one's world-ownership principle, a sufficiency proviso. The motivation for this sufficiency proviso can be found in the *rationale* for the self-ownership principle, i.e. our special moral status as separate and independent purposive beings.

The argument proceeds as follows. In the first section, I will show that full self-ownership is a merely formal concept. This will be done by rejecting three influential alternatives. Those three alternatives, which thus hold that a defence of the self-ownership principle informs the content of the proper world-ownership principle because self-ownership has implications for

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[114] Strangely, Nozick's theory does not fit well into this characterization of different forms of libertarianism. His view is a hybrid, which, moreover, has been interpreted in different ways (Wolff, 1991, p. 107). One thing is clear: Nozick defends a weak version of the Lockean proviso (cf. chapter V) and is, therefore, not part of the first group of theorists. That is, he explicitly defends a separate world-ownership principle. Nevertheless, it is unclear whether he is a member of the second or the third group. Some commentators think Nozick defends a labour-mixing justification for original appropriation (e.g. Brock, 1995, p. 50; Steiner, 1977, p. 44; 1981, p. 381). If this is true, this would put him in the second group, although for other reasons than the authors I take to be paradigmatic examples of this group (i.e. Mack and Roark). Nevertheless, Nozick has also been interpreted as rejecting the labour-mixing argument and defending, instead, a conventions-based argument to justify initial acquisition (Mack, 2010). If this latter reading is correct, and I believe this indeed is the best interpretation of his principle of initial acquisition, Nozick accompanies left-libertarians and Cohen in the third group.

the rights we can acquire over external resources, are based on (1) a labour-mixing theory of property rights, (2) a theory of first possession and (3) non-invasive rights violations. Then, in a second section, I will explain that the fact that self-ownership has no implications for our view about the distribution of external resources makes the principle merely 'formal' and, therefore, unattractive. This criticism will be addressed to right-libertarianism, as is common in the literature. Nevertheless, contrary to the common belief, I will then argue that the criticism also holds against most left-libertarian theories. In particular, it holds against *luck egalitarian left-libertarianism*. Therefore, in a third section, I will explain that all libertarians, both right and left, must defend substantive self-ownership. This is not only a more plausible conception as it grants agents *effective liberty* to set and pursue ends, it is also in line with the most plausible rationale for the self-ownership principle. To ensure substantive self-ownership, libertarians must defend a conception of the world-ownership principle that secures *sufficient* resources for all agents to be independent project pursuers.

1. Self-ownership: a merely formal concept

1.1. Labour-mixing

1.1.1. The labour-mixing argument

Some libertarians believe that the concept of full self-ownership informs the content of a possible world-ownership principle because of a Lockean labour-mixing theory of property rights (e.g. Feser, 2005; Rothbard, 1978, pp. 37-38; 1998, pp. 34, 47-50). Locke argues that agents can acquire property rights over *previously unacquired natural resources* by mixing their labour with those resources. Because agents are self-owners (e.g. Locke, 1960 [1698], II, sections 27 and 44), they own their body, capacities and energies and, therefore, they also own their labour.[115] When an agent mixes his labour with an unappropriated natural resource in a state of nature, he "thereby annexe[s] to it something that was his *Property*, which another had no Title to, nor could without injury take from him" (Locke, 1960 [1698], II, section 32). And "[t]hat *labour* put a distinction between them and [resources held in] common. That added something to them more than Nature, the common Mother of all, had done; and so they became his private right" (Locke, 1960 [1698], II, section 28). Given the

[115] For example, Locke (1960 [1698], II, section 44) states that each agent is "Master of himself, and *Proprietor of his own Person*, and the Actions or *Labour* of it" (his italics).

rights of self-ownership, an agent has, thus, "in himself *the great Foundation of Property*" (Locke, 1960 [1698], II, section 44).[116] Libertarians who defend the labour-mixing theory of property rights, thus, take "the notion of rights to external resources [to] be a *conceptual extension* of (and parasitic upon) the idea that one has a right to one's body parts, talents, abilities, labor, and the like" (Feser, 2005, p. 66, my italics).

For Locke, mixing one's labour with the unacquired natural resource is a necessary but not a sufficient condition for its appropriation. To mix one's labour with a resource can generate ownership rights over that resource only if, at the same time, two other conditions are met. First, the agent must leave "enough, and as good" for others in common (Locke, 1960 [1698], II, sections 27 and 33). This is the famous 'Lockean proviso'. Second, one is not permitted to acquire more natural resources than what one can make use of. That is, according to Locke it is impermissible to "spoil or destroy" natural resources (Locke, 1960 [1698], II, section 31, see also sections 38 and 46).

Some contemporary libertarians who defend a labour-mixing theory of property rights defend it, in contrast to Locke, as a necessary *and* sufficient condition for the initial acquisition of a natural resource (e.g. Feser, 2005, pp. 64-70; Rothbard, 1978, pp. 37-38; 1998, pp. 34, 47-50). Those libertarians believe "there is no such thing as an unjust initial acquisition" (Feser, 2005), which implies that there are no conditions or proviso's, apart from labour-mixing, that must be met in order for an agent to become the legitimate owner of an unappropriated natural resource.

1.1.2. Rejection of the labour-mixing argument

Let us first consider the claim that labour-mixing is *sufficient* to generate ownership rights over a previously unacquired natural resource. Nozick's (1974, pp. 174-175) discussion of the labour-mixing argument provides good reasons to doubt the plausibility of this claim. In

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[116] Locke's most famous statement of his labour-mixing theory can be found in section 27 of his *Second Treatise of Government* (1960 [1698]):
"Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joined to it something 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" (his italics).

particular, he provides us with many defeating questions concerning labour-mixing. One such question is about the boundaries of what labour is mixed with. If you build a fence around previously unacquired land, do you thereby appropriate the whole territory you have surrounded, or just those parts immediately underneath the fence? Another question is why mixing something you own with something unowned is a way of acquiring the unowned resources rather than lose the owned (see also Steiner, 1987, p. 54; 1994, p. 233)? Nozick (1974, p. 175) suggestively asks:

> "If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?"

A way out for advocates of the labour-mixing theory of initial acquisition might be to focus on the added value that labour generally creates.[117] The idea could be that an agent ought to have a moral claim to those unacquired resources she *improved* by using her personal talents and effort. Indeed, some authors think this 'improvement-based argument' is what actually grounds Locke's labour-mixing argument (Mack, 2010; van der Vossen, 2009). Nevertheless, still further questions arise (Nozick, 1974, p. 175). What about those labour-mixing efforts that do not improve the natural resources? And if 'improving' the natural resource is what counts as sufficient for the initial acquisition of unacquired resources, why should we consider this as an acquisition of the whole resource rather than only an acquisition of the added value? Moreover, even if it would be possible to separate 'added value' from 'non-added value', there is a question why this added value would rightfully belong to the labourer. For one thing, the labourer is not responsible for some of the necessary background conditions to create the added value, like the transport system, the educational system and the level of technological development available in one's society (Armstrong, 2017, chapter 4; Van Parijs, 1995). Also, the amount of added value that labour generates cannot only be brought down to the effort and ingenuity of the labour. It depends as well, at least in part, on the scarcity of the resource that was laboured upon and the technology available to make use of the resource (Armstrong, 2017, chapter 4). No agent can be held responsible for these societal

[117] It should be noted that the 'labour-mixing theory' and the 'added-value theory' are distinct from one another. In the literature, there is some discussion about which position Locke actually defends. Some think his argument is concerned with labour-mixing (Cohen, 1995, pp. 108-109; Nozick, 1974), while others represent him as defending an added-value theory of initial appropriation (Mack, 2010; van der Vossen, 2009).

circumstances and, therefore, it is highly questionable whether 'improving a resource' and 'adding value' can justify private property rights in a resource (or in the added value).

But labour-mixing is not only insufficient to ground initial ownership rights, it is also not *necessary* for initial acquisition. To take labour-mixing, which implies "significantly altering" a resource (Feser, 2005, p. 65), as a necessary condition for appropriation generates two problems. First, it would exclude from the practice of appropriation those agents that like the resource as it is (Roark, 2013, pp. 139-140). Imagine, for example, that you come across a previously unacquired plot of land which you like because it is the natural habitat of certain plants and animals and it is your end to enjoy the natural resources of the plot in its untouched state. Would it not be implausible, also for libertarians, to defend the view that one can only come to own the plot if one first 'significantly alters' it? A labour-mixing view seems to conflict with the basic libertarian idea that agents have the right to live one's life as one sees fit and, thus, to decide how to make use of one's person and of certain specified external resources in the pursuit of one's ends. The requirement of labour-mixing would imply that certain ways of using the resources are unavailable as options for the original acquirers (e.g. not interfering with the resource at all). Second, the requirement of labour-mixing has some counterintuitive results. That is, labour-mixing is absent in some clear instances of justifiable initial acquisition (Mack, 2010, pp. 72-73). Consider Nozick's fence again. It is intuitive to think that at least sometimes it suffices, for a justified initial acquisition of natural resources, to put a fence around a plot of land. But like Nozick suggests, surely we cannot say with a straight face that in building the fence one has mixed her labour with the whole plot, rather than only with the small parts of land in which one inserted the pales. Third, labour-mixing unfairly discriminates against agents that are incapable, through no fault of their own, to mix their labour with a natural resource (Otsuka, 2003, p. 22, fn. 29; Roark, 2013, pp. 138-139). Some severely disabled persons, for example, cannot mix their labour with, let alone significantly alter, an external resource. According to a labour-mixing theory of property rights those agents cannot acquire ownership rights over external resources in a state of nature. This implication is implausible.

The fact that labour-mixing is neither necessary nor sufficient for legitimate appropriation provides support for the claim that, whatever is the correct principle about legitimate initial acquisition, the idea of 'mixing one's labour with a resource' does not give us the tools to justify ownership rights over previously unappropriated resources. This conclusion is helpful for the purposes of this chapter, because it implies that at least one way in which libertarians

might hope to derive the content of ownership rights over external resources from the concept of self-ownership is unsuccessful. Because the labour-mixing theory fails we should reject the idea that an agent can convey ownership rights over one's person to external resources. Nevertheless, libertarians might have other ways to intimately connect the self-ownership principle with a principle that justifies ownership rights over worldly resources. So let us investigate some further arguments that a libertarian might want to put forward.

1.2. The rule of first-occupancy

1.2.1. Explaining the rule

A distinct but related idea to labour-mixing is *the rule of first-occupancy*. This view is most famously defended by Narveson (1998, 1999; 2001, chapter 7).[118] He argues that what is necessary and sufficient for the appropriation of external resources in the state of nature is simply to be the first to use, take or occupy a resource. So if you are the first to use a previously unacquired plot of land (because you build a shelter for your dog on it or because you intend to make a landscape painting of that specific plot, in its untouched state, that will take you several years to finish) and you ensure others "have publicly ascertainable evidence of [your] presence and activities" (Narveson, 1999, p. 215), you have met all the conditions to be recognized as the moral owner of the resource. Narveson (1998, p. 12) also labels the rule of first-occupancy, alternatively but accurately, the 'first-come first-served rule', or the 'finders-keepers rule'. Note that no labour-mixing is involved in this rule. Any recognizable sense of 'using', 'taking' or 'occupying' will do.

Relevant for the purposes of this chapter, Narveson believes that the first-occupancy rule is logically implied by the self-ownership principle. "A right to our person as our property is the sole fundamental right there is", he claims (2001, p. 66), and, consequently, rights over external resources must be the logical extension of our ownership rights over our person. For Narveson, the self-ownership principle simply reflects the basic idea that agents should be free from interference to do with their person whatever they want to do, as long as their

[118] Steiner (1987, p. 61) attributes the rule of first-occupancy to Pufendorf. Also Fressola (1981) defends a version of this view. Interestingly, at times Rothbard writes as if he defends a rule of first-occupancy rather than a labour-mixing theory (e.g. Rothbard, 1978, pp. 33-34). Insofar he defends the former rather than the latter, the arguments in this section are also relevant to evaluate his theory (for a discussion of Rothbard's view on the matter, see also Roark, 2013, pp. 145-147).

actions do not collide with the rights of others. "If [an action] does not, then, given our starting point of a general right to liberty, anyone who *can* do the action described and wants (for whatever reason) to do it is to be allowed to do it" (Narveson, 2001, p. 81). So the thought is that the first-occupancy rule is a logical extension of full self-ownership, because, if you defend that agents have the right to use and control their person as they see fit, they automatically have the right to use their person in a way that occupies a previously unacquired external resource. As long as such use does not collide with the legitimate liberties of others, no one has the right to interfere with the occupancy of the first-comer (Narveson, 2001, pp. 81, 83) . First-comers "may, then, take what they please, so long as what they take, that is to say, what they do there, does not adversely affect the rights that people already have" (Narveson, 2001, p. 85).

Obviously, this last thought begs the question. Does a first-comer's appropriation of a natural resource infringe the rights of others? Narveson thinks it does not, and believes this position logically follows from the plausible assumption that the external world in a state of nature is *unowned*. To accept that natural resources are unowned is to accept that no individual agent (or group of agents) has any claim-right over those resources absent of, or prior to, an act of initial appropriation. For example, in an unowned external world no one has a claim to exclude others from using a certain external resource. And given that no one has a claim over external resources in an unowned world, Narveson believes no agent can infringe the legitimate liberties of others by being the first to use, take or occupy a resource as a way to appropriate it. To sum up Narveson's first-occupancy rule:

If one holds that

> (a) agents are self-owners, and
>
> (b) the world is initially unowned

then

> (c) one can legitimately become the full private owner of an unowned resource simply by being the first to use, take or occupy it.

I will argue, shortly, that (c) does not necessarily follow from an acceptance of (a) and (b). Moreover, (c) is an implausible inference from (a) and (b). So, whereas I will accept (a) and (b), I will not accept (c).

1.2.2. Rejection of joint ownership

But let me first say a few words about the view that Narveson (1998, pp. 13-14; 1999, pp. 219-220; 2001, p. 93), wrongly, takes to be the main competitor of his first-occupancy rule and which he, rightly, rejects. That is the idea that the external world in a state of nature, i.e. prior to any appropriation, is *jointly owned*.[119] Initial joint ownership of the world implies that agents do not have the right to unilaterally (1) use or (2) appropriate any external resources in the state of nature without the collective consent of the community via, for example, unanimous agreement[120] or majority rule (Grunebaum, 2000 [1987]). This view is implausible. The radical version of joined-ownership, which not only rejects unilateral *appropriation* but also unilateral *use* of natural resources, implies that no one can do anything without the collective consent of all others, as for everything we do we need external resources (e.g. to breath, to feed oneself in order to stay alive, to move around, etc.). Radical joint-ownership, thus, nullifies the effective liberty of agents to set and pursue ends independently from others (for this argument, see Cohen, 1995, p. 98; Fressola, 1981; Mack, 2009b; Mazor & Vallentyne, forthcoming; Narveson, 1998, p. 12; Vallentyne, 2000, 2012a).

A less radical version of joint-ownership maintains that agents *can* freely *use* natural resources in a state of nature without the consent of others, but that they *cannot* unilaterally *appropriate* such resources unless collective permission is warranted (Gibbard, 2000 [1976]; Grotius, 2000 [1625]; Pufendorf, 2000 [1672]). This conception is a clear improvement compared to radical joint-ownership, as it grants agents the liberty to individually set and pursue ends that only require the use of natural resources. Nevertheless, this moderate version of joint-ownership fails to recognize the importance of private ownership rights over external resources for purposive beings. That is, almost all ends that agents pursue require not merely the temporal non-exclusive use of certain external resources, but rather the *continued exclusive use and control* of those resources and, moreover, the right to transfer these resources to others via gift, rent or sale. If I want to cultivate land in order to enjoy its profits later, save money for my retirement, start a business or give an engagement ring to my beloved one, I need the right (i.e. the Hohfeldian power) to acquire ownership rights (e.g. exclusive use, control and transfer rights) over certain specific external resources (for versions

[119] For an insightful discussion of this idea, see Vallentyne (2012a).
[120] Cohen (1995, pp. 94-96) discusses, and ultimately rejects, this option.

of this argument, see Brennan, 2014, pp. 78-82; Mack, 1990, pp. 532-534; 2010, pp. 60-64; Tomasi, 2012, pp. 76-78; van der Vossen, 2015, pp. 77-78; Wendt, 2018). Moreover, it is important that, in a state of nature, I can acquire these ownership rights unilaterally. For as long as I need the consent of others to appropriate natural resources, my purposive capacities, that is my capacities to set and pursue my individually chosen ends, are severely endangered. If no unilateral appropriation is permissible, others will still be in a position to vastly limit the ends to which I can use my privately owned external resources (van der Vossen, 2015). Joint-ownership conceptions, both radical and moderate, are, thus, implausible (cf. infra, section 3.1.). Consequently, like Narveson and many other libertarians, I accept that the world is initially unowned.[121]

1.2.3. Rejection of the first-occupancy rule

Nevertheless, acceptance of the world as initially unowned, together with the affirmation of the self-ownership principle, does not, contrary to what Narveson wants us to believe, imply acceptance of the first-occupancy rule. To understand this, we need to have a look, again, at the Hohfeldian analysis of rights outlined in chapter I. Recall that rights can consist of four basic incidents: claims, privileges, powers and immunities. The prototypical right is a *claim-right*. If you have a claim against me that a certain state of affairs will occur, I have a correlative duty towards you to make sure that the state of affairs will occur. *Privileges* are different from claims in that they do not imply a correlative duty. For you to have a privilege to do a certain act is simply for you not to have a duty *not* to do the act (i.e. you have a moral licence to do the act). To have a *power* means to be able to change the claims and privileges of others. For example, if I own myself I have a power to change your claims and privileges with regards to my person, as I can change them by giving my consent. *Immunities* protect against others changing your claims and privileges. If I lack the power to change your claims and privileges, you have an immunity against me.

With this Hohfeldian framework in mind it is relatively easy to see the flaw in Narveson's argument (see also Vallentyne, 2007b). Narveson (1999, p. 219; see also Feser, 2005, pp. 59-61 for a similar mistake) takes the unowned world to mean that no agent has a claim-right

[121] Among those libertarians are Nozick (1974), Feser (2005), Mack (2010), Steiner (1994, p. 268, but see also p. 235, fn. 11) and Otsuka (2003, pp. 22, 24).

over any of the resources in the state of nature and that, therefore, no one is wronged or owed compensation when an initial acquisition occurs.[122] But this argument fails to see the complexity of the rights that are at issue in the state of nature. Although it is correct that no agent initially has claim-rights over raw natural resources in a pre-ownership state, everyone does have a *privilege to use* such resources for their own purposes. That is, in the state of nature no one has a duty not to use an (unoccupied) external resource. In a world without claim-rights over external resources, everyone has the privilege to use water from the river, pick apples from the trees and cultivate the land in order to grow vegetables (although the latter might be a tricky activity, as all others have the privilege to simply take the vegetables for their own use). Even Narveson (1999, p. 220) himself recognizes this privilege when he states that "the general right of liberty, which we negotiate in the pre-ownership 'state of nature,' says that we are free to use hitherto unused things, provided we not molest anyone else's efforts to use other things". It is, thus, consistent and plausible to hold, at the same time, that the world is unowned and that all agents have a privilege, or a moral licence, to use external resources in an unowned world.

But to appropriate a natural resource from the state of nature is to change the rights of all others (Gibbard, 2000 [1976]; Nozick, 1974, p. 175; Steiner, 1987, pp. 58-59; Vallentyne, 2007b; Wenar, 1998, p. 806). For whereas everyone initially had *a privilege to use* the thing, all non-owners have now, after the initial acquisition took place, *a duty not to use* the thing.[123] Andrew Kernohan (1988, p. 61) expresses this idea nicely:

> "in the state of nature all persons have a liberty to use all things and no right to exclude others from a similar liberty. This liberty is grounded in their self-ownership right to use their human powers on things as they see fit. The transition to a regime of private property involves some persons acquiring a claim-right that others not use certain things while themselves retaining their original liberty. The acquisition of

[122] "For in taking something from the 'state of nature,' we are not taking anything from anyone, since it belongs to no one" (Narveson, 1999, p. 217).
[123] Nozick's statement of this idea: "For an object's coming under one person's ownership changes the situation of all others. Whereas previously they were at liberty (in Hohfeld's sense) to use the object, they now no longer are" (1974, p. 175).

> private property by some involves the restriction of liberty for others. This restriction of liberty is difficult for the libertarian to justify."[124]

To appropriate from the state of nature, thus, is an exercise of a Hohfeldian power to unilaterally alter the privileges and duties of others (van der Vossen, 2015). The idea is that if I appropriate an apple tree from the state of nature, I make use of my power to unilaterally acquire unowned resources. By so acquiring the apple tree, I alter the privileges and duties of everyone else with regards to the apple tree. Whereas all were previously at liberty to pick apples as they liked, my appropriation installs a duty on everyone else not to make use of the tree anymore. But if this is true, it is insufficient to combine (a) the self-ownership principle with (b) the assumption that the world is unowned to conclude that (c) the first-occupancy rule is correct (i.e. Narveson's argument, cf. supra). (a) and (b) will only lead to (c) if agents indeed have strong moral powers to acquire private property rights from the state of nature *and* if they have very weak immunities against others changing their privileges to use unowned resources. That is, (a) and (b) will only justify my appropriation of the apple tree if I indeed have a strong power to appropriate the tree and if others have weak immunities against having their privileges and duties with regards to the tree changed. But these strong powers and weak immunities need to be argued for (a task Narveson does not engage in). We are, thus, in need of a theory about our powers to acquire ownership rights over unowned resources and our immunities against others changing our privileges regarding such resources. The fact that I am the full owner of my person, even in combination with the idea that the world is unowned, does not provide any guideline for the content of these powers and immunities and is, therefore, insufficient to justify my initial acquisition of the apple tree. An independent world-ownership principle will have to determine the powers we have to appropriate natural resources and the conditions we must meet to alter the privileges of others to use them. To specify such a principle is a task I will take on in the third section of this chapter as well as in chapters V and VI. For now it is important to see that adherence to the self-ownership principle will not help to fulfil that task and that, for this reason, the first-occupancy rule fails to show that we can derive ownership rights over external resources from an analysis of the concept of self-ownership.

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[124] Note that I am assuming a situation of moderate scarcity. One might think that in a world of abundance, the loss of a privilege to use a particular resource does not generate claims of justice (Locke, 1960 [1698]; Steiner, 1987, pp. 58-59).

1.3. Non-invasive rights-violations

1.3.1. The general idea

A third route that libertarians might want to follow to derive ownership rights over external resources from the concept of self-ownership is grounded in the idea that self-ownership rights can be violated in a non-invasive, non-impinging and non-intruding way (for this suggestion, see Feser, 2005; Kernohan, 1988; Mack, 1995, 2002a, 2002b; Roark, 2013).[125] A standard violation of a self-ownership right involves a boundary-crossing, i.e. an intrusion of the body or mind of an agent (or the threat thereof). For example, when I hit you in the face or brainwash you, I invade, respectively, your body and mind. As, being a self-owner, you own your body and mind, these invasions of your person are paradigmatic cases of a violation of self-ownership rights. Nevertheless, the proposal at issue in this section holds that self-ownership rights can also be violated in non-invasive ways.

The idea is that the *concept of self-ownership* allows for rights violations that do not require a boundary-crossing. In particular, these authors believe that the concept of self-ownership implies a claim-right not to have one's purposive capacities, and, consequently, the rights over those capacities, to be "nullified" or "disabled" (Mack, 1995, p. 191). Others, thus, have a correlative duty not to bring about a state of affairs that severely disables the effective use of one's self-ownership rights (e.g. Mack, 1995, pp. 187, 191, 197, 217-218), even if others do so without impinging upon one's person. Because certain rights over one's person are effectively useless if one has no right to use a minimal amount of external resources, the concept of self-ownership logically implies, or so the argument goes, that owners of external resources have a duty not to use their resources in a way that nullifies the self-ownership rights of non-owners. The self-ownership principle, thus, implies a world-ownership principle in which all agents have use rights over a minimal amount of external resources.

In this respect, Mack and Feser argue for a 'Self-Ownership Proviso', whereas Roark includes a 'right to access one's self' in the standard set of self-ownership rights (apart from the rights to control, use, transfer and the like, cf. chapter I). These authors all think that the concept of self-ownership limits the moral power of agents to use and appropriate external resources. One's power to use and appropriate is limited by the self-ownership-implied right of others to use a minimal amount of external resources. It are these kind of proposals that are at issue in

[125] Although he suggests this route, Kernohan is not a libertarian himself.

this section. I capture and finally reject those proposals by focussing on what they have in common: the thought that an agent can non-invasively violate ownership rights of others by bringing about a state of affairs that renders these rights effectively useless. I will argue that a claim-right to access one's ownership or a claim-right not to have certain essential capacities to be nullified is alien to the concept of ownership.

1.3.2. Intuitions in favour of non-invasive rights-violations

The intuitions in support of non-invasive rights-violations can be provoked in different ways. For instance, imagine a case in which you own a car and I build an impenetrable wall around it (Roark, 2013, p. 76). Even although the bricks were mine and your car was on my property (e.g. because I had invited you for my birthday party), building the wall is impermissible. Moreover, it seems impermissible at least in part because you no longer have the requisite control over the car, as you cannot do anything with the car anymore. Most obviously, you can no longer use your car to drive home. Roark considers this case as a non-invasive rights-violation. Whereas I have not impinged upon your car, I have non-invasively impeded your access to the car and, in doing so, violated your control and use rights.

Let us now apply this idea to a situation in which self-ownership rights are at stake. Mack (1995, pp. 187-188) suggests a case in which innocent, shipwrecked Zelda struggles towards the coast of an island that is the full private property of Adam (before Zelda's arrival Adam had performed all those acts necessary and sufficient to appropriate the whole island in a way that secures full liberal ownership rights over all its resources). As an exercise of his ownership rights, Adam refuses Zelda to come ashore. The intuition, again, is that Adam does something wrong to Zelda and that the wrong involved can, at least in part, be explained by the fact that Adam refuses Zelda to use certain external resources that are necessary for her survival and, thus, for Zelda, as a self-owner, to access and use what she owns (i.e. her person). Although Adam does not intrude Zelda's person, Zelda is no longer in a position to use and control her person. She cannot do anything with her person anymore and, therefore, or so is the thought, Adam does seem to violate Zelda's self-ownership rights.

If these intuitions indeed point at the possibility of non-invasive rights-violations, a defence of the self-ownership principle informs the content of the proper world-ownership. That is, if the self-ownership principle implies a duty not to bring about a state of affairs that, even non-

invasively, leaves another's self-ownership rights effectively useless, then the principle would limit the rights we can acquire over external resources. It would limit, for example, Adam's ownership rights over his island, as he would have a duty to let Zelda come ashore and let her use enough of the island's external resources in order to survive. Similarly, referring to a famous discussion of Nozick (1974, p. 180) it would also limit a person's power to acquire ownership rights over the only waterhole in the dessert, as it would be impermissible to exclude all others from using the waterhole. More generally, if we have a duty not to non-invasively make the self-ownership rights of others effectively useless, we have a duty to ensure that, whatever system of private property rights is in place, all self-owners can use sufficient external resources to secure their survival and, more extensively understood, access their purposive capacities. If successful, this argument justifies at least minimal use-rights over external resources.

1.3.3. Rejection of non-invasive rights-violations

Nevertheless, the idea of non-invasive violations of self-ownership rights is incoherent. I will show this by means of an analysis of *ownership* rights more generally, rather than *self*-ownership rights in particular. This strategy is justified because the rights that come with self-ownership are determined by the ownership rights over external resources in the first place. Recall that the self-ownership principle grants to each agent over herself all those rights that one could have over an external resource, like a car or a laptop, in a system of maximal (or full) liberal ownership rights (cf. chapter I). The reason that libertarians believe that agents have those rights over themselves is, indeed, because they hold that agents are the (near-)full *owner* of their person. It is (near-)full *ownership* over one's person that distinguishes libertarianism as a political theory. Therefore, we can analyse the argument at issue by an analysis of the rights that come with full liberal ownership. Does such ownership over an external resource imply the claim not to have one's use and control rights nullified non-invasively?

In order to provide an answer to this question, we need to dig a bit deeper into the argument for non-invasive rights-violations. In particular, we should investigate what it means for an ownership right to be 'nullified', 'disabled' or 'effectively useless'. For example, how can we distinguish a non-invasive rights-*violation*, because another's ownership rights were disabled, from a non-invasive but permissible *limitation* of the options another has to employ what she

owns? Imagine that instead of building a wall around your car, I use the bricks to build several flower boxes on my drive in front of my house. Those flower boxes do not impede your access to your car. Nevertheless, they do limit the possible trajectories you can take to drive away. Why is building a wall around your car a violation of your ownership rights while building several flower boxes is not?

To leave herself a way out, the defender of non-invasive rights-violations must refer to something like a 'use-threshold' of the thing owned. Such a use-threshold determines the point at which the options for use open to the owner are sufficient for the ownership rights *not* to be effectively useless. The use-threshold opens the door for the idea that, if you own something, others have a duty not to limit your options to use the thing below a certain threshold. Arguably, building a wall around your car puts you below the use-threshold of your car, while building flower boxes on my drive is insufficient to do so.

The problem for defenders of non-invasive rights-violations is that acts that we would otherwise consider as paradigmatically permissible exercises of one's ownership rights over external resources can put others below the use-threshold of a certain resource. Such paradigmatically permissible acts would, according to the defender of non-invasive rights-violations, implausibly be considered impermissible because of each agent's proclaimed duty not to bring about a state of affairs that puts others below the use-threshold of what they own. Imagine, for example, that you own a car which has ran out of fuel. I own fuel but am unwilling to let you freely take some of it. My refusal to let you freely take some of my fuel leaves you, arguably, below the use-threshold of your car. Like when I build a wall around your car, my refusal to give you some fuel makes your ownership rights over your car effectively useless, as you cannot use the car to drive anywhere (not even to the nearest gas station). Does this mean that I have a duty to let you take some of my fuel? We do not standardly take this duty to be implied by my ownership rights over the fuel, nor by your ownership rights over the car. On the contrary, the suggestion that this duty is logically implied by our respective ownership rights indeed seems ridiculous.

Kernohan (1988, pp. 65-66) anticipated this objection and, given his aim to derive ownership rights over external resources from a defence of the self-ownership principle, argues that there is something special about owning oneself that does not apply to owning external resources. That is, whereas owning an external resource leaves the owner with a wide variety of options to employ the resource, owning oneself and, in particular, owning one's *productive powers*

really only has the purpose of exercising these powers. If I cannot exercise my talents and energies, my rights over those powers are less than (near-)full. So if one defends the view that agents have (near-)full ownership rights over their productive powers, as the self-ownership principle entails, these ownership rights must include ownership rights over a minimal amount of external resources in order to leave each agent the possibility to exercise those powers.

Kernohan's idea is that, when I refuse to let you take some of my fuel for your car, you still relevantly own your car as you can do all kinds of other things with your car apart from driving. You can use your car as a shelter against the rain, sleep in it or, if it is particularly fancy, use it to impress others. My refusal to let you take my fuel, in other words, does not put you under the use-threshold of your car. More generally, Kernohan believes it is almost impossible to ever non-invasively leave another under the use-threshold of any external resource.

But this is different for ownership rights over oneself, or so the argument goes. Agents are special. Agents have a certain feature, ownership of which has a very specific purpose. To meet the use-threshold of this feature, one needs to have access to a minimal amount of external resources. Like I mentioned earlier, for Kernohan this special feature is the "productive powers" of agents. Very similarly, Mack (1995) and Feser (2005) refer to an agent's "world-interactive powers". For Roark (2013, p. 83), it is the mere fact that an agent is "alive" and able to perform "conscious actions". These special features have a very specific purpose which requires use-rights over a minimal amount of external resources. That is, without rights to use a minimal amount of external resources, ownership of the special feature of agents would be nullified, disabled and effectively useless. Therefore, one can non-invasively violate the self-ownership rights of others by employing one's resources in a way that denies someone else to use any external resources at all (e.g. Adam's exclusion of Zelda, or any other system of property rights that leaves some without rights to use external resources at all).

The problem of this argument for non-invasive violations of ownership rights is that, contrary to what Kernohan believes, an agent's paradigmatically permissible non-invasive acts can put another agent below the use-threshold of an *external* resource as well. First, this might happen if the purpose of owning a certain external resource is very specific. Cohen (1995, p. 98) gives

the example of a corkscrew.[126] The purpose of owning a corkscrew is very clear: to open bottles of wine. If one has no access to bottles of wine, ownership rights over a corkscrew are effectively useless. But the argument for the existence of non-invasive rights-violations seems to imply, implausibly, that owners of bottles of wine have a duty to let owners of a corkscrew take some of the bottles because the latter's rights over the corkscrew would otherwise be below the use-threshold. Second, an agent's rights over an external resource can be below the use-threshold if the effective options to use the resource, even if using it might have a wide variety of possible purposes, are clearly negligible. For example, imagine you and I stand along a river. You own a mobile phone which, for some reason, is at the other side of the river. You cannot cross the river but by using the boat I own. Clearly, unless I let you use my boat, your rights over the mobile phone are below the use-threshold. That is, they are effectively useless. Wouldn't it be implausible to conclude from this that your ownership rights over your phone logically imply that I have a duty to let you use my boat to cross the river?[127]

So contrary to what Mack, Feser, Roark and Kernohan want us to believe, the concept of ownership does not imply the claim-right to access what one owns or the claim-right not to have the capacities of what one owns to be nullified or disabled. This is not to say there is nothing morally problematic about me building a wall around your car or Adam refusing Zelda to come ashore. It is to say that the concept of ownership cannot explain what is wrong in those cases.

At times defenders of non-invasive rights-violations write as if it is not the *concept* of self-ownership that implies use-rights over a minimal amount of external resources, but rather the *justification* for the self-ownership principle that necessarily limits plausible conceptions of world-ownership.[128] For example, Mack (1995, pp. 201-202) states that he has "included [the] claim against noninvasive disablement among the claims of self-ownership for a number of

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[126] For an extensive and insightful discussion of the *Corkscrew Objection*, see Bornschein (2016, chapter 4).
[127] This example is from Tom Parr (personal conversation).
[128] Frank Van Dun (2009) explicitly makes this move. He thinks a right to freedom, rather than (self-)ownership, is foundational for libertarianism. It is this right to freedom that justifies ownership rights but also, at the same time, limits those rights. To solve the problem caused by non-invasive restrictions of freedom (e.g. the wall around the car, Adam's refusal to let Zelda ashore), Van Dun suggests a 'Free Movement Proviso' "as an integral part of the libertarian concept of ownership rights". The free movement proviso is very similar to Roark's right to access. The two views differ, though, in that Roark thinks a right to access is logically *implied by* the concept of ownership, whereas Van Dun recognizes that the free movement proviso *limits* the standard concept of ownership. According to Van Dun, the concept of ownership should be enriched by a free movement proviso in order to respect the more fundamental right to freedom.

specific reasons. […] But nothing essential hinges on categorizing the claim against severe noninvasive nullification as a claim of self-ownership" (see also Roark, 2013, p. 85). As will become clear later in this chapter, I believe this indeed is the way forward for libertarians.[129] Nevertheless, to make this move is to accept that the self-ownership principle as such does not limit the rights we can have over external resources. Rather, in making this move one accepts that it are the *values* that justify self-ownership that also (partly) inform the content of an independent world-ownership principle.

1.4. Self-ownership is merely formal

In the previous pages, I have rejected three ways in which libertarians try to derive rights over external resources from a conceptual analysis of the self-ownership principle. I have argued that the labour-mixing theory is implausible as a ground for ownership rights over external resources as it is vastly indeterminate and morally irrelevant, and because it fails to accommodate appropriations of natural resources that take place with the explicit purpose *not* to significantly alter external resources. I have shown that the first-occupancy rule is equally unsuccessful in limiting ownership rights over external resources as it fails to recognize that, even in an originally unowned world, all agents have the privilege to use external resources and that, to change this privilege into a duty not to use an external resource, one needs to specify and justify the powers and immunities we have with regards to unowned external resources. Also the idea of non-invasive violations of self-ownership rights will not help the libertarian to derive ownership rights over external resources from an analysis of full self-ownership, as non-invasive rights-violations are alien to the concept of ownership.

The conclusion, then, is that the rights implied by the concept of full self-ownership are merely formal (in contrast to effective of substantive) (Cohen, 1995, pp. 94-102; Otsuka, 2003, p. 30). The principle "says, on the face of it, nothing about anyone's rights in resources other than people, and, in particular, nothing about the substances and capacities of nature, without which things that people want cannot be produced" (Cohen, 1995, p. 13). Also Vallentyne (2000, p. 5) notes that "nothing of substance [about the ownership of external resources] follows here from full self-ownership alone". That is, nothing in the concept of

[129] But as will become equally clear, I do not believe the proposals of Mack, Feser, Roark and Kernohann adequately capture the implications of this move.

self-ownership tells us which rights and duties we have with regards to external resources.[130] Contrary to those libertarians who believe self-ownership is the only fundamental moral principle in a theory of justice (e.g. Rothbard, Narveson, Feser), my discussion has shown that we need an independent world-ownership principle that specifies and justifies the rights and duties agents have with regards to the external world. And contrary to those libertarians who agree that we need a separate world-ownership principle but who still believe that the concept of full self-ownership partly informs the content of this principle (e.g. Mack, Roark), I have shown that their arguments are unsuccessful.

Because the concept of self-ownership is merely formal, the self-ownership principle is consistent with a wide variety of conceptions of the world-ownership principle. Arneson (2010, p. 173) interprets this position as "anything goes, so far as self-ownership is concerned". Indeed, given that it only specifies negative rights over our person, rather than positive rights over our selves or (negative or positive) rights over external resources, the self-ownership principle is consistent with radical free market institutions and a capitalist economic system (Narveson, 1999, 2001; Rothbard, 1978, 1998), a luck-egalitarian distribution of worldly resources (Otsuka, 2003; Roark, 2013; Steiner, 1994, 1997, 2002a; Vallentyne, 1998, 2002), a defence of the highest feasible basic income (Van Parijs, 1995), a Rawlsian distribution of external resources (Quong, 2011) and even a traditionally socialist economic system (Vrousalis, 2011). Later in this chapter, in section 3, I will argue that, although (near-)full self-ownership is indeed *consistent* with all those economic constitutions, some of them are *incoherent* with the self-ownership principle. That is, the *rationale* for self-ownership rejects some world-ownership principles as available options for libertarians. But let me first explain, in the next section, why the fact that (near-)full self-ownership is merely formal is a problem, even for libertarians themselves.

2. Formal self-ownership problematic for all libertarians

[130] Vallentyne, Steiner and Otsuka (2005, p. 204, fn. 7) correctly note that there is one exception to this idea: "Assuming that one loses some rights when one violates the rights of others, full self-ownership is incompatible with someone else owning the rest of the world and denying the agent permission to occupy any space (since the agent would be trespassing and lose some rights)."
That is, in order to be a full self-owner one must have a privilege to use the physical space that one's body occupies. Mack (1995, p. 200, fn. 17), in discussing formal self-ownership (which he rejects), makes a similar remark. See also Steiner (1987, pp. 62-64; 2009b, p. 241).

2.1. The general problem

Formal self-ownership rights fail to live up to the expectations of those who defend self-ownership as a principle of justice (Cohen, 1995, pp. 94-102). Recall that libertarians defend the self-ownership principle because it respects the rights of agents to do with their person as they see fit as long as they respect the rights of others. Moreover, the principle is supposed to protect a sphere of liberty to set and pursue one's own ends. But formal (near-)full self-ownership fails to meet those expectations in two ways. First, given that agents are human beings in need of food, water and shelter merely to secure their survival, one's continued status as a self-owner depends on having access to certain external resources. Without such access, ownership rights over one's person will, very quickly, become useless (as one will simply die). Second, one cannot set or pursue any projects at all without having rights to use and control certain external resources. That is, an agent cannot do anything with her person without having the right to interact with the external world (Cohen, 1995, pp. 93, 98-99). In this regard, Mack (1995, p. 199) correctly notes that "the standard [i.e. formal] account [of self-ownership] in no way reflects or embodies the fact that human beings do not live their lives, do not pursue their projects and ideals, within the spaces defined by their respective skins. It seems blind to the fact that as human beings, even if not as pure noumenal selves, we live our lives within and through a world of all sorts of external objects upon which we bring to bear our talents and energies".

Cohen (1995, pp. 94-96) explains the problem of formal full self-ownership via a story about a *jointly owned world* with two inhabitants: Able and Infirm.[131] In this world, Able has productive capacities whereas Infirm has none. They have to come to an agreement about the use of the external world, as without such an agreement both will die. Given certain plausible assumptions about the quality and quantity of the available external resources and productive capacities of Able, an agreement could lead to both having a minimally decent life. Namely, Infirm could choose only to loosen her veto over Able's use of external resources if the latter produces enough to ensure that both can survive and set and pursue a variety of ends.

The problem for libertarians is that formal (near-)full self-ownership is fully consistent with the jointly owned world of Able and Infirm. In particular, Able can have (near-)full self-ownership rights over his person and, at the same time, need the permission of Infirm to do

[131] Recall that in a situation of joint ownership one cannot unilaterally use or appropriate any natural resources without collective consent.

anything at all (e.g. move around, pick some apples, drink water from the river) because of Infirm's joint ownership of the external world. But, as Cohen (1995, p. 98) asks, "what is the point of my owning myself if I can do nothing without the agreement of others? Do not Able and Infirm jointly own not only the world but also, in effect, each other?" It seems problematic for libertarians that Able can, at the same time, be a (near-)full self-owner and not have the right to do anything with his person at all.

The way out for libertarians is to argue that their preferred conception of world-ownership would not lead to a situation comparable to the jointly owned world of Able and Infirm. Although joint ownership of the world might indeed imply that (near-)full self-owners have no right to do anything with their person at all without the consent of someone else, libertarians must argue that their theory, which rejects joint world-ownership (cf. supra), will lead to a distribution of ownership rights over external resources that will always guarantee substantive (rather than merely formal) self-ownership rights. In what follows, I will first argue that right-libertarians fail to meet this challenge because the propertyless proletarian in a free market society does not have self-ownership rights more substantial than Able. This is Cohen's argument, and well-known in the literature. Thereafter, I will, more controversially, argue that also some of the most prominent left-libertarians fail to meet the challenge. Also in certain left-libertarian societies some agents could end up with no rights over external resources whatsoever.

2.2. Formal self-owners in a right-libertarian society

Right-libertarians, in affirming the self-ownership principle, cannot guarantee that all agents have substantive or effective rights to set and pursue ends without the consent of others. This is because a right-libertarian society is consistent with some agents having no rights over external resources at all. As we have seen, if one has no rights over external resources, then one cannot (a) secure one's survival, nor (b) set and pursue any end.

Right-libertarianism is, in contrast to left-libertarianism, characterized by an inegalitarian world-ownership principle. Right-libertarians argue that an agent can, via a specified procedure of original appropriation, become the full moral owner of a previously unowned external resource and that an owner can transfer all those rights to someone else as long as there is mutual agreement about the conditions of the transfer. In other words, no constraints,

except for mutual agreement, apply to the transfer of resources one justly acquired. Therefore, right-libertarianism justifies a radical free market society and does not principally reject the unlimited accumulation of wealth (e.g. Nozick, 1974, pp. 160-164 on Wilt Chamberlain, see also chapter V).

It follows that, in a right-libertarian society, some agents could end up without any resources at all. This could happen in different ways, like if an agent transfers all of her resources to others or if she had no resources to begin with (e.g. because her parents were very poor and there were no external resources left for original appropriation in the state of nature). Such propertyless agents, which Cohen suggestively calls 'propertyless proletarians', are in the same position as Able (and Infirm) in the jointly owned world. The proletarian has (near-)full self-ownership rights over her person, but cannot do anything with those rights as she has no rights over external resources. Moreover, the proletarian, just like Able, needs the permission of someone else in order to acquire use rights over external resources. That is, she needs to form an agreement with someone who has ownership rights over external resources in order to acquire access to them (e.g. via a labour-contract). Right-libertarians, thus, defend a society in which the self-ownership rights of some agents could be merely formal. This is an unattractive conclusion.

Narveson (2001, pp. 71-73) defends right-libertarianism against this critique. In essence, he thinks Cohen's argument fails because it is based on very unrealistic premises. The situation of the propertyless proletarian in a right-libertarian (i.e. capitalist) society is not relevantly similar to that of Able in the jointly-owned world. Whereas Able cannot do anything without the consent of *everyone else*, the proletarian can, in any realistic scenario, (a) become self-employed or (b) sell his labour to *any single* owner of external resources. In a capitalist society an agreement with only one other person (a property-owner) suffices for each agent to have access to external resources, whereas in a jointly-owned world an agreement between all its inhabitants is necessary. This difference, Narveson claims, is substantial and justifies the right-libertarian position that the proletarian in a capitalist world does have effective self-ownership rights whereas an agent in a jointly-owned world does not.

The idea that the propertyless proletarian could become self-employed fails to capture Cohen's critique. Namely, the critique is that in a right-libertarian society some could end up without ownership rights over *any* external resources. It could simply be the case that all external resources are owned by others and that there are no raw natural resources left for

original appropriation. But, obviously, to become self-employed one has to have at least some minimal use rights over certain external resources, such as resources necessary to invest in the creation of one's product or service and a physical space where one can offer them to others (see also Brown, 1990, pp. 442-443).

Narveson's second answer, that the propertyless proletarian needs the consent of only one other agent, whereas Able needs the consent of all others, and that such consent would be readily available in a capitalist society, is also insufficient for a right-libertarian to overcome the criticism. Even if the free market economy works as efficient as right-libertarians tend to believe and offers proletarians plenty of options to acquire rights over external resources by, for example, selling their labour, it remains true that right-libertarianism does not provide a principled way out of Cohen's challenge. That is, right-libertarians cannot secure, in a principled manner, that an agent's self-ownership rights are effective in any sense.[132]

More importantly, this right-libertarian response fails to capture the essential problem that Cohen's argument points out. The point is that there is something especially problematic for someone who defends the self-ownership principle to accept that an agent needs the agreement of someone else to be able to make use of her self-ownership rights. Such a position fails, in an important way, to respect agents as *separate and independent* end-setters and end-pursuers. Just like libertarians think it is important that agents can *unilaterally* appropriate external resources in the state of nature, it seems essential that in a more developed economy, where (almost) no resources are still up for grabs, one can still *unilaterally* come to own external resources. That is, to have to make an agreement with others seems inconsistent with the thought that agents should be able to direct their life as they see fit, independent from others. Someone who defends the self-ownership principle must reject any society in which some need the agreement of others to make effective use of their self-ownership rights, even if such agreement is readily available. Cohen's argument shows, thus, that mere self-ownership rights are not only a threat for the status of agents as *project pursuers*, but also for them being *separate* and *independent* from others.

[132] It is precisely for this reason that Mack suggests his 'self-ownership proviso' (cf. supra). Although he is a fan of free market institutions and thinks such an economic system will provide plenty of opportunities for the propertyless to acquire ownership rights over external resources via an agreement with others, he want to exclude, in a principled way, the possibility that a propertyless agent finds no one willing to exchange ownership rights.

2.3. Formal self-owners in a left-libertarian society

Surprisingly, the same criticism applies to many left-libertarian theories of justice. Left-libertarians, recall (cf. Introduction), hold (a) that agents own themselves in a (near-)full manner and (b) that a 'Lockean' or 'egalitarian' proviso applies to the initial appropriation of previously unowned external resources (i.e. raw natural resources and abandoned artefacts) (e.g. Otsuka, 2003; Roark, 2013; Steiner, 1994; Tideman & Vallentyne, 2001; Vallentyne, 2012a; Van Parijs, 1995). All agents, that is, have a right to an equal or fair share of the world's raw natural resources. The idea is that social institutions must ensure that everyone gets their equal or fair portion of the external world. In practice, this means that left-libertarians justify policies that redistribute resources from those who took more than their fair share of external resources (i.e. over-appropriators) to those who acquired less than what they had a right to (Steiner, 1994, p. 268; Vallentyne, 2009). One would expect, then, that left-libertarianism can guarantee effective self-ownership for all. Indeed, it is an essential claim of left-libertarians that their defence of an egalitarian world-ownership principle has the attractive feature that it makes self-ownership rights effective and substantive rather than merely formal (Otsuka, 2003; Steiner, 1987, pp. 59-64; Vallentyne, 1998, p. 618). In what follows, I will argue that this is not the case. Many left-libertarian theories cannot guarantee that the self-ownership rights of all agents are more than merely formal.

2.3.1. Luck-egalitarianism

To see why the same criticism applies to many forms of left-libertarianism as well, it is important to light up 'luck-egalitarianism' as a central feature of that theory.[133] Indeed, Steiner (2011b, p. 110) characterizes left-libertarianism as "a family of luck egalitarian theories". Nevertheless, sometimes left-libertarianism is defined more broadly, so as to include all theories that defend (near-)full self-ownership and some significant redistributive policies so as to secure, for example, Rawlsian equality (Quong, 2011) or sufficiency (Simmons, 1992; Wendt, 2018). My criticisms here do not apply to those latter suggestions. Rather, in this section, I will speak to the version of left-libertarianism, *luck-egalitarian left-*

[133] The three most famous luck-egalitarians are Ronald Dworkin (1981a, 1981b, 2000), G.A. Cohen (1989, 2011c) and Richard Arneson (1989). For recent defences of luck-egalitarianism, see Carl Knight (2009) and Kasper Lippert-Rasmussen (2015).

libertarianism, that is defended by the most prominent contemporary left-libertarians: Steiner, Vallentyne, Otsuka and Roark.[134]

Luck-egalitarianism is a conception of distributive justice which arose as a response to Rawls's 'Justice as Fairness' and which has integrated the idea of *personal responsibility* into the ideal of equality. For Carl Knight (2009, p. 1) luck-egalitarianism is "the view that variations in the levels of advantage held by different persons are justified if, and only if, those persons are responsible for those levels". Lippert-Rasmussen defines luck-egalitarianism differently. He focusses on the opposite of personal responsibility, i.e. *bad luck*. The "core luck egalitarian claim", he thinks, is that "it is unjust if some people are worse off than others through their bad luck" (Lippert-Rasmussen, 2015, p. 1).

Luck-egalitarian theories of distributive justice hold that the distribution of internal (e.g. personal talents) and external (natural resources and artefacts) resources must be sensitive to individual responsibility and insensitive to matters of brute bad luck. In other words, luck-egalitarians condemn as unjust inequalities between agents that cannot be traced to individual choice or fault. Such inequalities provide a ground for compensation and redistribution. Paradigmatic instances of problematic inequalities are those that arise from poor genetic endowments, handicaps and the social and economic circumstances in which one grows up. In contrast, a standard case of individual responsibility is the choice to spend one's money on an entrance ticket of a football game rather than to save it for one's pension. The luck-egalitarian, thus, holds that inequalities that result from differential talents and the social and economic circumstances of one's parents are unjust, and that those that result from free and informed choices are just. This reasoning results in the idea that what is important for luck-egalitarians is to *equalize opportunities rather than outcomes*. It is not important that agents end up with equal amounts of wealth, resources, wellbeing, or some other equilisandum. These outcomes may be unequal but only if the inequality results from the choices of the

[134] Note that I do not mention Van Parijs' (1995) version of left-libertarianism here. That is because he accepts, in contrast to other left-libertarians, that formal self-ownership is only one building block of personal liberty. That is, Van Parijs explicitly argues that formal self-ownership should be accompanied by 'effective opportunities' in order to generate a sphere of personal liberty (Van Parijs, 1995, chapter I). In other words, *substantive* self-ownership is at the core of his concept of 'real freedom'. He is, therefore, more willing than other left-libertarians to adjust his world-ownership principle so as to ensure that all agents have the effective self-ownership rights necessary to set and pursue their own projects.

agents involved. Rather, what is important is that all individuals have an equal opportunity to realize or acquire a certain level of wealth, resources, wellbeing or still something else.[135]

2.3.2. Luck-egalitarian left-libertarianism

Left-libertarians differ along the lines of the internal luck-egalitarian debate about the *currency of egalitarian justice* (cf. chapter VI). Some left-libertarians defend a version of equal opportunity for wellbeing (Otsuka, 2003; Roark, 2013; Vallentyne, 2002), while others defend something like equality of resources (Steiner, 1994). The details of the conflict and the specific left-libertarian theories should not distract us here. What all those left-libertarians have in common, though, is that they want to equalize opportunities via an initial distribution of natural resources that compensates agents who have poor natural and social endowments. Those agents that are born with few marketable talents, disabilities, or into a family with negligible material and social capital should, in the initial distribution, receive more natural resources than agents born with plenty of marketable talents or in a very stimulating and rich family.[136]

To make this idea explicit, consider Otsuka's left-libertarian theory. Irrespective of his welfarist incliniations, he holds that the following egalitarian proviso applies to initial acquisition of external resources in the state of nature:

> "You may acquire previously unowned worldly resources if and only if you leave enough so that everyone else can acquire an equally advantageous share of unowned worldly resources" (Otsuka, 2003, p. 24).[137]

For example, consider again a Cohenian island inhabited by Able and Infirm. This time, the island is originally *unowned rather than jointly owned*. The rights of its inhabitants, both rights over their person and rights over external resources, are determined by a left-libertarian

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[135] For more on luck egalitarianism and its attractiveness, see chapter VI.

[136] The details of the different luck-egalitarian left-libertarian theories differ a bit. Whereas my description in the text is accurate for most contemporary left-libertarian theorists, it does not fully hold for Steiner's version. Steiner's focus is on equalizing the share of natural resources agents can permissibly acquire, and includes personal endowments and the effects of natural disasters on one's share of resources within the pool of distributable natural resources. Contrary to other left-libertarians, he does not accept social circumstances (e.g. the social network of one's parents) as a disadvantage due to bad luck that ought to be compensated. Nevertheless, the criticisms I will shortly express against left-libertarianism equally apply to Steiner's view.

[137] Left-libertarians differ, thus, only in what they consider to be an 'equally advantageous share' of unowned worldly resources.

theory. That is, Able and Infirm have full (or near-full) self-ownership rights and have the moral power to unilaterally acquire an egalitarian share of the natural resources available on the island. Able is very talented and capable of transforming natural resources into welfare or resources more broadly defined. Infirm is severely handicapped and has difficulty with making productive use of his talents. Given this difference, left-libertarian theories of justice prescribe that Infirm has a right to a greater than equal share of the island's natural resources. Rather than to split the island in two equally valuable shares, the left-libertarian will hold that Infirm has a right to 2/3 of the island's natural resources, or 3/4, or 4/5, or some other size. The size of the island that Able and Infirm can, respectively, justly appropriate will depend on the difference in the value of their natural endowments and talents. The value of each inhabitant's natural endowments and talents will be determined based on how useful they are in achieving a certain level of welfare or resources (depending on the currency or equilisandum the left-libertarian prefers). This division expresses the luck-egalitarian spirit of left-libertarianism. If one is born with inferior natural endowments, less marketable skills or in a family where the social and economic circumstances obstruct rather than enhance one's opportunities, the distribution of natural resources must be so that it compensates for those instances of bad luck.

The problem for left-libertarians is that the luck-egalitarian feature makes the theory vulnerable to two famous objections: the *slavery of the talented objection* and the *harshness objection*. Both objections come down to the claim that left-libertarianism cannot ensure effective liberty for all agents at all times. In other words, those two objections show that luck-egalitarian left-libertarianism is consistent with a society in which the self-ownership rights of some agents are merely formal.

2.3.3. The 'slavery of the talented' objection

The first objection is famously labelled as the 'slavery of the talented'. The general idea of the objection is that the requirements of compensation and redistribution that follow from a theory of distributive justice can be so demanding that the most talented agents in society are left with no resources at all to make something valuable out of their lives (Dworkin, 2000, pp. 60-61, 80) or, even more horrendous, that they are morally required to be productive in certain profitable ways merely because of their highly marketable talents (Dworkin, 2000, pp. 89-90; Van Parijs, 1995, pp. 64, 75, 92).

The slavery of the talented objection applies to luck-egalitarian left-libertarianism as well (see also Arneson, 2010, pp. 173-174; Quong, 2011, pp. 74-77).[138] Consider Able and Infirm and their co-inhabited left-libertarian island again. If we imagine the value of Able's talents to be extremely high, and the value of Infirm's talents to be extremely low, the proper luck-egalitarian left-libertarian initial distribution of the island might require that Infirm has a right to appropriate the whole island (or something very close to the whole island), while Able has no right at all to acquire parts of the island via initial acquisition. Imagine, for example, that Able is an extremely good singer while Infirm is severely disabled and hardly capable of doing anything at all without Able's support. Moreover, Infirm has a special taste for good singing and is, therefore, very happy to exchange plenty of resources with Able to encourage her to sing a song now and then. Able's talents, thus, are highly marketable. In such a world, for Able and Infirm to have equal opportunities might require, as a compensation for brute luck inequalities, to give the whole world to Infirm and leave Able only with a use-right over the space that her body occupies.

The problem, of course, is that, in this left-libertarian society, Able's self-ownership rights are merely formal. She has no (or almost no) rights over external resources. Therefore, she cannot secure her future existence, let alone set and pursue ends, without making an agreement with Infirm. Her situation is relevantly similar to the situation of inhabitants of a jointly-owned world and to that of the propertyless proletarian in a right-libertarian free market society (cf. supra). Although Able has full self-ownership rights, she has no effective liberty whatsoever. Her access to external resources depends on making an agreement with Infirm. Even although Infirm would be very happy to transfer external resources to Able in exchange for the latter singing a song, there is something deeply problematic about Able being required to exchange something with Infirm in order to be able to do anything with her life at all. Theorists who defend the self-ownership principle because of the importance of those rights to ensure that agents are not subordinated to others and, thus, independent from others in their project pursuit, must ensure that those self-owners have resources at their disposal to effectively make use of their rights.

Otsuka (2003, see especially pp. 31-35) anticipated this objection. He acknowledges that although left-libertarianism shows "that the conflict between libertarian self-ownership and equality is largely an illusion" (Otsuka, 2003, p. 11), it cannot fully reconcile those two ideas.

[138] Early on, Cohen (1995) and Fried (2004) pointed at a similar worry.

That is because, like the slavery of the talented objection shows, sometimes the demands of equality might make the self-ownership rights of some agents effectively useless. Nevertheless, he believes that left-libertarianism is able to guarantee equal opportunities for advantage, "across a fairly wide range of individuals who differ in their capacit[ies]", in a manner that is compatible with the "robust" self-ownership rights of all (Otsuka, 2003, p. 11). Otsuka contrasts 'robust self-ownership' with 'merely formal self-ownership' (Otsuka, 2003, pp. 11, 16). An agent's self-ownership rights are robust insofar as the agent is not forced, out of necessity, to come to the service of others in order to secure her survival (Otsuka, 2003, p. 32). In other words, robust self-ownership implies that one has both formal self-ownership rights and rights over sufficient external resources to stay alive without having to engage in an exchange with others. Otsuka claims that, "as a matter of contingent fact" (2003, p. 11), luck-egalitarian equality and robust self-ownership are compatible in our actual world as well as in almost all possible and nearby worlds (2003, pp. 33-35). Without having to go into the details of the view, his idea is that, if we assume standard tastes and preferences, all agents (both talented and untalented) will be very happy to exchange rights over resources with one another. As long as the less-talented agents have the right to acquire a significantly greater and more valuable share of the unowned worldly resources, as luck-egalitarian left-libertarianism proclaims, this distribution will generate, almost always, equal opportunities for welfare (or, if one so prefers, equality of resources).

Otsuka's response is insufficient to overcome the challenge posed to libertarians by the fact that full self-ownership is a merely formal concept. It fails to adequately address the challenge in two ways. First, his response is highly based on empirical facts and provides no principled answer to the challenge. Even if it is indeed the case that left-libertarianism can secure robust self-ownership rights for all agents *most of the time*, in our actual world and in most possible worlds, it does not, in principle, exclude the option that some self-owners will end up without any rights over external resources at all. That is, left-libertarianism, as it is construed by its most prominent defenders, is consistent with some agents being forced to come to an agreement with others in order to have access to external resources and to have any effective liberty at all. Otsuka's claim that in almost all possible worlds all agents will have robust rather than merely formal self-ownership rights does not seem a lot different from a right-libertarian's claim that free market capitalism will, in almost all its appearances, be in the advantage of all agents. Even if those empirical claims of left and right libertarians are true, someone who defends self-ownership as a principle of justice would fare much better if she

had a principled argument to secure that those self-ownership rights are more than merely formal.

Second, Otsuka's robust self-ownership is insufficiently robust. It only requires that agents have enough use-rights over external resources in order not to be forced, out of necessity, to sacrifice one's life, limb, or labour in assisting others (Otsuka, 2003, p. 32). Unfortunately, Otsuka does not give us an account of the background conditions that should be met so that an agent is not 'forced out of necessity' to make an agreement with others. Given his libertarian inclinations, we can assume that the level of external resources needed in order not to be forced out of necessity will not be very high (cf. Steiner, 1994).[139] A plausible interpretation of his view, I believe, is that robust self-ownership requires that agents have access to sufficient external resources to secure their survival independently from other agents.[140] But such a defence of robust self-ownership only surmounts one problem that mere formal self-ownership rights generate. Robust self-ownership would indeed be sufficient to guarantee an agent's continued existence as a being with a special moral status. It is insufficient, though, to overcome the claim that formal self-ownership cannot ensure that all agents can effectively and independently set and pursue ends. In order to be in a position to independently set and pursue ends, one needs more than just use-rights sufficient to survive. One needs different kinds of ownership rights, including at least some control, transfer and enforcement rights, over a significantly greater amount of external resources. Again, we cannot do anything with our lives, we cannot set and pursue any project, if we do not have a minimal amount of

[139] For arguments that the background conditions which must be met in order for an agent not to be forced are quite demanding, see Olsaretti (2004) and Widerquist (2010). Olsaretti argues that for one's choices to be genuinely voluntary, in contrast to forced, one must have a guaranteed minimum of external resources that secures "a sufficient range of acceptable options", objectively defined (2004, p. 164). Widerquist is a bit more specific and thinks that choices can only be voluntary if one has unconditional access to sufficient resources in order to guarantee and protect one's basic capabilities (defined by Nussbaum's (1997) list of ten basic capabilities). For Widerquist, thus, this unconditional minimal capability level provides an adequate exit option which, in turn, is necessary for interpersonal agreements to be genuinely voluntary. Both authors conclude that, insofar libertarians defend the self-ownership principle to protect an agent's capacity for voluntary choices, libertarians must ensure that all agents have access to a level of external resources sufficient for that agent to have an acceptable exit option.
Note the difference between the Olsaretti/Widerquist-strategy and mine to reject mere formal self-ownership rights. Their argument refers to the requirements of 'voluntariness', whereas my argument is grounded in the idea that agents should be respected as 'independent purposive beings', capable of setting and pursuing individually chosen ends. I think both views are consistent, but I will neither defend nor reject the Olsaretti/Widerquist-strategy in this PhD.

[140] Also Arneson (2010, p. 175) and Roark (2013, p. 128) interpret Otsuka's robust self-ownership in this minimal way.

ownership rights over external resources. This amount, arguably, must be greater than the amount that Otsuka thinks would secure robust self-ownership.[141]

2.3.4. The harshness objection

A second famous criticism against luck-egalitarianism that shows that luck-egalitarian left-libertarianism cannot guarantee the effective liberty of all agents to set and pursue their independently chosen ends is the so-called *harshness objection*. The harshness objection is famously expressed by Elizabeth Anderson (1999, see especially pp. 295-302). In short, the objection holds that luck-egalitarian theories are harsh with regards to agents who end up very badly off as a consequence of choices for which they can be held morally responsible. I will argue that, although the criticism is unfair with regards to some luck-egalitarian theories, it applies particularly well to luck-egalitarian left-libertarianism. Moreover, it shows that this kind of left-libertarianism cannot ensure that an agent's self-ownership rights are anything more than merely formal.

Anderson's criticism runs as follows. Luck egalitarians, she says, aim to compensate individuals for misfortune and, as the other side of the same coin, hold them responsible for choices that can properly be attributed to their own agency. To hold someone responsible for her own choices entails that she must accept the consequences and bear the costs of those choices. For example, if you choose leisure over work and, let us assume, can be held morally responsible for this preference, you must accept the consequence that the level of income and wealth that you will acquire over your lifetime will be less than someone who, all other things being equal, chooses to work more. But if this is true, Anderson argues, "the inequalities and suffering permitted by this view are unlimited" (1999, p. 298). For one could end up totally without any income, wealth or any other external resources due to choices for which one can be held morally responsible. I could, for example, give you all external resources I own as a

[141] Arneson (2010) provides still other reasons for why Otuska's robust self-ownership is insufficiently robust. He convincingly argues that the rationale of the self-ownership principle puts further restrictions on the content of the world-ownership principle. For example, for self-ownership-like reasons, it is unacceptable for a libertarian to accept a conception of world-ownership that states that one can only acquire extra ownership rights over external resources, in addition to what one needs to survive, if one restrains from having sexual intercourse with someone of the same sex, from drinking alcohol or from speaking in public about political issues. Although all such proviso's would be consistent with Otsuka's robust self-ownership, they are clearly incoherent with the idea that agents own themselves. Therefore, although Otsuka's robust self-ownership is an improvement to mere formal self-ownership, it is insufficiently robust to protect the libertarian spirit that agents should be free to live their life as they see fit.

way to show you my deep love, or I could give them all to my religious community so as to express my creed. I could also lose a gamble. Such a gamble can be imprudent, like when we, together, decide to toss a coin and whoever wins gets all the external resources of the other. To my bad, you might end up with all my wealth. But a gamble can also be prudent, like in case I start my own coffee bar, after due market research, but still fail to make it profitable. I can lose all my external resources due to the depths I have to pay off after bankruptcy. Assuming that all agents initially had ownership rights over their fair share of external resources, luck-egalitarians, implausibly, or so Anderson thinks, hold that society has no reason whatsoever to come to the help of agents who suffered bad option luck.[142] But this seems harsh. Agents seem to have no protection against subordination in a luck-egalitarian society if they can be held responsible for their dire straits. No unemployment benefits, living wage, subsidized health insurance, emergency care, extra schooling, or any other state provision seems to be owed to someone who ends up without any ownership rights over external resources as a consequence of choices for which she is morally responsible.

It must be noted that the harshness objection does not apply to all luck-egalitarian theories and, moreover, is unfair with regards to most of them. In that regard, it is not a coincidence that Anderson discusses the harshness objection by focussing on one "hard-line version" (Anderson, 1999, p. 298) of luck-egalitarianism (the version defended by Eric Rakowski (1991)). Most luck-egalitarian theories, in contrast, can avoid the harshness objection in several ways. First, luck-egalitarians can refer to the requirement that the principles of any egalitarian society must show equal concern and respect for all its citizens (Anderson, 1999, p. 289; Dworkin, 2000, 2011). One plausible interpretation of this requirement is that the state can only show equal concern to all its citizens if it ensures the minimal conditions for a humane life. This condition could serve as a limit to the responsibility-sensitivity requirement of luck-egalitarian theories (in similar vein, see Williams, 2006). Another standard liberal interpretation of the requirement to show equal concern and respect for all is to defend a liberal democracy which guarantees, among other things, some inalienable political liberties like the freedom to participate and speak freely in public debate, the freedom to start a political organization, the freedom to compete for political office and so forth (Freeman,

[142] Luck-egalitarians might be able to accommodate the case of the coffee bar, though, because they might want to include something like a criterion of 'reasonable deliberate influenceability' in their account of brute luck (Vallentyne, 2002). This would imply that if one's investments are sufficiently responsible, the failure of those investments counts as brute bad luck (Dworkin, 2011, p. 357).

2001, 2007; Rawls, 1993, 1999). In order to protect those liberties, one must ensure the fair value of the political liberties, which in turn requires the satisfaction of certain background conditions necessary for all citizens to actually make use of the political liberties. These background conditions, arguably, include that all agents have their basic needs met, like food, shelter, basic education and health care. Such provisions must ensure that all citizens can participate in democracy on an equal, or at least fair, footing. In this regard, luck-egalitarians can easily argue that although justice requires that the distribution of external resources in society must be sensitive to the choices of agents, there is a minimal level of social provisions that is insensitive to this requirement so as to ensure the fair value of the political liberties. Second, a luck-egalitarian could also take the route that principles of justice do not exhaust the realm of enforceable positive duties. She could, for example, claim that, although *justice* does not require us to redistribute extra resources to agents who can be held responsible for their bad condition, we still have a *duty of beneficence* or a *humanitarian duty* to help those in severe need at small cost to ourselves. Such duties might indeed be enforceable as well and legitimate state action. At most, the harshness objection applies to some versions of luck-egalitarianism and shows that other versions are slightly indeterminate (Lippert-Rasmussen, 2015, p. 230). It fails to question all luck-egalitarian theories.

Nevertheless, the harshness objection is particularly well-placed to criticize luck-egalitarian left-libertarianism as defended by Vallentyne, Steiner, Otsuka and Roark. That is because the options for other luck-egalitarian theories to get around the harshness objection are not open to those left-libertarians. First, insofar as left-libertarianism is grounded in the idea that principles of justice should reflect equal concern and respect for agents, no prominent left-libertarian claims that their interpretation of equal concern and respect would require, as a matter of principle,[143] that the minimal conditions for a humane life are met for all individuals at all time. For left-libertarians, to show equal concern and respect for all agents entails to respect their set of justified ownership rights. As we have seen, this set is determined by two principles: the self-ownership principle and the luck-egalitarian world-ownership principle. Given that left-libertarians think, standardly, that no other considerations than 'self-ownership' and 'an equally advantageous share of worldly resources' are relevant to

[143] This contrasts with Otsuka's (semi-)empirical defence of robust self-ownership (cf. supra).

determine the ownership rights of agents, they reject 'conditions for a minimally humane life' as a ground for individual rights.[144]

Second, political liberties are not fundamental in libertarianism. Whereas personal liberties and political liberties form a balanced set of rights and liberties in standard liberal egalitarian theories, the former are hierarchically higher than the latter in libertarian theories. For libertarians, political liberties are derivative rights, grounded in the principles of self-ownership and world-ownership. More specifically, the standard libertarian route to justify and legitimize a democratic political system is via a Lockean theory of consent.[145] Any government, including a democratic political system, is legitimate if and only if all citizens consent to transfer some of their non-derivative rights to it. So it is only when agents transfer some of their rights of self-ownership (e.g. enforcement rights) and world-ownership (e.g. small parts of land so as to create public spaces) to a state or government that political liberties arise. Without the consent of all agents, the political liberties cannot, in turn, limit the more fundamental rights of self-ownership and world-ownership. Therefore, in contrast to other liberal egalitarians, left-libertarians cannot say that the political liberties require background conditions, implying basic social provisions, that limit the self-ownership rights and world-ownership rights of agents. They cannot use this route to bypass the harshness objection.

Third, left-libertarians hold the view that considerations of justice exhaust the realm of enforceable duties (Vallentyne, 2000, 2012a). Given that the standard libertarian conception of self-ownership, in contrast to a more moderate version, like the one I defended in chapter III, rejects the existence of enforceable positive duties, left-libertarians would have a hard time accepting duties of beneficence or humanitarian duties as a way out of the harshness objection.

We must conclude that luck-egalitarian left-libertarianism, in accepting only considerations of self-ownership and luck-egalitarian world-ownership to be relevant for justice, is particularly vulnerable to the harshness objection. It is consistent with luck-egalitarian left-libertarianism that some agents, like the religious devotee or the prudent business man, end up without any rights over external resources because they are morally responsible for their deplorable

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[144] Recall that my criticisms here are not directed to Van Parijs' theory of justice. His is not a 'typical' left-libertarian theory, as he does not equalize personal liberty with formal self-ownership (cf. supra).
[145] Otsuka (2003) provides a contemporary statement of such a Lockean theory of legitimate government.

situation. Such agents chose to give away their wealth or to start a business and thus to gamble with their external resources. They knew in advance that they might end up without any external resources at all. Even if the religious devotee decides to exit her religion or if the prudent business man wants a second chance in life, luck-egalitarian left-libertarianism lacks the theoretical tools to ensure those agents the effective liberty to do so. Indeed, Steiner (1997, p. 298; 2001) affirms that agents who are responsible for their own hardship are, in a standard left-libertarian society, left to charitable aid and voluntary rescue programmes. Justice, he thinks, does not require any enforced redistribution of resources to come to the help of self-inflicted needy agents and to secure their substantive self-ownership (Steiner, 1997, p. 305; 2001). Therefore, the harshness objection, just like the slavery of the talented objection, shows that luck-egalitarian left-libertarianism cannot guarantee that the self-ownership rights of all agents are substantive rather than merely formal.

3. Libertarianism, substantive self-ownership and sufficiency

Thus far, the arguments in this chapter support two claims. The first is that the concept of self-ownership is merely formal and that, therefore, one cannot derive ownership rights over external resources from an analysis of the implications of self-ownership principle alone. The second is that this is problematic for both right- and (some prominent) left-libertarians, because a defence of formal self-ownership makes them vulnerable to the claim that their theories are consistent with certain agents owning no external resources at all and, therefore, not having any substantive rights to independently set and pursue projects. In this third section, I will argue that although the *concept* of self-ownership is silent about the scope of plausible conceptions of the world-ownership principle, the best *rationale* or *justification* of (near-)full self-ownership does have implications for the conception of the world-ownership principle that libertarians can coherently defend. That is, the rationale for self-ownership, based on the special moral status of agents as separate purposive beings, leads to the acceptance of two basic world-ownership rights. First, theorists who defend the self-ownership principle in order to respect agents as separate end-setters and end-pursuers must

also accept a *natural right of property*.[146] Second, these theorists must accept a *sufficiency proviso*.

3.1. The natural right of property

Following Mack (1990, 2010), I believe that the best argumentation for the self-ownership principle also grounds a natural right to private property. Recall that the best argumentation for (near-)full self-ownership derives ownership rights over one's person from a more foundational moral claim about the respect that is owed to the special moral status of agents (cf. chapter II). This more foundational claim entails, I believe, that agents should be respected as separate and independent purposive beings, capable to set and pursue their own conception of the good. The argument accepts that agents are special, as compared to objects and non-human animals, in that they can rationally set and pursue ends. Moreover, it accepts that agents are separate from one another, in that they give special priority to their own wellbeing over the wellbeing of others or some collective good. The special purposive capacity and the separateness of persons, together, generate a privilege for each agent to live her life as she sees fit. It also justifies a duty in all others not to employ an agent as a means to pursue their own projects, but rather to respect her as an independent and separate end-setter and end-pursuer. This duty requires an agent not to interfere with another agent's attempts to live her life in her own chosen way and in her use of her body, mind, capacities and energies in the pursuit of her ends. That is, to be respected as a separate and independent purposive being others have to respect your (near-)full self-ownership rights.

Just like the argument for full self-ownership, the argument for a natural right of property starts from a basic moral claim that individuals ought to be respected in their capacity to direct their own life and to pursue their own conception of the good in the way they see fit. In order to be able to guide one's life to certain self-chosen goals in the way one prefers, agents need, at the very least, use-rights over external resources. This is because one cannot do anything without making use of external resources. In Mack's (2010, p. 62) words, "life is lived through the acquisition, transformation, and utilization of extrapersonal objects". Nevertheless, use-rights are insufficient to be respected as a separate and independent end-

[146] For a discussion of 'natural rights' and the way contemporary libertarians use this label, see the introduction of this PhD.

setter and end-pursuer because they are, standardly, only temporary. To be in a position to set and pursue the kind of ends that last longer than immediate use would make available (e.g. to collect stamps, to give an engagement ring to your girlfriend, to build a house), one needs long-term rights to exclude others from interfering with some external objects. That is, to be able to make plans for the future, one must have a right to acquire continued discretionary control over certain external resources and the right to transfer these resources to others. Without the right to exclude others from interfering, now and in the future, with the resources one makes use of or plans to make use of, an agent is highly disabled of her capacity to live her life in her own chosen way.

Given the importance of control over external resources to live one's life, it would be a violation of an agent's fundamental claim to be respected as a separate and independent purposive being if she would be prevented from acquiring ownership rights over such resources (see also my rejection of joint ownership of the state of nature, supra) (Brennan, 2014, pp. 78-82; Mack, 2010, pp. 61-62; Roark, 2013, pp. 136-137; Tomasi, 2012, pp. 76-78; van der Vossen, 2015, pp. 77-78; Wendt, 2018). This is why agents have a claim right "not to be precluded from engaging in the acquisition and discretionary disposition of extrapersonal objects" and a moral power to appropriate external resources (Mack, 2010, p. 54).

This argument in favour of a natural right of property has several implications. First, and most straightforwardly, the reasoning for the natural right of property implies that it must be permissible, via some justified procedure, to acquire *ownership* rights over previously unowned external resources. Without this permission, external resources would remain unowned, only available for use by all. No one would have the right to acquire long-lasting control over external resources and, therefore, no one would be able to deploy external resources in a way that enables them to set and pursue ends for the future and, thus, to live their life as they see fit.

Second, it must be permissible to acquire *private* ownership rights. This is not to say that all ownership rights must be private, or that there is something wrong with, or undesirable about, collective ownership rights. It is to say that if one wants to respect agents as separate and independent purposive beings, it must be permissible for them to acquire rights over external resources that they can exercise separately and independently from others. The rights must be such that the consent of others to one's continued control over certain external resources is irrelevant.

Third, it must be permissible to *unilaterally* acquire ownership rights. I have developed this argument earlier in the chapter against joint-ownership conceptions of world-ownership. These conceptions violate the foundational moral claim that agents should be respected as separate and independent purposive beings as they require that an agent demands for the collective consent of all others for each use or appropriation of an external resource. One cannot be said to be free from subordination, and thus to be genuinely independent, if one needs the consent of others for any end one aims to pursue.

Fourth, the initial acquisition of private ownership rights must take place via the exercise of a moral *power* to appropriate. The idea is that agents must be permitted, through some act of their own, to acquire certain specific things (Feser, 2005, p. 63; Wendt, 2018). This is because agents often think it is important to control this *specific* piece of land, or that *specific* book, or that *particular* house they built themselves. Moreover, the exercise of a moral power to appropriate external resources seems to be the only coherent way agents can acquire ownership rights over worldly resources in a state of nature.

I have already dismissed two libertarian conceptions of how these unilaterally acquirable private property rights might be instantiated: the labour-mixing theory and the first-possession theory of initial acquisition (cf. supra). These theories are based on the idea that some *inherent feature* of the act justifies the initial acquisition (Mack, 2010, pp. 54-55). In the case of labour-mixing, mixing one's labour is the inherent feature that generates ownership rights. In the case of first-possession, the mere fact one is the first to use or possess the resource and, in the process of doing so, one does not violate another's claim rights, is the inherent feature that generates ownership rights. Given that the two most popular inherent feature conceptions fail, because of moral irrelevancy, indeterminacy, unfairness and neglect of the use-rights agents have over unowned resources (cf. supra), it is highly doubtful that some inherent feature can be found that is not vulnerable to those objections.

Interestingly, as an alternative, Mack suggests a *practice conception* of initial acquisition of private property. Under the practice conception agents can justly acquire private property rights over external resources by performing an act which is conventionally accepted as a way to acquire such rights under a justifiable practice of private property (also Narveson, 2001, p. 86 touches upon this idea). A practice of private property is a means to artificially overcome the problems with the inherent feature conception. It allows individuals to unilaterally appropriate external resources and to gain discretionary control over them without reference

to certain rights-generating rules. The fact that a certain initial appropriation is in accordance with a justifiable practice is sufficient to justify the appropriation. Nevertheless, this is not to say that it is the practice or convention itself that justifies the generated private property rights. This would be ridiculous, as some practices and conventions are clearly unjustifiable (e.g. property acquisition via a caste system). Rather, it is the fact that the practice is *justifiable* that makes the acquisition just. If, in the practice conception, the acquisition of individual private property rights depends on the justifiability of the practice of private property upon which the acquisition rests, it is important to know when such a practice is justified. Therefore, in the rest of this chapter as well as in the next we will be concerned with the question when a practice of private property is justifiable.

Mack puts forward four features a practice should, to a reasonably acceptable extent, instantiate in order to be justifiable: coherency, transparency, comprehensiveness and inclusiveness.

> "The practice will be *coherent* insofar as the entitlements generated by acting in accordance with its rules are compossible.[147] It will be *transparent* insofar as the entitlements generated under it can be readily identified. It will be *comprehensive* insofar as it facilitates the establishment of private rights over all extrapersonal objects (except for those objects, if any, which are not appropriate candidates for private ownership). [It will be] *inclusive* [insofar] all persons [are] equally eligible to participate in the practice" (2010, p. 63, see also 1990, pp. 535-537).

These four conditions are indeed plausible prerequisites for a practice of private property to be justifiable. Nevertheless, in the rest of this PhD, I will argue that there are two extra conditions which a practice of private property must meet. First, it must meet a sufficiency proviso (cf. infra). Second, it must, above the sufficiency threshold, distribute the value of worldly resources in an egalitarian, or fair, manner. This implies, I will argue, that the value of worldly resources should be distributed in a way that compensates for brute luck inequalities (cf. chapter VI). Before I take up the task to defend those two additional conditions, I would like to make one extra remark about the practice conception of private property.

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[147] Rights are compossible insofar they never conflict. To ensure rights do never conflict, it might be necessary to specify the content of rights in a detailed way. See Steiner (1994, especially pp. 86-101) for an influential statement of the compossibility of rights.

Clearly, there is some indeterminacy in the practice conception. In particular, it is unclear what specific act one needs to perform to initially acquire external resources. As there is no requirement of an inherent feature, there is room for many different sorts of acts to be sufficient for initial acquisition. The only requirement is that the act is in line with a justifiable practice of private property. But this could entail all kinds of acts, like labour-mixing, adding value, publicly staking the first claim, long-term use of the resource, etc. Nevertheless, this indeterminacy of the proposal is a strength rather than a weakness. It is a strength because it accepts that systems of private property often function based on customs and conventions. As long as these formal and informal rules are part of a justifiable practice of private property, acquisition in line with those rules is sufficient to generate discretionary rights over an external resource.

3.2. The sufficiency proviso

3.2.1. The rationale for sufficiency

Although the self-ownership principle and the natural right of property are necessary to respect agents as separate and independent project pursuers, they are insufficient to do so. The problem is that even if the self-ownership rights and the natural right of property (i.e. the claim not to be precluded from a practice of private property and a Hohfeldian power to appropriate unowned external resources) of all agents are respected, some might still end up without ownership rights over external resources at all. But a view that can only secure formal self-ownership rights violates the basic moral claim of each agent to live her life in her own chosen way.

As is clear from the discussions in this chapter so far, a view that secures only formal self-ownership violates the rationale for libertarianism in two ways. First, that some agents have no rights over external resources forms a threat for their status as being *independent* and free from subordination. If one needs the agreement of property owners to acquire any external resources at all, one cannot set and pursue ends independently from the ends of others. The ends of others partly determine which projects one can pursue because those ends provide the ground on which the others will form an agreement. Therefore, propertyless agents are subordinated to the will of others. To be properly respected as an independent project pursuer, one needs rights over sufficient external resources in order to avoid that one is at the mercy of

others. Call this the *independence argument* for sufficiency. Second, agents need a minimal amount of external resources in order (a) to secure their continued status as an agent, because without such resources one would die, and (b) to actually be able to set and pursue their own ends and, thus, to live as project pursuers. Call this the *project pursuit argument* for sufficiency.

The independence argument and the project pursuit argument provide support for a proposal suggested by Fabian Wendt (2018). Wendt argues that libertarians who accept the project pursuit argument must accept a 'sufficiency proviso'. Just like any sufficientarian principle (e.g. Crisp, 2003; Frankfurt, 1987, 2000), the sufficiency proviso holds that "we have weighty non-instrumental reasons to secure at least enough of some good(s)" (Shields, 2016, p. 28).[148] In particular, this proviso states that in order to respect the special moral status of agents it is necessary to guarantee that all have enough ownership rights over external resources to live a life as a project pursuer. It ensures that self-ownership rights of agents are effective (or substantive) rather than merely formal. Obviously, it is very difficult to set the level of what is 'sufficient'. Nevertheless, given that the rationale for the sufficiency proviso is that agents should be able to live their lives as independent project pursuers, the threshold of sufficiency must be enough to be able to pursue projects independent from the ends of others. As Wendt (2018, pp. 172-173) explains, "[o]f course, the proviso does not say that everyone is to have sufficient resources to succeed in the specific projects he or she actually pursues; these projects may be very expensive or risky, and justice cannot require that everyone succeeds in his or her projects. The proviso merely requires that everyone is to have enough to live as a project pursuer, to be able to pursue projects beyond mere survival". At the very least, this seems to imply that agents have the power to acquire enough external resources to meet their basic needs, like food, shelter, basic health care and basic education (Wendt, 2018, p. 173).

The sufficiency proviso should be seen as an integral part of a justifiable practice of private property. That is, for such a practice to be justifiable, it must ensure that all agents meet a certain sufficiency threshold. This leaves open the question whether the sufficiency proviso

[148] Following Casal (2007), Shields calls this *The Positive Thesis*. The positive thesis is, according to him, necessary but not sufficient for a theory to be part of the sufficiantarian family. To be part of this family, Shields thinks a theory must also affirm *The Shift Thesis*: "Once people have secured enough, there is a discontinuity in the rate of change of the marginal weight of our reasons to benefit them further" (Shields, 2016, p. 30). The shift thesis is consistent with different distributive principles below and above the threshold. The world-ownership principle I defend in this PhD holds both the positive thesis and the shift thesis and is, therefore, a sufficientarian theory in Shields' sense.

applies to the original appropriation of previously unowned external resources (Simmons, 1992)[149] or to the practice of private property as a whole (Wendt, 2018, p. 172). I remain agnostic about this issue here. What is clear, though, is that the sufficiency proviso installs upon all agents a negative duty to leave others sufficient resources to appropriate so that everyone can independently set and pursue projects. That is, an agent is not permitted to appropriate more resources than is compatible with a system of private property that allows all agents to have sufficient resources to live as an independent project-pursuer. This duty is *negative* as it does not require one to give one's rightly appropriated resources to the needy. Rather, it states that if an agent has more than sufficient resources while there are others who fall below the threshold and are needy, the agent's appropriation of certain surplus resources was not justified in the first place. That is, when the sufficiency proviso is not met, it is the property-owners who benefited from injustice, i.e. from a practice of private property that did not meet the sufficiency proviso, who owe compensation to those whose level of external resources is beneath the threshold. "Those who managed to gain more and better resources than they would have under a justifiable practice of private property that meets the sufficiency proviso can be regarded as 'over-appropriators'" (Wendt, 2018, p. 174).

3.2.2. Improvements of Wendt's sufficiency proviso

Although the sufficiency proviso is clearly the way forward for libertarians who aim to avoid defending merely formal self-ownership rights, Wendt sets out the proposal further in several problematic ways. In discussing those questionable specifications, my aim is to make clear how the most plausible sufficiency proviso would look like and, thus, how to improve Wendt's proposal. First, Wendt (2018, p. 173) thinks that the proviso only applies in economies that are sufficiently rich. The thought is that it might sometimes be impossible to bring everyone above the threshold because the economy is too weak. Therefore, he does not think the sufficiency proviso is unconditional. It is conditional upon there being sufficient funds so as to compensate those below the threshold and to ensure that all agents can live as project pursuers. Although this is correct, it is a mere contingent fact of all duties of compensation that debtors might sometimes have insufficient funds to comply with their duty

[149] Simmons (1992, pp. 292-298) argues that some form of sufficiency condition is the most plausible interpretation of the Lockean proviso, which states that an initial appropriation is only justified if it leaves 'enough, and as good' for others to appropriate.

(Steiner, 2011b, p. 115). Are there principles or practices of compensation that are not conditional in this sense? Even my duty to compensate you in case I break your nose seems conditional upon the fact that I have sufficient resources, or other means, at my disposal.[150]

More interesting is that Wendt claims that the sufficiency proviso is conditional in another way as well. That is, the proviso must be included as part of a justifiable practice of private property as long as it does not endanger the *point* of having such a system in the first place. The idea is that there might be times in which bringing everyone above the sufficiency level is so costly that it conflicts with the reasons why others have property rights, i.e. so that they can live their lives as project pursuers. If meeting the sufficiency proviso demands so much redistribution that the ownership rights of property-holders no longer leave the latter "generous space" to pursue their own projects, the proviso does not apply (Wendt, 2018, p. 173).

This suggestion is problematic. Either it collapses into the 'sufficient-funds condition' just explained, or it conflicts with the project-pursuit rationale. It collapses into the sufficient-funds condition if the only point of the suggestion is that we must not lift some above the threshold at the cost of leaving others, who originally were situated above the threshold, without sufficient resources to be a project pursuer (i.e. below the threshold). Supposedly, Wendt means something different here. What he means is that the requirement to lift all agents above the threshold may be so demanding that it would severely demean the value of having ownership rights even if one, as an individual property-owner, remains above the threshold all the time. This might be the case if the requirements of sufficiency would demand *constant and extensive redistribution* of external resources. One would not be able to actually count on one's resources and, therefore, one's ability to set and pursue projects for the future is severely diminished. In such a situation, the sufficiency proviso would be undesirable as it would conflict with the point of having a practice of private property, even although the economy is sufficiently strong to lift everyone above the threshold (admittedly, at a very high cost). For Wendt, the proviso is, therefore, also conditional in this other way. It is conditional

[150] In similar vein, also Rawls's principles of justice are conditional. Although his principles of justice are not in essence principles of compensation, they are similarly conditional as they only apply to societies in which the "circumstances of justice" are in place (Rawls, 1999, p. 109). These circumstances include, among other things, conditions of moderate scarcity. There is moderate scarcity in case there are insufficient resources to satisfies everyone's demands, but there are sufficient resources to meet everyone's basic needs (Rawls, 1999, p. 110).

upon its requirements not being in conflict with the very point of having private property in the first place.

But to make the sufficiency proviso conditional in this way conflicts with the project-pursuit rationale and the very reason to put forward a threshold of sufficiency. For although we assume that everyone can be lifted above the threshold, in that it is economically feasible, a practice of private property might, according to Wendt, sometimes be justifiable even without respecting a sufficiency proviso. It would be justifiable if respect for the proviso would severely diminish the extent to which those above the threshold would be able to set and pursue ends. But did we not already agree that agents at the threshold have sufficient to live as project pursuers? Why do we need, then, a special protection for the purposive abilities of those agents who are *well above* the threshold? This is appalling, especially because it is at the cost of accepting that others cannot live a life as project pursuers. If one accepts the project-pursuit rationale, and if one also accepts that everyone above the threshold has sufficient resources to live a life as a project pursuer, what is of primary importance is to lift *everyone* above the threshold. That this might have severe consequences for agents who would, without the sufficiency proviso, be able to live as project pursuers to an even higher extent, as their ownership rights over external resources would protect better against their property being redistributed, is vastly less important than securing all agents a life as a project pursuer. To respect the special moral status of agents as independent and separate purposive beings requires that we ensure that all can set and pursue projects. It does not require that we respect the moral status of some at the cost of a lack of respect for that of others.

Another way in which I depart from Wendt's proposal is, second, that he thinks the proviso should only guarantee that everyone can come to own and use sufficient resources. The proviso does not put forward a specific procedure via which it must be possible to become an owner. "It does not matter whether someone gets property via free exchange, gift, or initial appropriation or whether he rents or leases things from owners" (Wendt, 2018, p. 173). Wendt's analysis would be correct if project pursuit was the only argument for the sufficiency proviso. But recall that there is also an independence argument in support of sufficiency. I have claimed, in this section and at other places in this chapter, that the problem with a lack of ownership rights over external resources is not only that one cannot set and pursue any ends, but also that it puts an agent in a position in which she needs the *agreement* of someone else in order to do anything with her life. It puts one in a condition of subordination to others, a position that clearly conflicts with the idea that agents should be respected as *separate and*

independent project pursuers and that they, therefore, *own themselves*. Moreover, I have argued that this was Cohen's main point in comparing the mere formal self-ownership rights of the propertyless proletarian in a capitalist society with the rights of Able (and Infirm) in the jointly-owned world. To avoid such a position of subordination, agents must have the right to acquire sufficient external resources without being in need of an agreement with others. Therefore, contrary to what Wendt thinks, from the perspective of the rationale for self-ownership (which refers to both independence and project pursuit) it is problematic when agents depend on exchanges or gifts to acquire ownership rights over external resources.

So although the project pursuit argument for sufficiency does not distinguish between procedures of acquiring ownership rights over external resources (e.g. initial acquisition, transfer), the independence argument clearly does. The latter requires that agents can acquire sufficient resources for project pursuit without having to depend on the consent of others. This is, thus, at least one sense in which the sufficiency proviso is unconditional. To ensure that an agent is independent from others, one's right to acquire sufficient resources to live as a project pursuer may not be conditional on whether others affirm the acquisition. But if this is true, one can picture the sufficiency proviso in a different way. It ensures, in a developed economy, that agents can acquire sufficient resources just like they would have been able to, via original appropriation, in a state of nature.[151]

3.2.3. Sufficiency, effective self-ownership and libertarianism

The advantages of the sufficiency proviso are clear by now. It can overcome the criticisms I expressed in this chapter against other libertarian proposals. First, it correctly accepts that the concept of self-ownership is a formal one, in that it is completely inward looking and, thus, only grants rights over one's body, mind talents and energies. As a concept, self-ownership is silent about which rights agents have over external resources.

Moreover, second, the sufficiency proviso is preferable over two other proposals to make self-ownership rights more effective. One is Otsuka's robust self-ownership. Even if Otsuka's left-libertarian society would indeed be consistent with robust self-ownership rights for all, those

[151] In chapter VI, I will discuss still another disagreement with Wendt. Whereas he thinks the sufficiency proviso is all what is needed for a distribution to be just, I think it matters how resources are distributed above the threshold. Admittedly, the reason for this is not grounded in the rationale for self-ownership but, rather, in a separate value of equality.

rights are insufficiently robust (or effective). They only guarantee the survival of agents, whereas the sufficiency proviso effectively secures that agents can set and pursue their own ends. Another proposal is effective self-ownership based non-invasive rights violations. I discussed this idea as a way to analyse the concept of self-ownership. Nevertheless, I also noted that sometimes authors who defend non-invasive rights violations write as if it is the *rationale for*, rather than a *conceptual analysis of*, self-ownership that provides the ground for the existence of non-invasive rights violations. The rationale-route is the better tactic, but I still reject the proposal. That is because the idea of non-invasive rights violations only justifies very minimal and temporal use-rights over external resources including, arguably, a duty to compensate the owner (e.g. Roark, 2013, p. 78). Like Otsuka's robust self-ownership, the idea of non-invasive rights violations can only secure self-ownership rights that are insufficiently robust.

Third, the sufficiency proviso provides an answer against my critique of both right- and left-libertarianism. In contrast to right-libertarianism, the sufficiency proviso ensures that the propertyless proletarian will always be able to live as an independent project pursuer. In contrast to left-libertarianism, it will protect the talented agents from slavery and it will ensure that even those who are responsible for being destitute have sufficient to continue a life as a project pursuer. The latter position is plausible as "from the perspective of the project-pursuit rationale for libertarianism someone not having enough to be a project pursuer is always a concern, no matter what its cause is" (Wendt, 2018, pp. 173-174).

And still, it is a genuinely libertarian principle. For one thing, it is grounded in the most plausible rationale for libertarianism. That is the idea that agents should be free to live their life in their own chosen way and that they, therefore, must be respected as separate and independent purposive beings. It is this rationale that is the foundation for the self-ownership principle (i.c. near-full MPSO), for the natural right of private property *and* for the sufficiency proviso. Moreover, the sufficiency proviso is libertarian in that it only generates negative duties for agents. It only entails the negative duty to leave enough external resources for others so that they can independently acquire sufficient resources for project pursuit. That is, it does not entail that agents have a positive duty to provide everyone with sufficient resources.[152] Furthermore, the sufficiency proviso is a clear development of thoughts and

[152] Note that a strong objection against this lack of a positive duty fails with regard to my theory. The criticism is that in defending only a negative duty to leave others enough external resources cannot ensure, in a state of

intuitions that are acknowledged by several libertarians. It accurately expresses the intuitions that underlie robust self-ownership (Otsuka, 2003), the self-ownership proviso (Feser, 2005; Mack, 1995), the right to access what one owns (Roark, 2013; Van Dun, 2009) and discussions about the 'only waterhole in the desert' (Nozick, 1974, p. 180).

4. Conclusion

This chapter established three claims. First of all, it argued, along with Cohen and left-libertarians, that (near-)full self-ownership is a merely formal concept. That is, it rejected that one can derive ownership rights over worldly resources from a conceptual analysis of self-ownership. I reject, thus, the positions of those libertarians who believe the concept of (near-)full self-ownership is necessary and sufficient to partially, or even fully, determine the content of the rights agents can acquire over external resources. I've supported this first claim by rejecting three influential arguments based on which libertarians have tried to inform the world-ownership principle via an analysis of (near-)full self-ownership: labour-mixing, first possession and non-invasive rights-violations.

The second claim is that both right- and left-libertarians are vulnerable for the charge that they only defend merely formal self-ownership. Formal self-ownership contrasts with effective or substantive self-ownership. One is a formal self-owner insofar one has no external resources at one's disposal to effectively make use of one's rights and liberties. Starting from Cohen's argument, I've claimed that formal self-ownership is in conflict with the justification of libertarianism in two ways. First, if one only has formal self-ownership rights one cannot live a life as a project pursuer. Second, if one only is a formal self-owner, one is subordinate to other agents (property owners) because one needs their agreement to acquire property rights and, thus, to be able to make effective use of one's self-ownership rights. Right-libertarianism is vulnerable to this charge as it cannot guarantee the effective liberty of the propertyless proletarian. Left-libertarianism, in turn, cannot secure substantive self-ownership rights for the most talented agents in society (*slavery of the talented objection*) and for those agents who

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nature, that the severely disabled can acquire external resources, as they might be paraplegic and therefore unable to interact with those resources. But this criticism presupposes that to initially acquire external resources one has to interact with them. As the discussion of a justifiable practice of private property made clear, no such requirement is present in my theory. It might simply be sufficient to publicly claim the resources in some way or another.

can be held morally responsible for having no ownership rights over worldly resources (*harshness objection*).

Third, although the concept of self-ownership does not inform the content of the rights we can acquire over external resources, the rationale or justification of the self-ownership principle certainly does. The most plausible justification of self-ownership is based on independent project pursuit. That is, agents have a special moral status as separate and independent project pursuers. This special moral status requires respect of all others. One way to respect this status is to affirm the ownership rights of agents over their own person. Nevertheless, in this chapter I've argued that there are two further ways in which this special moral status demands respect. First, agents have a natural right of property. This natural right entails a claim-right not to be precluded from a practice of private property in which one can justly acquire discretionary control over external resources. Moreover, it also includes a moral power to initially acquire unowned resources (i.e. unowned natural resources and abandoned artefacts). Second, the practice of private property is justified if and only if it respects a sufficiency proviso. This proviso protects agents from being merely formal self-owners. It guarantees that everyone can originally acquire sufficient ownership rights over external resources (a) to be independent from others, which requires that one can, at all time, engage in unilaterally acquisition, and (b) to live a life as a project pursuer.

Chapter V: Rejection of Sufficiency-Constrained Right-Libertarianism

It is clear by now that a plausible conception of the world-ownership principle accepts that agents have a natural right of private property and that a practice of private property is only justifiable if it meets the sufficiency proviso. Nevertheless, our picture of the best conception of the world-ownership principle is not complete yet. There is, namely, a further question that needs to be answered: which rule or principle should govern the distribution of resources above the sufficiency threshold? It is this question that will occupy us in this chapter as well as in the next.

In the current chapter, I will consider and reject one possible answer to this question: right-libertarianism above the sufficiency threshold. The idea is that, from the moment everyone has enough, we should let unrestricted initial appropriation and free exchange between agents determine the distribution of resources like wealth and income. Or, to define the same idea differently, the proposal defends right-libertarianism but accepts that a sufficiency threshold limits the implications of free appropriation and exchange. Call this view *sufficiency-constrained right-libertarianism*. Like all sufficientarian principles, sufficiency-constrained right-libertarianism defends the Positive Thesis (Casal, 2007; Shields, 2016). The Positive Thesis holds that "we have weighty non-instrumental reasons to secure at least enough of some good(s)" (Shields, 2016, p. 28). Besides, sufficiency-constrained right-libertarianism defends the claim that if the requirements of the Positive Thesis are met, any acquisition of an external resource that occurs via an act of original appropriation or a consensual transfer is justified. This second claim implies that there are no limits on the amount of external resources one can justly acquire nor on the level of inequality above the threshold. For sufficiency-constrained right-libertarianism to be justifiable, both claims must be established.

Note that sufficiency-constrained right-libertarianism differs from sufficiency principles like those famously defended by Frankfurt (1987, 2000) and Crisp (2003). Standard sufficiency principles hold that the way resources are distributed above the threshold is morally irrelevant. Sufficiency-constrained right-libertarianism, in contrast, defends the view that the distributive principle above the threshold is morally relevant. Namely, it claims that, once resources are appropriated via the proper procedure, free initial appropriation and exchange of possessions should govern the distribution of resources above the threshold.

The argument develops as follows. In a first section, I will develop and reject a principle which I will label *Nozickean sufficiency*. Nozickean sufficiency is a version of sufficiency-constrained right-libertarianism that is grounded in Nozick's proviso on initial acquisition of unowned resources. I will, in turn, develop Nozick's proviso, explain how this proviso can ground a sufficientarian principle and reject Nozickean sufficiency. In section two, I will consider and reject an alternative version of sufficiency-constrained right-libertarianism which is based on the sufficiency proviso as explained in chapter IV. Like Nozickean sufficiency, the sufficiency proviso as a ground for sufficiency-constrained right-libertarianism accepts vast inequalities in wealth based on arbitrary factors. In section three I will quickly put forward two considerations in favour of egalitarianism and conclude that a version of sufficiency-constrained egalitarianism is less arbitrary and, therefore, more plausible than sufficiency-constrained right-libertarianism. In a fourth section, I will evaluate two right-libertarian criticisms of egalitarianism. The first is Nozick's famous Wilt Chamberlain argument. The second is Mack's rejection of redistributive taxation based on 'the point of private property'. If successful, these argument show that sufficiency-constrained egalitarianism is not more plausible than sufficiency-constrained right-libertarianism. Nevertheless, I will argue that both right-libertarian critiques of egalitarianism fail and that we have, therefore, good reasons to investigate which egalitarian principle is the most plausible to guide the distribution of external resources above the sufficiency threshold. This investigation will take place in chapter VI.

1. Rejection of Nozickean sufficiency

1.1. The Nozickean proviso

One way to justify both claims of sufficiency-constrained right-libertarianism (the Positive Thesis and right-libertarianism above the threshold) is by reference to Nozick's entitlement theory of justice and, in particular, to his principle of just initial acquisition (Nozick, 1974). Nozick holds that whether or not one's ownership rights over an external resource is justified depends on the history of those titles. If the history of a title is free from any rights violation, it is justified. The simple thought is that if I acquire your copy of *Anarchy, State, and Utopia* via voluntary exchange, my newly generated ownership rights over the book are justified. Nevertheless, if I acquire that same book by means of violence, assault or the threat thereof, my newly generated 'ownership rights' are unjustified. Given that the history of an ownership

right is so important, and given that all external resources are either themselves natural resources or construed out of natural resources, it is essential for his theory to justify the initial appropriation of natural resources in the state of nature. In other words, to judge whether or not a title over an external resources is 'clean' (i.e. free from rights violations), we have to know how an agent can come to own a natural resource that was previously unowned. Steiner (2009a, p. 2) puts the same idea, very nicely, as follows:

> "since all non-natural (i.e. made) things are immediately or ultimately derived from natural resources, the validity of any *rights* to those made things inescapably depends on the validity of the rights to their natural antecedents – since those made things can only have come about precisely through various permissible or impermissible uses of those natural resources and of the things successively created by those uses. […] *nothing gets made from nothing*" (his italics).

So imagine a state of nature situation. Nozick thinks that agents can unilaterally come to privately own unowned external resources. He is unclear about what specific act an agent must perform to initially acquire a raw natural resource (e.g. whether to mix her labour, to improve the resource or simply to stake a claim over the resource) (Wolff, 1991, pp. 102-107), so let us assume, like Mack (2010) and Roark (2012, p. 4), that he defends the practice conception of private property that was set out in the last chapter. Recall that, according to the practice conception, one can come to own a previously unowned resource via an act or procedure that is conventionally accepted as an act of initial acquisition and that is part of a justifiable practice of private property.

Different from more radical right-libertarians (e.g. Feser, 2005; Narveson, 2001; Rothbard, 1998), Nozick thinks an agent's initial acquisition of an external resource from the state of nature must be justifiable to all other agents. This is because he accepts the argument I expressed in chapter IV against the rule of first-occupancy. In initially acquiring a natural resource, an agent changes the privileges of all others to use that resource for their own purposes. Whereas everyone previously had the privilege to use the resource, the original appropriation changes this right into a duty to all (except the owner) not to use the resource anymore without the consent of the owner. But this power to unilaterally change the rights and duties of everyone else needs to be justified.

As a way of justification, Nozick defends some kind of Lockean proviso. Locke famously wrote that an initial acquisition is just if and only if one leaves "enough, and as good" for

others to use and appropriate (Locke, 1960 [1698], pp., II, 33). Although the Lockean proviso is attractive, and might have been suitable for 17th century Britain or America, it fails as a guideline for just initial acquisition in a world, like ours, in which previously unacquired external resources are scarce (Nozick, 1974, p. 176). For in a scarce world, there will inevitably be a point upon which someone, by an act of initial appropriation, does not leave enough and as good for others. This makes the appropriation unjust. To make this idea clear, let us following Nozick's *zipping back argument* and call this first unjust appropriator Z. By her initial acquisition Z does not leave enough and as good for others and, therefore, the appropriation is unjust. But if Z cannot justly acquire previously unowned resources because she would not leave enough and as good for others, this automatically implies that the previous appropriator, Y, failed to leave enough and as good for Z to appropriate. Consequently, Y's appropriation was equally unjust. But if Y could not justly acquire resources by means of initial appropriation as he would not leave enough and as good for Z, this implies that the last appropriator before Y, X, also failed to leave enough and as good for others. This reasoning can be continued until we have to conclude that the first appropriator, A, failed to respect the Lockean proviso and that, therefore, in a scarce world, no initial acquisition and no private property rights are justified according to the Lockean proviso.

In acknowledging this weakness of the Lockean proviso, Nozick (1974, pp. 176-177) argues for a different interpretation. First, the Lockean proviso should be understood in a weaker sense. An appropriation should not leave enough and as good resources for others to 'appropriate', but to 'use'. As long as everyone still has enough and as good external resources to use, the appropriation is justified. This opens the door for the total appropriation of scarce natural resources while still meeting the (weaker) Lockean proviso. Second, and more important, Nozick claims that the Lockean proviso should be understood as a moral rule *not to worsen the situation of others* by appropriating previously unacquired external resources. This leads to the following proviso for just initial acquisition (Nozick, 1974, p. 178):

> **Nozickean proviso**: A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened.

This proviso, thus, installs a particular welfare baseline which requires that an original appropriation is a Pareto improvement compared to a situation in which the resource remained in an unowned state (Steiner, 1987, p. 55).[153]

1.2. Nozickean sufficiency

The Nozickean proviso can be translated into sufficiency-constrained right-libertarianism. Namely, if we assume conditions of moderate scarcity in the state of nature, which means that there is enough for everyone to meet their basic needs but not enough to meet all their desires, the proviso would require that each original appropriation leaves enough for everyone else to meet their basic needs (either in the form of unowned resources or in the form of use-rights with regards to already appropriated resources). No initial acquisition of an unowned resource can ever be just if it leaves others in a state of destitute that is more severe than what they would experience in the state of nature. It is for this reason that "a person may not appropriate the only water hole in a desert and charge what he will. Nor may he charge what he will if he possesses one, and unfortunately it happens that all the water holes in the desert dry up, except for his" (Nozick, 1974, p. 180). Such instances violate the Nozickean proviso as they leave the non-owners worse off than they would have been if the water hole was available for use by all (like in the state of nature). Nozick's proviso, thus, provides a ground for a sufficiency threshold.[154]

Interestingly, this argument from a state of nature situation also has significant implications for more developed economies like ours today. That is because "each owner's title to his holding includes the historical shadow of the Lockean proviso on appropriation" (Nozick, 1974, p. 180, see also Steiner, 2009). The proviso, thus, limits ownership rights over external resources even until this day. It plays a permanent role in the evaluation of a property right, no matter how long ago the original appropriation (of its components) took place or how often it

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[153] A Pareto improvement is a change of situation in which at least one person is better off and no one is worse off compared to the initial situation. The Nozickean proviso does not *strictly* require a Pareto improvement, though, as it does not require that the welfare of the appropriator enhances (Steiner, 1987, p. 55). Strictly speaking, an original acquisition can meet the Nozickean proviso even if no one's position improves. That is, if the appropriator's position worsens (or does not improve) and the position of all others remains the same (and, thus, is not worsened), the initial acquisition is justified. Nevertheless, this situation is very unlikely, as agents will standardly only initially appropriate an unowned resource if it improves their position.

[154] For a similar argument, see Brock (1995). Brock, nevertheless, overestimates the work the concept of 'basic needs' does in Nozick's theory. Therefore, his conclusion that Nozick must, on his own terms, defend the public provision of education and health care is unwarranted.

has been transferred from one agent to another. "Once it is known that someone's ownership runs afoul of the Lockean proviso, there are stringent limits on what he may do with (what it is difficult any longer unreservedly to call) 'his property'" (Nozick, 1974, p. 180). So while a distribution of resources may satisfy the proviso at one time, this does not automatically imply that it will satisfy the proviso at a later time. It is clear from this analysis that Nozick must reject any practice of private property that does not respect his proviso. If the assumption of moderate scarcity in the state of nature is granted, any society in which some agents have insufficient food, water, shelter, clothing and other resources necessary to meet their basic needs is deemed unjust. Call this idea *Nozickean sufficiency*. Although I will question Nozick's proviso shortly, I think he accurately judges the significant role a proviso on original appropriation plays for the justifiability of in any practice of private property until today (see also Vallentyne, 2009).[155]

Nozickean sufficiency provides support, or so one might think, for the two claims of sufficiency-constrained right-libertarianism. First, it seems able to explain why we have very weighty non-instrumental reasons to secure that everyone has enough external resources. Namely, because all agents in a state of nature are equally free to use the external world as they see fit, we have to ensure that each agent has, at all times, access to a bundle of external resources that is at least as valuable as what one would be able to use freely in the state of nature. To respect the initial equal liberty of all agents, no one may be worsened by a practice of private property. Therefore, if we assume a world of moderate scarcity, everyone must have enough. Second, it also gives an explanation of why consensual exchange should rule the distribution of resources once everyone is above the threshold. That is, once no one is worse off than they would be in the state of nature, no one has any complaint against the practice of private property that is in place. The thought is that the practice is by definition in everyone's advantage. If this is true, it seems reasonable to accept voluntary exchanges as the default position for the distribution of the surplus goods. Nevertheless, as I will now argue, we should reject Nozickean sufficiency.

1.3. Problems with Nozickean sufficiency

[155] Also Steiner observes that Nozick's proviso "prescribes, for any would-be appropriator, a welfare "baseline" which consists in the level of well-being every other individual could reasonably expect in the absence of that person's appropriation, and which imposes *structural considerations* on the size of permissible holdings" (1977, p. 46, italics added).

The problem with Nozickean sufficiency is that it is based on a proviso that is intolerably weak. This argument has most famously been made by Cohen (1995, chapters 3 and 4; see also Kymlicka, 2002, pp. 116-119). Cohen points out two main problems with the Nozickean proviso. First, it is solely concerned with *material wellbeing*. Nozick aims to make sure that appropriation makes no one worse off in terms of resources like income and wealth. But in doing so, he neglects the fact that although an appropriation might make no one worse off in material terms, it might do so in terms of an agent's independence from others (see also Otsuka, 2003, p. 23). For example, the Nozickean proviso is met in a society in which one person acquires ownership rights over *all* natural resources while ensuring, at the same time, that everyone else has an income equivalent to what they would be able to use in a state of nature. Although no one is worse off *in material terms* than in a world where no appropriation had ever taken place, in such a society all but one agent severely lack independence from others. Everyone is subject to the decisions of the property-owner (e.g. which use to make of the natural resources, whether or not to destroy part of them, on what conditions they can be transferred and acquired). On the one hand, this lack of independence generates power relations to which some agents might object. If so, these agents are at least in one way worse off than they would have been in a state of nature. It is unclear whether an increase in material wellbeing can always compensate for this change in power relations. On the other hand, the fact that all agents need the consent of the one to acquire any resources on top of their income might obstruct their opportunity to significantly improve their life (Armstrong, 2017, pp. 33-34). It seems that the wealthy property-owner is justified in keeping everyone else at a level of wealth that is no more than what those agents would have reached in the state of nature. The wealthy property-owner may thus permissibly block any opportunity to others for upward social mobility.

Second, Nozick's proviso sets the *baseline of comparison* too low (Arthur, 1987; Cohen, 1995, chapter 3; Steiner, 1987, pp. 55-57; Wenar, 1998, p. 815; Wolff, 1991, pp. 112-115). The baseline of comparison is the state to which the post-appropriation situation should be compared in order to determine whether some are worsened by the initial acquisition of others. For Nozick this baseline is the pre-appropriation situation (i.e. the state of nature). To worsen someone's situation by a certain appropriation means that this person would be worse off, in material terms, after the appropriation compared with before. Because of his empirical claim that a system of full permanent private property rights is almost always better than a pre-appropriation situation, Nozick thinks he leaves his critics with the high burden to prove

the worsening of a certain appropriation. But this move is unfair. Given the so called 'tragedy of the commons' (Hardin, 1968), it is very plausible that *any* system of property rights will improve the situation of most if not all agents compared to a state of nature situation. For example, also a system of collective ownership or a system of private property rights limited by a Rawlsian difference principle will achieve a level of material wellbeing for all that exceeds what they could have reached in a state of nature. Moreover, if 'not being worse off' is what justifies ownership rights, shouldn't we confront Nozickean sufficiency with a broader range of possible practices of private property rights, rather than only comparing it with a pre-appropriation situation, to evaluate which system makes everyone 'best off'? Why should we accept, then, as the only justifiable system, a practice of private property that implies (near-)full bequeathable ownership rights over external resources? It seems that a further justification is needed to establish the right-libertarian first-come first-served principle above the sufficiency threshold. Nozick's theory is of no help to perform this task.

There is, though, still another problem with Nozickean sufficiency. It cannot guarantee that everyone will be able to live a life as a project pursuer (Wendt, 2018, pp. 177-178). Given that Nozickean sufficiency states that a practice of private property is justifiable as long as it does not make anyone worse off than they would be in a pre-appropriation situation, it can only guarantee sufficient resources to meet each agent's basic needs. Plausibly, given conditions of moderate scarcity, the state of nature will allow everyone to use sufficient resources in order to feed themselves and to protect themselves against the freaks of nature (e.g. via shelter and clothing). But such minimal resources are hardly sufficient to pursue any project in life. Arguably, one also needs, among other things, health care, education and some minimal level of income to live a life as a project pursuer. Therefore, the sufficiency proviso, as argued for in chapter IV, might possibly be a better route to argue for sufficiency-constrained right-libertarianism.

2. Sufficiency proviso

Like Nozickean sufficiency, the sufficiency proviso supports a version of sufficiency-constrained right-libertarianism. That is, taken as a free-standing principle, it holds (a) that we have weighty non-instrumental reasons to secure that everyone has enough and (b) that first-

come first-served original acquisition and free exchange of possessions should govern the distribution of resources above the threshold.[156] The main advantage of the sufficiency proviso over Nozickean sufficiency is that the former, standardly, has a higher threshold. The threshold is high enough to secure that everyone can live a life as a project pursuer. As was argued in last chapter, this is an advantage because it coheres better with the rationale for self-ownership, which is that all agents should be respected as separate and independent purposive beings able to live their life as they see fit. This requires, at least, a minimal set of opportunities to actually set and pursue projects.

The sufficiency proviso provides an explanation for both claims of sufficiency-constrained right-libertarianism. From the discussion of last chapter, it is plain that it supports the first claim (a). But it also offers a rationale for the second claim (b). First, given that the argument for the sufficiency proviso is grounded in the idea that agents should have the rights necessary to lead a life as an independent purposive being, it naturally limits the demands of the proviso. To lead a life as an independent project pursuer, one does not need equality of outcome, or maximal, or equal opportunities. One simply needs enough. Second, if an agent's capacity for 'project pursuit' is the appropriate rationale for a theory of justice, it seems logical to accept a distributive principle which allows for the free gathering of unowned resources necessary to advance one's projects. Also, free exchange of possessions based on consensual transfer grants agents generous space to pursue their projects. From the rationale of project pursuit, sufficiency-constrained right-libertarianism seems an attractive theory.

Nevertheless, also the sufficiency proviso does not provide us with a satisfactory theory of justice. Although it is indeed immensely important that everyone has enough to live a life as a project pursuer, the sufficiency proviso is insufficiently egalitarian.[157] First, note that the sufficiency proviso might, in certain cases, be less demanding than Nozickean sufficiency. This is so in case each agent would be able to live a life that exceeds the necessary

[156] This is the view supported by Wendt (2018). Wendt, recall, originally invented the sufficiency proviso. In chapter IV, I stressed a few differences between my version and his. Most importantly, I believe his version is insufficiently unconditional. My rejection of sufficiency-constrained right-libertarianism in this chapter is a second way in which I depart from Wendt's original proposal. In chapter VI, I will argue for a version of sufficiency-constrained egalitarianism or, more specific, sufficiency-constrained left-libertarianism as a more plausible theory of justice.

[157] I found inspiration for my argument in Armstong's discussion of 'Minimalism' as a theory of global justice (Armstrong, 2017, pp. 35-39). According to Minimalism, global justice requires that all individuals, wherever they live, should have enough to meet their basic rights. It also claims that there is no requirement of justice to secure more than this basic-rights-threshold for people living outside one's own community. Egalitarian principles, if relevant at all, only apply to the distribution of resources within one's society or state. According to Armstrong, Minimalism is defended by Rawls (1999), Miller (2007) and Risse (2012).

requirements for project-pursuit in the state of nature. Only securing enough for project-pursuit would, then, worsen the situation of this agent compared to her position in the state of nature. Consequently, the sufficiency proviso does not always meet the requirements of the Nozickean proviso.

Second, and more important, the sufficiency proviso is vulnerable to similar criticisms as those against Nozickean sufficiency. That is, although the sufficiency proviso standardly guarantees a more demanding threshold, it is still problematic because it does not take inequalities above the threshold to matter in and off themselves. Imagine a group of shipwrecked sailors coming ashore at a uninhabited island. The sufficiency proviso allows a few of the sailors to acquire the whole island as long as they guarantee all others enough to live a life as a project pursuer. But this "allows some individuals to live lives of great luxury, whereas others may live lives which are considerably less comfortable, simply because the former are able to annex resources before others do" (Armstrong, 2017, pp. 37-38). For imagine that there are enough resources for everyone to lead luxurious lives. The sufficiency proviso would be satisfied if most sailors merely have good enough lives (in contrast to luxurious lives) whereas others live in enormous luxury (Vallentyne, 2012a). But why should the first sailors lucky enough to reach the island be permitted to acquire it all? Like in Nozick's theory of initial acquisition, this first-come first-served principle of original appropriation that accompanies the sufficiency proviso is arbitrary and indefensible.

3. Egalitarianism

As an alternative to right-libertarianism, egalitarianism above the threshold seems less arbitrary and, therefore, more plausible. Egalitarianism above the threshold would imply that if everyone has enough for project-pursuit surplus resources are distributed according to an egalitarian principle. Such egalitarian principle might entail, for example, to distribute resources according to a Rawlsian difference principle, or according to a luck-egalitarian principle, or according to a left-libertarian distribution of (the value of) natural resources. All such distributions are 'egalitarian' and, or so I claim, less arbitrary than right-libertarianism.

Egalitarianism is less arbitrary and more plausible for at least two reasons. One reason is that egalitarianism accepts that the special moral status of agents not only requires to respect them as separate and independent project-pursuers, but also *to respect agents equally*. That is,

agents are special, different from stones and bees, in that they can rationally set and pursue ends. This special capacity requires us to respect the value of each agent's life in and of itself. Of course, not all agents have the purposive capacities to the same degree. Some are better in setting and pursuing ends and advancing their own interests than others. What is important, though, is that once an agent's capacities pass a certain threshold of rationality and purposiveness, it is non-instrumentally valuable and asks for equal respect (Carter, 2011). Quite plausibly, to respect agents equally and to accept that their lives are equally morally valuable implies that it is equally important how well their lives go. This grounds the idea that we should judge the opportunities of agents for a good life by reference to an egalitarian baseline.

A second reason why egalitarianism above the threshold is more plausible than right-libertarianism is that it accords well with our strong intuitions. Consider the following hypothetical case, invented by of Paula Casal (2007, p. 307), in which a hospital is at a level of sufficiency in terms of services to its patients:

> **Hospital Donation**: Suppose that having provided every patient with enough medicine, food, comfort, and so forth, a hospital receives a fantastic donation overnight, which includes spare rooms for visitors, delicious meals, and the best in world cinema. If its administrators then decide to devote all those luxuries to the patients that wake up earliest the next morning, their decisions would be unfair.[158]

Even although all patients were already at a level of sufficiency, they, arguably, have a right to a fair share of the benefits provided by the donation. The donation is a kind of *manna from heaven* to which no patient has a special claim. The logical implication of this thought seems to be that all have an equal claim. Quite plausibly, this implies a duty for the administrators to distribute the benefits of the donation in a way that is fair for all patients. The example shows that equality is a relevant consideration even although all agents already received a level of services above the sufficiency threshold at the time of the donation.

These considerations, of course, do not serve as a full argument for egalitarianism. Nevertheless, I consider the implausibility of right-libertarianism as shown in this chapter and

[158] I slightly adjusted Casal's example to include the right-libertarian first-come first-served principle above the threshold. For other intuitive cases that show that equality above the threshold matters, see Casal (2007, p. 311).

the previous one, together with those quick comments in favour of egalitarianism, sufficient to accept egalitarianism above the threshold as the default position.

4. Right-libertarian critique of egalitarianism

So imagine I am right to accept egalitarianism above the threshold as the default position. This puts the burden of proof, i.e. to show that egalitarianism is incorrect, on right-libertarians. But right-libertarians might, of course, be able to show that egalitarianism is implausible itself. In particular, it could be that equality necessarily conflicts with some other values and, if so, we might consider those other values to be more important than equality. This indeed is the criticism that right-libertarians express against egalitarianism. Equality conflicts with liberty, or so the thought goes, and there is little reason to prioritize the former over the latter. My aim here is to strengthen the case for egalitarianism above the threshold by refuting two right-libertarian criticisms. The first, Nozick's famous 'Wilt Chamberlain argument', questions why we would ever accept that equality trumps liberty. The second, which refers to 'the point of private property', thinks that there is a point at which considerations of equality lose much of their weight in favour of the liberty of agents to make use of their possessions as they see fit.

4.1. Wilt Chamberlain

Consider, first, Nozick's Wilt Chamberlain argument (1974, pp. 160-164). Nozick famously argues that any egalitarian principle conflicts with the liberty of agents. This is because the voluntary actions of agents (almost) automatically overturn, or upset, an egalitarian distribution. To uphold an egalitarian distribution, thus, requires permanent interference in the voluntary choices of agents. Therefore, or so the argument runs, if one values the liberty of agents to set and pursue their own projects, and to live their lives in their own chosen way, one must reject egalitarianism.

Nozick builds his argument around a hypothetical society in which Wilt Chamberlain, a famous basketball player, signs a contract with a basketball team which states that Chamberlain will receive 25 cents of each ticket that the fans buy to watch the team play. That is, the fans will have to drop 25 cents in a box with Chamberlain's name on every time

they enter the stadium. Nozick argues that, whatever the distribution of resources before the basketball season started, it will obviously be different after the season has finished. Even if the distribution of wealth and money was completely equal (e.g. all agents starting off with 100), or egalitarian in some other way, the fact that many fans are keen to watch Chamberlain play and are very happy to pay him 25 cents will disrupt the egalitarian distribution. Nozick (1974, p. 161) calculates that if one million fans came over to the stadium during the season to watch Chamberlain play, Chamberlain will end up with 250 000 while all others have less. But this inequality arose only from the voluntary choices of agents. So what can ever be wrong about the new distribution (i.e. the post-season distribution)? Nozick argues that to redistribute wealth from Chamberlain to others after the season would entail to interfere with the voluntary interactions of agents and with their respective ends and projects. Everyone voluntarily chose to transfer 25 cents to Chamberlain. Therefore, he concludes:

> "The general point illustrated by the Wilt Chamberlain example […] is that no [egalitarian] principle of justice can be continuously realized without continuous interference with people's lives. Any favored pattern would be transformed into one unfavored by the principle, by people choosing to act in various ways; for example, by people exchanging goods and services with other people, or giving things to other people, things the transferrers are entitled to under the favored distributional pattern. To maintain a pattern one must either continually interfere to stop people from transferring resources as they wish to, or continually (or periodically) interfere to take from some persons resources that others for some reason chose to transfer to them." (Nozick, 1974, p. 163)[159]

Admittedly, the Wilt Chamberlain argument is intuitively very powerful. Indeed, why else do agents have ownership rights over external resources than to be able to employ those resources in the pursuit of their projects? Nevertheless, the argument fails. Nozick himself begs the question as follows: "There is *no* question about whether each of the people was entitled to the control over the resources they held in [the pre-season egalitarian distribution]; because that was the distribution […] that (for the purposes of argument) we assumed was acceptable" (1974, p. 161, his italics). Contrary to Nozick's claim, several theorists have argued that there indeed *is* a question about whether the people had the entitlement to the kind

[159] The Wilt Chamberlain argument is the main force to back up Nozick's 'principle of justice in transfer'. This principle holds that a transfer is just if and only if it is voluntary (Wolff, 1991, p. 83).

of control over those resources that Nozick assumes they have (Cohen, 1995, chapters 2 and 3; 2011a, pp. 152-154; Nagel, 1981 [1975]; Ryan, 1981; Steiner, 1981; Wolff, 1991, pp. 93-96).

To see why the Wilt Chamberlain argument fails, we need to distinguish two different conceptions of liberty (Cohen, 2011a; Ryan, 1981). A first conception is a non-moralized version. Standardly, non-moralized liberty refers to the absence of interference in one's life. To determine whether or not an agent is at liberty to do or to become something, we need to know whether there is an interfering actor which prevents her from doing or becoming the specified thing (MacCallum, 1967). According to non-moralized liberty, I am at liberty to drive a motorcycle if no one interferes with my attempt to drive a motorcycle (e.g. no one physically stops me from doing so, or there is no law that forbids me from driving a motorcycle). If this would be Nozick's definition of liberty, it would be obvious why redistributive taxation to uphold an egalitarian distribution violates liberty. An income tax, for example, interferes with the property holder's life, as she can no longer do with the pre-tax income whatever she could have done in the absence of the interfering tax.

But Nozick cannot accept a non-moralized conception of liberty. This is because he does not believe that my 'liberty' is constrained whenever the police stops me from non-consensually entering your house. He wants to argue that your property is what legitimately belongs to you and that there is, therefore, no question of interference with my liberty whenever I illegitimately attempt to make use of your property. I simply do not have the right to non-consensually make use of your property and, consequently, I am not at liberty to use it. In contrast, a non-moralized conception of liberty based on non-interference should label the interference of the police as liberty-constraining. This discussion makes clear that Nozick, like many other libertarians (e.g. Narveson in Narveson & Sterba, 2010; Steiner, 1977), holds a moralized or rights-based conception of liberty (Cohen, 2011a). The thought is that I am at liberty to do whatever I have the right to do. Because it is *your* house, I have no right to it and I am, thus, not at liberty to enter your house without prior consent. That is why there is no violation of my liberty whenever the police interferes with my attempts to enter your house.[160]

[160] As another example of this view, Steiner (1977, pp. 42-43) writes that "a property rule would thus assign, to each individual, his legitimate sphere of personal freedom – his rights – as constituted by the physical objects composing it".

But if this is all true, Nozick cannot speak about 'violations of liberty' without, first, delineating and justifying the system of rights he prefers. And this is where the Wilt Chamberlain argument runs afoul. In his argument, Nozick *assumes* full liberal ownership rights without making this assumption explicit, let alone providing a defence for the assumption (Cohen, 1995, chapter 3; Kymlicka, 2002; Nagel, 1981 [1975]; Wolff, 1991, pp. 93-96). To tax Wilt Chamberlain's income for the purposes of redistribution is a violation of liberty, on Nozick's own terms, if and only if both the fans and Chamberlain have the full, unconstrained rights to transfer to others whatever they possess and the unconstrained right to all of the income such a transfer might generate. But this conception of ownership rights must, of course, be justified. Nozick does not attempt to do so in his Wilt Chamberlain example, but does discuss the justification of ownership later on. He claims, as we have seen earlier, that an original appropriation of unowned external resources is justified if and only if it respects the Nozickean proviso. But as I have argued as well, this Nozickean proviso is intolerably weak. A more plausible proviso, it seems, is more egalitarian, allowing for redistributive measures so that all agents get their fair share of unowned external resources. Nozick fails, thus, to justify the full liberal ownership rights that he assumes in the Wilt Chamberlain argument. So, whereas Nozick thought there is "no question" that all agents were entitled to their resources in the pre-season egalitarian distribution, in fact agents lack the kind of tax-immune full transfer and income rights that Nozick takes for granted (Cohen, 1995, chapter 3; Nagel, 1981 [1975]). In contrast, or so I will argue in the next chapter, agents have rights over external resources that are limited by an egalitarian proviso on appropriation and, therefore, those resources are partly available for redistributive taxation.[161]

4.2. The point of private property

4.2.1. The objection

There is, though, a more advanced version of Nozick's argument against egalitarianism and in favour of voluntary transfer of holdings. This argument states that, rather than to violate liberty, redistributive taxation in accordance with an egalitarian principle conflicts with the 'point of private property' (Mack, 2002a, pp. 85-91; 2010; Wendt, 2018, p. 176). As we have

[161] For arguments that the non-moralized version of liberty, based on non-interference, also fails to justify right-libertarianism, see Cohen (2011a), Sterba (in Narveson & Sterba, 2010) and Ossenblok (2013).

seen, a plausible rationale in favour of libertarianism in general, and supporting a practice of private property rights in particular, is to respect agents as independent and separate project pursuers and to give them an extensive moral space (or set of rights) to live their life in their own chosen way. So the purpose of having private property rights is that agents can set and pursue all kinds of different projects. These projects can be short term, like to mow the lawn or to go for a coffee in the bar around the corner. They can also be more forward looking, like to build a house so that one's children will grow up in a safe and healthy environment or to save money for one's pension. Especially in case of the more long-term and forward looking projects, it is essential that agents can count on having ownership rights over the resources they already employed into the pursuit of those long-term ends. That is, for an agent to be respected as a purposive being it is not only important that she has the right to put money on a bank account to save for her pension, but also that this money will still be hers when she actually retires and wants to collect and use those savings. Agents, thus, must be respected in their legitimate expectations (Mack, 2002a, p. 90). If you once were the legitimate owner of a house or the savings on a bank account, you have legitimate expectations that those will be yours at any point in the future and you may plan your life around those expectations. If no long term ownership rights are part of a practice of private property, this practice does not secure that agents can set and pursue forward looking ends. Such a practice would, therefore, be unjustifiable. To respect an agent's status as an independent project pursuer entails to secure a set of rights that provides room to pursue both short term and long term projects. Therefore, a practice of private property rights must respect agents' legitimate expectations.

But it is here that egalitarian principles fail, or so the right-libertarian argument goes. The point is not only (Nozick's claim) that an egalitarian proviso would require permanent redistribution of holdings. This 'problem' is solved by redefining property rights so as to grant only rights of control, use, transfer and income 'subject to taxation according to an egalitarian proviso' (instead of full liberal ownership rights). Rather, the argument is that even if it would be possible to define the proper egalitarian proviso, to implement any such principle would require constant adjustments of the tax system (Mack, 2002a, pp. 85-91). This is because even if, at one point, the perfect egalitarian distribution of resources has been reached by means of a certain tax system (e.g. a progressive income tax with a maximal tax rate of 65% whenever one has an income over 60 000 EUR), a whole set of social factors will lead to the inadequacy of that specific tax system to sustain the egalitarian distribution. For example, the talents, effort and creativity of individuals and the kind of technological knowledge available in

society will lead to permanent changes in earning powers of agents. It will lead to the increase of earning powers of some, and the decrease of earning powers of others. It will also change the total amount of resources (e.g. wealth) available in society that can be used by agents as well as the value of raw natural resources that are to be distributed according to the egalitarian proviso. In short, the streams of income are unpredictable and vary constantly. So while a certain tax system might have been accurate to achieve justice at one point, it will not be at another (e.g. whereas first the progressive income tax was sufficient, a wealth tax might have to be installed later on, or some other taxes might have to be abandoned, to achieve egalitarian justice). The study of how best to realize the preferred egalitarian principle is an ongoing process, which will lead to permanent adaptations of what were once thought to be just distributions. But "the conscientious institution of new income regimes in the ongoing quest for justice in the lifetime distribution of income will frequently have to deprive individuals of what they expected to be their just income or even of previous income that has been viewed as just and will alert people to the fact that their current claims may well be subject to similar abnegation" (Mack, 2002a, p. 90). This implication of egalitarianism conflicts with the idea that agents should be able to count on their ownership rights in order to be able to set and pursue long term and forward looking projects. The right-libertarian claim is, thus, that egalitarianism cannot guarantee that the legitimate expectations of property-owners will be respected in the future.

4.2.2. Plausible egalitarian responses

Egalitarians have several paths open to them to respond to this criticism. First, there is a question of what the purpose of a theory of justice is. Is it to determine what the fundamental rights and duties are that *all* agents owe to one another, or is it to secure a sphere of effective liberty for *some* agents (e.g. those who possess resources) potentially at the expense of others? For right-libertarians who accept the 'point of private property' argument against egalitarianism must hold that, even although egalitarianism might be right that redistributive taxation is needed to give everyone their fair share, this consideration is outweighed by the fact that property-owners would not be able to count on their property for their long term projects. But the point of the discussion of the Lockean and Nozickean proviso's on initial acquisition was to explain that if equality requires redistributive taxation, the property was *not*

theirs in the first place. One has no right to count on resources that are surplus of one's fair share.

The right-libertarian might answer, of course, that an agent's 'legitimate expectations' is, just like 'equality', a relevant consideration to delineate her rightful ownership rights in the first place. That is, not only an egalitarian proviso determines the justifiability of a redistributive tax system, but also the extent to which the tax system respects the moral status of agents as project pursuers. Together, rather than an exclusive focus on equality, those values determine whether a tax system is just.

Egalitarians can, second, agree with this right-libertarian response to the first egalitarian route. Namely, this was exactly the rationale for the sufficiency proviso defended in the last chapter. It is vastly important that agents can live their lives as project pursuers and therefore they need ownership rights over enough external resources. Those ownership rights must indeed be secure so that one can count on them today and in the future. Nevertheless, once an agent has sufficient to live a life as a project pursuer, the force of this rationale weakens significantly. If both equality and project pursuit are relevant values to determine the justifiability of a tax system, surely reasons of equality must start to trump reasons of project pursuit once everyone has enough to live as a project pursuer. This argument also holds if right-libertarians consider project-pursuit as vastly more important than equality to judge the justifiability of an income or tax system. Even then it must be the case that at one point (e.g. once everyone has enough to live a life as a project pursuer) this rationale becomes irrelevant and other reasons win conflicts of values.

Third, sometimes right-libertarians seem to think that egalitarianism conflicts with project-pursuit because it is thought to require agents to live their lives in accordance with egalitarian principles. In particular, right-libertarians sometimes appear to think that the personal choices of agents are limited by a duty to bring about an egalitarian distribution in society (Lomasky, 1987, p. 122; Wendt, 2018, p. 176). Notwithstanding very few exceptions who indeed argue that egalitarian principles should guide individual action (e.g. Cohen, 2000; 2008), the standard position among egalitarians in the debate on the 'site of justice' is that their principles only concern institutions (Dworkin, 2000, 2011; Rawls, 1999). Egalitarian principles only apply to the 'basic structure of society' (Rawls, 1999), i.e. the most fundamental social, economic and political institutions. It does not require that individuals themselves, at all times, aim to establish an egalitarian distribution of resources. Rather,

egalitarianism is concerned with delineating the sphere of liberty, which is protected by rights, of each agent to set and pursue their own projects. So, also in an egalitarian society it is permissible for agents to prioritize the advancement of their own projects.

The right-libertarian might respond that the debate on the site of justice is, in fact, irrelevant if one defends egalitarianism. The thought might be that, even if one holds that egalitarian principles only serve to evaluate the justifiability of institutions, the fact that those institutions have to install severely invasive measures (like permanent redistributive taxation) to establish an egalitarian distribution in fact comes down to the same thing as to require individuals to personally live according to those principles. What is the real difference, the right-libertarian might ask, between (a) having the liberty to transfer one's labour powers to others on the condition that one pays an income tax at the rate of 75% and (b) having to incorporate the egalitarian ideal in one's own labour-related projects?

This indeed seems to be a matter of degree. For imagine a society in which the redistributive policies are based on an egalitarian principle that requires 'equality of outcome at all times'. At each point in time everyone must have the same amount of natural resources *and* artefacts. Whenever one acquires a greater than equal share of, for example, income and wealth, redistributive measures are in place that take away the surplus share and redistribute it to those who have less than their equal share of total resources. In such a society, there indeed seems to be very little an agent can do with her life without constantly being confronted with the egalitarian demands.

But off course, no sensible egalitarian theory suggests such a stringent requirement. Equality of outcome runs afoul of several ideals. Apart from the fact that it is unacceptably invasive because agents should not be forced to accept egalitarianism in their personal projects, it also conflicts with the thought that a distribution of resources must be minimally sensitive to the choices and responsibility of agents. Any acceptable egalitarian theory holds that inequalities of outcome are permissible as long as each agent has an adequate (e.g. Anderson, 1999; Nussbaum, 1997; Scheffler, 2003b), maximal (e.g. Rawls, 1999; Van Parijs, 1995) or equal

(e.g. Cohen, 2009, 2011c; Lippert-Rasmussen, 2001, 2015; Otsuka, 2003, 2004) opportunity to live a life of her own choosing or to reach a certain level of wellbeing.[162]

So also within an egalitarian distribution there is room for individual project pursuit. Egalitarianism does not require the constant confiscation of property, nor does it require invasive surveillance or permanent intrusions in one's personal life. Rather, most egalitarians defend a 'loose pattern' which focusses on redistributive income and wealth taxes and state provisions like public education and health care services. The primary aim is to avoid gross inequalities in power relations, significant (undeserved) inequalities in income and wealth, severe poverty, and to retain a sense of community (Wolff, 1991, p. 89). For these valuable ends, egalitarians are, rightly so, happy to sacrifice a bit of the room for the project-pursuit of property owners.

To conclude, let me sketch the broad lines of sufficiency-constrained egalitarianism in a different way. Because of the sufficiency proviso, each agent is secured to have a set of ownership rights over external resources which is enough to live a life as a project pursuer. These resources can be properly called the agent's 'property'. These property rights are granted for now and for the future, so that agents can make both short-term and long-term plans. This set of rights could be extended, above the threshold, according to an egalitarian principle. Some of the resources above the threshold might, depending on some social and natural facts about our world, be secure for now and for the future as well. But sufficiency-constrained egalitarianism allows for ownership rights over some resources, at 'the edges of one's capital', to be unsecure and blurred. These resources might be called an agent's property today, but might not be so called tomorrow if the egalitarian principle, or its application, justifies their confiscation for redistribution.[163]

5. Conclusion

[162] This is not to say that those different egalitarian proposals treat the problem of (lack of) responsibility-sensitivity equally well. It is only to say that they all leave at least *some* room for inequalities based on an agent's choices.

[163] All what I have said in this section is consistent with accepting that the 'legitimate expectations' of agents are a relevant consideration in designing legislation. My arguments in the main text concern principles of justice, which is another level of consideration.

I have provided further reasons to reject right-libertarianism. Whereas chapter IV showed that any right-libertarianism that lacks a sufficiency proviso is flawed (e.g. right-libertarianism that holds that the world-ownership principle can solely be grounded in labour-mixing, first possession or non-invasive rights violations), this chapter argued that even sufficiency-constrained right-libertarianism is implausible. The main reason is that sufficiency-constrained right-libertarianism allows for significant inequalities above the threshold based on an arbitrary first-come first-served principle of initial appropriation of unowned resources. More plausible is the view that an egalitarian principle informs the distribution of resources above the threshold. Indeed, sufficiency-constrained egalitarianism seems the default position if we accept that the special moral status of agents requires to respect them equally. Moreover, our intuitions speak in favour of egalitarianism rather than right-libertarianism.

Of course, if right-libertarianism could show that egalitarianism is implausible and counterintuitive as well, it would put right-libertarianism and egalitarianism on an equal footing. Nevertheless, two famous right-libertarian critiques of egalitarianism fail. First, Nozick's Wilt Chamberlain example assumes the kind of ownership rights it aims to justify. That is, it is only if Chamberlain and his fans have full liberal ownership rights over resources that redistributive measures violate their liberty. But Nozick does not provide an independent justification for full liberal ownership rights. Second, Mack's 'the point of private property'-argument underestimates the force of the sufficiency proviso and overestimates the invasiveness of the policies required by egalitarian principles of justice. It underestimates the force of the sufficiency proviso as this proviso provides an independent justification to ensure that agents can live their lives as project-pursuers. We don't need an extra argument (like 'the point of private property') to respect agents as purposive beings. It overestimates the invasiveness of egalitarianism as, even although this theory requires redistributive policies, it still allows agents to significantly prioritize their own ends and it still protects an extensive core of private property rights for agents upon which they can count for their long-term projects.

I conclude that sufficiency-constrained right-libertarianism is implausible. Therefore, we accept sufficiency-constrained egalitarianism as the default position and investigate this further. This will be done in the next chapter. In chapter VI, I will investigate which egalitarian principle should govern the distribution of external resources above the sufficiency threshold. I will do so via a critical evaluation of different left-libertarian theories.

Chapter VI: Towards an Egalitarian Distribution of Worldly Resources

Distinct from right-libertarians, left-libertarians defend an egalitarian distribution of natural resources. They interpret the Lockean proviso on the original appropriation of natural resources, which is to leave 'enough, and as good' for others, quite strictly.[164] For left-libertarians, to leave enough and as good natural resources for others, in a scarce world, means to leave an *equal or fair share* for all.[165] In arguing for a fair distribution of natural resources, they accept the arguments made in the last chapters and agree (a) that a right-libertarian first-come first-served principle of initial acquisition fails to respect that it is equally important how well each agent's life goes (cf. chapter V) and (b) that due compensation is owed if one changes the privileges and duties of others with regards to a resource because of one's original appropriation (cf. chapter IV's rejection of the rule of first-occupancy).

Nevertheless, left-libertarians disagree about their specification of the Lockean proviso. What does it mean to give all agents an equal or fair share of the natural resources? First, left-libertarians differ with regards to the proper *distribuendum* to generate equality or fairness. The distribuendum is the set of resources that is available for redistribution in order to accomplish fairness. Roughly, left-libertarians argue that the proper distribuendum concerns bundles of natural resources (Otsuka, 2003), the competitive value of natural resources (Roark, 2013; Steiner, 1994; Tideman & Vallentyne, 2001; Vallentyne, 1998) or all the competitive value of resources, natural and non-natural, which is not attributable to the choices of agents (Van Parijs, 1995). Second, left-libertarians differ on the correct *equalisandum* of egalitarian justice. The equalisandum, also known as the *metric* or *currency* of egalitarian justice, specifies what it is that should be equalized (Cohen, 2011c, p. 5). How should the distribuendum be distributed for the resulting distribution to be fair? The

[164] Whenever I use 'natural resources', I mean raw, unimproved natural resources. It are the kind of resources one finds in a state of nature in which no agent has interacted with the external world yet. Non-natural resources, in contrast, are natural resources that have been altered by agents, like a bench, a laptop or a book. Non-natural resources are, thus, artefacts. Because all artefacts have natural resources as their constitutive parts, all what I will say about 'natural resources' also applies to the natural resources used to make artefacts (cf. chapter V).

[165] For my introductory defence of left-libertarianism, which is unrelated to the content of the current chapter, see Ossenblok (2016).

equalisandum concerns the 'Equality of What?'-debate (Sen, 1980).[166] Some left-libertarians argue for a resourcist metric (Arthur, 1987; Steiner, 1994; Tideman, 2000; Van Parijs, 1995), while others defend a welfarist metric (Otsuka, 2003; Roark, 2013; Vallentyne, 1998, 2012a). Whereas the welfarists all agree, more or less, on a proviso on initial acquisition that generates 'equal opportunity for wellbeing', there is internal disagreement at the resourcist side. Some resourcists defend an equal division of (the value of) *external* natural resources (*strict resourcism*) (Arthur, Tideman and the early Steiner), others argue for an equal division of (the value of) external *and internal* natural resources (which includes innate abilities) (*extensive resourcism*) (late Steiner), while still others claim that the distribution of resources should be sensitive to a range of brute luck inequalities (Van Parijs).

In this last chapter I take a stance in those two debates. With regards to the distribuendum, I will make two claims. First, whatever resources are part of the proper distribuendum, it is their competitive value, rather than the resources themselves, that should be distributed fairly among all agents. Second, I will tentatively claim that the standard left-libertarian's exclusive focus on natural resources seems arbitrary and, thus, that the proper distribuendum consists of more than only natural resources. With regards to the equalisandum, I will defend a resourcist account which is sensitive to brute luck inequalities. Some modesty is appropriate, though. The arguments in this chapter will hardly ever be conclusive, both in defence of my own view as well as in rejecting the views of others. This is because the issues that will be addressed here are complicated and have generated, in recent decades, an enormous amount of literature. Nevertheless, I hope that what I will say is sufficient to show the plausibility of my view.

The chapter unfolds as follows. In a first section, I will focus on the distribuendum. I will first explain why left-libertarians tend to focus on the distribution of natural resources. Although we can readily *explain* why left-libertarians pay special attention to natural resources, it seems harder to *justify* this focus. Therefore, it might be arbitrary to limit the distribuendum to (the value of) natural resources. Thereafter, I will reject the 'actual shares conception' of the distribuendum, which holds that equality or fairness should be accomplished by distributing actual shares of the resources that are part of the proper distribuendum. This conception is implausible because it is (a) incapable of taking future generations into account, (b)

[166] Famous and distinct answers in the 'Equality of What?'-debate are given by Rawls (1999), Cohen (1989, reprinted in 2011), Dworkin (1981b, reprinted in 2000) and Sen (2009). Rawls argues for equality (or maximining) of social primary goods, Cohen for equal access to advantage, Dworkin for equality of resources and Sen for sufficient capabilities.

impracticable and (c) inefficient. I will end this section with an explication and partial defence of a *Georgist conception* of the distribuendum, which holds that it is the competitive value of a resource that should be distributed fairly among agents. In a second part of the chapter, I will deal with questions concerning the proper equalisandum of egalitarian justice. I will reject *Equal Share Georgism*, both in its strict resourcist version and in its extensive resourcist version. A far more plausible view is to use the distribuendum in order to promote equality, where equality is defined in a way that is sensitive to brute luck inequalities. I will label this view *Equalizing Share Georgism*. Nevertheless, not all equality-promoting views are equally plausible. The popular welfarist view, for example, generates the problem that it funds offensive tastes. A resourcist conception of equality seems more plausible, so the way forward for left-libertarians is to look into the proposals of Dworkin (hypothetical insurance) and Van Parijs (undominated diversity) to compensate for brute luck inequalities.

1. The proper distribuendum for left-libertarianism

1.1. Natural resources and manna from heaven

Standardly, left-libertarians accept 'natural resources' as the default option for their distribuendum. That is, for most left-libertarians, either the natural resources themselves or the value of those resources must be distributed among all agents in a fair manner. Moreover, they believe natural resources exhaust the resources available for redistribution. Natural resources are the only resources that should be distributed according to a proper pattern of egalitarian justice.[167] Whatever that correct pattern consists of, most left-libertarians agree that natural resources are the proper means to accomplish equality or fairness. As we will see, Van Parijs (1995) is a notable exception to this rule. He thinks that, although natural resources are vastly important, the proper distribuendum is (far) more extensive and focusses on (a whole range of) non-natural resources as well.

Natural resources are standardly conceived as those raw and unimproved external resources that can be found in the state of nature. They are all the resources that fall under the label of 'Mother Nature'. Paradigmatic examples of such resources are plots of land, wild plants and

[167] Note that this characterization is prototypical. Many left-libertarians allow for exceptions on this rule. Nevertheless, even if they allow for an extension of the distribuendum beyond natural resources, the special attention to the distribution of natural resources remains a defining feature of all left-libertarian theories.

animals, the air we breathe, the energy contained in wind, waves and sunlight, the water in rivers and oceans, the trees of forests and the minerals, gases and raw oil that can be found under the soil. Such resources are, very often, valuable for agents. They can be used to serve their needs, desires, interests and values (Mazor & Vallentyne, forthcoming; Narveson, 1998, p. 15). They can be employed, that is, to set and pursue all kinds of projects.

There are, I believe, five reasons why left-libertarians tend to focus on the distribution of natural resources. First, natural resources are special in that they exist in a state of nature in which no human interaction or improvement has already taken place. Moreover, those resources would exist even in the absence of the human species. Given that Lockean libertarians argue that we can derive the correct political theory from the rights and duties agents have in the state of nature (e.g. Nozick, 1974; Otsuka, 2003), it is rather straightforward to pay special attention to the rights and duties agents have with regards to natural resources.

Second, the genesis of libertarianism creates a natural tendency to focus on natural resources. This is because of the historical character of the theory. As was explained earlier, libertarians think that the justification of current ownership rights over a particular resource depends on the history of the ownership rights over that resource. That is, one's ownership rights over a chair are justified if and only if the history of the rights over the chair and its constituents is free from rights violations. But given that all chairs, like all other artefacts, are originally made from natural resources (e.g. wood from trees), one needs to know whether those natural resources were appropriated justly from the state of nature. So the focus of libertarianism on the history of property rights automatically generates the question of how to justify the initial acquisition of a natural resource and how to distribute ownership rights over such resources fairly.

Third, given that the existence of natural resources does not require human action, they are, in a clear and obvious way, a kind of 'manna from heaven' for which no one is responsible. The existence of a natural resource is not the result of a choice or effort of any agent. No one created those resources. This feature gives them a special moral status, as no one can claim a right over those resources based on personal responsibility. This is different from improved resources (or artefacts) like a table or a bicycle. The latter require human interaction for their existence, which might generate a special claim over them.

Fourth, given that no one created natural resources, the default position is that these resources are unowned (cf. chapter IV). No one, initially, has any claim to exclude someone else from using a natural resource. In a state of nature in which no original appropriation has yet taken place, it would be absurd for you to hold that I may not pick the apples from a tree, or drink water from a river, while you happily use those resources. Rather, in such a world we both seem to have the same use-rights over the tree and the river. Quite plausibly this is because no one owns those resources in advance of an act of original appropriation. This feature, like the fact that no one created them, makes natural resources special. We cannot distribute natural resources in a way that is sensitive to the ownership rights of agents, as no agent initially has any such rights over external resources.

Fifth, natural resources are scarce. It is true, of course, that not all resources are depletable and that some are renewable. But the scarcity of natural resources refers to the fact that there are insufficient natural resources to enable all agents to meet their desires and to accomplish their ends. This feature, quite plausibly, generates a requirement to let all agents have a fair share of those resources. If natural resources would be overabundant, it is questionable whether the use and appropriation of those resources would generate any (difficult) questions of distributive justice at all (Arneson, 2010, pp. 173-176; Locke, 1960 [1698], II, par. 34).

These five reasons *explain* why left-libertarians focus on natural resources as the proper distribuendum. But do those reasons also *justify* this focus? I believe only three of the five reasons generate a justification for treating natural resources as fit for redistribution, but those reasons also apply to certain non-natural, improved external resources (or artefacts). Let us first discuss the two reasons that do not provide a justification to treat natural resources as the proper distribuendum for one's egalitarian theory. These are the first and second explanation of the left-libertarian focus on natural resources. Consider the first explanation. The fact that libertarians mimic the rights and duties of agents in the state of nature in their political theory does not, of course, provide a justification for those rights and duties. Moreover, the fact that libertarians believe it is helpful to theorize about the rights and duties of agents over natural resources in a pre-political state does not justify the *exclusive* focus on those rights and duties even in a more developed society. Consider now the second explanation. Although the libertarian's focus on the history of ownership rights provides an explanation for why they believe the rights and duties with regards to natural resources deserve special attention, it cannot explain *what* these rights and duties are and *how* agents should deal with, and organize

the distribution of, such resources. The empirical fact that all artefacts have natural resources as their origin does not explain why a fair distribution of natural resources is morally relevant.

Let us now consider the three reasons which do provide a justification for the left-libertarian inclusion of natural resources in the proper distribuendum. The fact that (a) no one is responsible for the existence of natural resources, (b) that these resources are initially unowned and (c) that they are scarce indeed provides good reasons to treat them as particularly well-fit for redistribution. Namely, what these reasons come down to is that *no one has a prior claim* over natural resources and that, because of their scarcity, all should get a share. Moreover, it seems that these features generate a rationale for an egalitarian or fair distribution of those resources. As Arthur (1987, p. 344) forcefully states: "[no person is] born deserving a smaller share of the earth's wealth, nor is anybody else naturally entitled to a larger than average share". Natural resources seem to be paradigmatic examples of resources to which all agents have an equal claim.[168] We have, therefore, very good reasons to secure that all get their fair share. Note that, besides the fact that all should get a fair share of the *benefits* of natural resources, those three features also provide sufficient reason to share fairly among all agents the *burdens* that (the preservation of) natural resources generate.

Nevertheless, natural resources are not the only resources which share the three morally relevant features ((a) no one is responsible for their existence, (b) they are unowned and (c) scarce). One standard set of non-natural resources that also shares those two features are *abandoned artefacts*. Imagine, for example, that I justly own a cabin in the woods. I originally acquired, in accordance with the proper egalitarian proviso, all the resources necessary to own the cabin (i.e. the plot of land it stands on and the resources and labour necessary to build it). At a certain point, though, I do not longer want to own the cabin and decide to abandon it. The cabin now has the same morally relevant features as natural resources in the state of nature. (a) No potential new appropriator can claim responsibility for it being there, (b) no one can claim to have rights over the cabin different from everyone else's rights (because it is unowned), and (c) not everyone can appropriate the cabin. In short, no one has a prior claim to the cabin and it is scarce. Most left-libertarians acknowledge (Roark, 2013; Steiner, 1994; Vallentyne, 2000), for this reason, that abandoned resources should be part of the proper distribuendum as well.

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[168] This 'claim' is a claim in the broad moral sense, rather than in the Hohfeldian sense of 'claim-right'.

But the proper distribuendum might be even more extensive. For although those three features are *sufficient* for inclusion in the distribuendum, they might not be *necessary* for such inclusion. For example, gifts and bequests are, arguably, justifiably taxable (at a high level) and to a large extent fit for redistribution (Otsuka, 2003, pp. 38-39; 2009b; Vallentyne, 1998, pp. 617-618, 624-625; Van Parijs, 2009).[169] The reason for this is that to receive a gift or bequest very often is a matter of brute luck and because a system of free gifts and bequests will easily disrupt the egalitarian distribution of resources. But gifts and bequests only share with natural resources the feature that its receivers (appropriators) are not responsible for their existence and do not control whether or not they will receive it. The fact that the gift or bequest is given to *her* rather than to someone else might, in contrast, provide a plausible ground for the receiver to stake a special claim over those resources. So I leave open the possibility that the distribuendum is even more extensive than suggested by the criteria proposed here. Possibly, if a resource only shares one of those two features (e.g. no agent is responsible for the existence of the resource) it might be fit for partial redistribution. This potentially has very significant implications for the distribuendum of our theory of justice, because society could be conceived as a "massive gift distribution machine" (Van Parijs, 2009, p. 160). As Van Parijs (2009, p. 157) notices, "in actual life, the opportunities we enjoy are fashioned in complex, largely unpredictable ways by the interaction of our genetic features with countless circumstances, from the smiles of our parents to the presence of older siblings, from our happening to have a congenial primary school teacher or imaginative business partner to our happening to have learned the right language or our getting a tip for the right job at the right time." All these 'gifts' might justify to significantly extend the tax-base.[170]

So the proper distribuendum extends beyond natural resources. Therefore, in what follows, I will refer to a fair distribution of 'worldly resources' rather than 'natural resources'. By 'worldly resources' I mean all the resources, natural and non-natural, that are part of the proper distribuendum. If the reader finds the concept of 'worldly resources' too abstract, little

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[169] Steiner takes the peculiar position that bequests can justly be taxed at 100% of their market value (Steiner, 1981, pp. 249-258; 1994), but no taxes on gifts can ever be justified (Steiner, 1987, p. 70). For more on Steiner's argument on taxing bequests, see below.

[170] Van Parijs (1995), for example, argues that the extra income an employee receives merely because of the fact that the job-market as a whole does not fully clear supply and demand is fit for taxation and redistribution. That is because no one is responsible for this general feature of the job-market, nor can anyone claim to have a stronger claim to the benefits thereby generated than any other agent. I do not have the ambition to enter an economic debate, but his argument seems prima facie plausible to me.

is lost if one reads ‘natural resources’ each time I use ‘worldly resources’, as long as the reader accepts the caveat that I do believe that the proper distribuendum can be extended beyond natural resources.

1.2. The Actual-Shares Proviso

A further question that concerns the distribuendum is whether we should care about the distribution of *actual shares* of worldly resources or rather about the distribution of their *value*. In this section, I will explain and dismiss the first suggestion. I will turn to the distribution of the value of worldly resources in the next section.

A first suggestion is to defend an *Actual-Shares Proviso* on the acquisition of worldly resources. The Actual-Shares Proviso is concerned with the distribution of actual shares or bundles of worldly resources. It holds that whenever one appropriates worldly resources, one has a duty to leave a fair share of *in kind* worldly resources for others to appropriate. So, for example, *if* a ‘fair share’ equals an ‘equal share’, an agent may only appropriate worldly resources if she leaves an equal share of worldly resources for all others to appropriate. If you and I are the only inhabitants of a world in which there are ten equally valuable bundles of worldly resources, and if a ‘fair share’ indeed means an ‘equal share’, we both have the power to appropriate not more than five bundles.

Otsuka (2003) defends the Actual-Shares Proviso. According to his theory, agents may not appropriate more than their fair share of actual (i.e. in kind) worldly resources. He does not believe, though, that a ‘fair share’ consists of an ‘equal share’. Rather, he argues that a ‘fair share’ is an ‘equally advantageous share’ (Otsuka, 2003, pp. 24-27). An ‘equally advantageous share’ takes into consideration that not all agents are equally talented and that some, therefore, are in need of less resources to have an equal opportunity for a good life. Irrespective of the details, what is important is that Otsuka holds that one has no right to initially acquire more than one’s equally advantageous share. If your equally advantageous share equals seven (of the total of ten) bundles of worldly resources, you may not initially appropriate more than those seven bundles. Similarly, in that situation I may not initially appropriate more than three (of the ten) bundles (i.e. my equally advantageous share of all worldly resources).

The Actual-Shares Proviso is implausible, though. First and foremost, it cannot deal well with future generations. For imagine that you and I divide the ten bundles in our world in the fair way prescribed by the correct equalisandum. Let us assume that the correct equalisandum states that we should both get (in contrast to Otsuka's proposal) an equal share, which means, if there is only one generation of agents, that we both have a right to appropriate five bundles of worldly resources. Now it appears to us that there will be future generations of agents and, for some reason, we know that there will be eight other agents before humankind goes extinct (the amount of agents before doomsday, thus, totals ten). Several problems arise. Given that we are the only currently existing agents, do we have a right to appropriate five bundles each, or should we already leave an equal share for the future agents and only appropriate $1/10^{th}$ of the worldly resources (i.e. only one bundle each)? The most plausible answer in line with the Actual-Shares Proviso is, of course, that we may appropriate five bundles each but must leave an equal share of worldly resources for future agents to appropriate.

But if this is true, it generates a new problem. That is, the requirement to leave future generations an equal share of worldly resources severely limits the options for the current generation to use and transform natural resources. For one thing, it severely limits the use agents can make of *depletable resources*. The standard example are fossil fuels like coal, petroleum and natural gas. To form them naturally, it takes thousands of years. So it seems that the Actual-Shares Proviso does not allow us to appropriate but a small bit of such resources. This is implausible, especially if we assume, more realistically, that future generations consist of billions of agents. The reason is that the current use of such resources will very likely lead to economic and technological developments that make the use of fossil fuels superfluous. A good case can be made to leave future generations some (sufficient?) amount of depletable resources (e.g. because it leaves open certain paths and opportunities otherwise closed forever), but it is not clear that we should leave future generations an equal bundle of such resources if we can compensate their loss in some other valuable way.[171]

Moreover, the Actual-Shares Proviso severely limits the extent to which the current generation is permitted to *transform natural resources*. Many forms of using a natural resource, namely, consist in transforming the resource into an artefact. Often, by creating an

[171] Note that Otsuka's conception of the Actual-Shares Proviso, which focusses on 'equally advantageous shares' instead of 'equal shares', is not vulnerable to this objection. An 'equally advantageous share' for future generations might, namely, consist of less actual resources if technology advances to so as to put the smaller share of resources to more advantageous ends.

artefact, the natural resource ceases to be useful in any other way (i.e. other than being a constituent of the artefact). So if the current generation has a duty to leave an equal in kind share of raw natural resources for all members of future generations, our liberty to use and transform natural resources is severely limited. That is, we have to make sure that in transforming natural resources into artefacts we leave sufficient natural resources untouched (or unaltered) so that future generations have an equal share to use and transform.[172] But this, again, seems absurd. The artefacts created by previous generations more often than not improve the quality of our lives, and the artefacts we invent today arguably will provide similar benefits for future generations. Again, by using, transforming and thereby improving natural resources we compensate future generations for having less raw natural resources at their disposal.

Second, the Actual-Shares Proviso is impracticable. Most obviously, not all worldly resources are divisible into fair shares (Steiner, 1987, p. 65; 1994, p. 272).[173] We might be able to divide the desert into fair shares by giving everyone a fair amount of sand grains or by splitting the desert into fairly sized plots, but how do we divide healthy air near a rain forest or a particularly productive and good looking horse? Some natural resources are hard to divide in fair shares or are simply indivisible. Moreover, the number of agents in the world is not stable and is changing constantly. Some agents die while others newly appear. It will be very hard, if possible at all, to keep track of what a 'fair share' of raw natural resources consists of (Steiner, 1987, pp. 68-69).

Third, granting everyone the right to appropriate only their fair share will not be very efficient. For one thing, not everyone might want to appropriate the complete share of worldly resources they have a claim to, as some of them might only want to surf all day. Consequently, the Actual-Shares Proviso will probably leave some worldly resources unappropriated (Vallentyne, 1998). But even if all agents want to appropriate their complete share, such a distribution is, standardly, not very efficient (Roark, 2013, p. 111; Van Parijs, 1995, p. 42). In particular, some agents might be far better than others in transforming worldly resources into useful artefacts and wealth that, in turn, might increase the opportunities of all agents to live their lives as they see fit. If so, it is not a good idea to constrain the rights to

[172] An alternative for the duty to leave sufficient natural resources 'untouched' is to use and transform those resources during our lifetime but, at the end, to recover them to the state of raw natural resources.
[173] I use 'fair share' to remain neutral among different equalisanda that might be used by left-libertarians. I take 'fair share' to be neutral, for example, between 'equal share' and 'equally advantageous share'.

appropriate worldly resources of those more efficient and productive agents. Importantly, this argument does not claim that the alternative I will suggest shortly (i.e. Georgism) is the most efficient way to organize an economy, nor that only the most efficient distribution of worldly resources can be justifiable. It is to say, simply, that the Actual-Shares Proviso is very probably a particularly inefficient manner to distribute worldly resources.

1.3. Georgism

An alternative and more plausible strategy is to conceive of the distribuendum as focussing on the *value* of worldly resources rather than the actual resources themselves. This is Henry George's (1879) view and defended by most contemporary left-libertarians (Roark, 2013; Steiner, 1987, 1994, 2009a; Tideman & Vallentyne, 2001; Van Parijs, 1995, 2009). The general idea is that an agent can originally appropriate a worldly resource if and only if she pays the value of the resource to a collective or social fund (e.g. by means of taxation). Let us call this general idea *Georgism*. Nevertheless, Georgism is complex and I do not claim to be able to define and defend it fully. I will simply attempt to sketch the general idea in a way that makes it comprehensible and plausible.

There are several issues that complicate the idea of 'paying the value of a worldly resource' at the point of initial appropriation (for interesting discussions, see Roark, 2013; Vallentyne, 1998, 2000). For example, how are we to determine the value of a resource? The standard view is that the relevant value of a worldly resource consists of its *competitive value*. Many worldly resources generate benefits for agents and, therefore, to be able to appropriate such a resource generates benefits for the appropriator. Someone who appropriates a worldly resource is, therefore, most often willing to pay for it. But an appropriation also deprives others from the opportunity to benefit from the resource. Although everyone initially had a privilege to use the resource, after the appropriation has taken place all but the appropriator have a duty not to use the resource anymore (without the owner's consent) (cf. chapter IV). An agent's willingness to pay for an appropriation as well as the opportunity costs for others not to be the owner of the resource, it seems, are relevant considerations to take into account in determining the value of a resource.

There are several concrete ways in which the competitive value of a resource can be calculated. What these manners share is that they make use of the mechanisms of supply and

demand. One example is to look at the market-clearing price in a perfectly free and competitive market economy (George, 1879; Steiner, 1987, p. 67; Vallentyne, 1998, p. 620; Van Parijs, 1995, p. 49). This is the price that will ensure that both supply and demand dry up. All available resources are sold and there is no demand for extra resources. Another way to determine the competitive value of a resource is to look at its price at an auction (Dworkin, 2000; Roark, 2013; Steiner, 2011a, p. 332, fn. 12). Imagine a Dworkinean group of shipwrecked immigrants arriving at an uninhabited island (Dworkin, 2000). One way to determine the value of the resources on the island is to organise an auction in which all the resources are up for sale. All agents receive an amount of clamshells to bid on the resources they would most like to appropriate. Because all immigrants will bid in the auction they determine the value of the resources together, based on their respective preferences. Resources that are in higher demand will have a higher price, while resources that only a few of the agents fancy will be cheaper. The price at which an agent can purchase a particular resource is the competitive value of the resource. The purchase price at an auction reflects the value of the resource to the second highest bidder. That is, one can standardly buy a resource at an auction if one just slightly outbids the second highest bidder. Therefore, the price of a resource is sensitive to the opportunity costs of the resource; the costs for others not to be able to use a resource is relevant to determine its value (Van Parijs, 1995, p. 51). The auction-mechanism establishes "that the true measure of the social resources devoted to the life of one person is fixed by asking how important that resource is for others" (Dworkin, 1981b, p. 288).[174] It is hard to make a well-argued choice between those two standard manners of determining the competitive value of a resource. In what follows, I will simply assume that there is a convincing way to calculate the competitive value of a worldly resource. Because the conditions necessary to organize an auction are easier to comprehend than those necessary for a fully transparent and free market, I will, for simplicity, accept the auction procedure as the proper way to think about the competitive value of a resource.

A further issue to determine the value of a worldly resource concerns the prior allocation of rights (prior, that is, to the start of the auction procedure) (Vallentyne, 2000, p. 16). For the

[174] It should be noted, though, that Dworkin (1981b) not only uses the auction as a way to determine the competitive value of a resource, but also to divide the complete bundle of resources available on the island in equal shares, based on 'envy-freeness'. A distribution is envy-free if no one prefers anyone else's bundle of resources over her own. Although I believe this is a very promising way to establish equal shares of resources, the aim of the auction in left-libertarianism is only to set the competitive value of a good rather than to establish a complete and equal distribution of all the goods among all agents.

competitive value of a resource will depend on the distribution of bidding-power at the auction. To make this clear, imagine two different situations. In the first, there is a vast inequality in bidding power among the immigrants. Prior to the auction, some are very rich while others hardly have any resources to bid with. In the second, the bidding power of the immigrants is the same. There is equality in wealth before the start of the auction. Given the different individual preferences of the immigrants (i.e. immigrant A prefers coconuts over apples and seawater, whereas immigrant B prefers seawater and apples over coconuts), the two auctions will deliver significantly different competitive valuations of the worldly resources that are auctioned. The same holds, by the way, in case one determines the competitive value of a resource based on its market clearing-price. The distribution of wealth among agents operating in the free market will influence the price of a resource. So what should the prior allocation of rights be in order to get a fair valuation process?

Most authors suggest that we have very strong reasons to give all immigrants equal bidding power (Dworkin, 1981b; Roark, 2013; Van Parijs, 1995).[175] Dworkin, for example, suggests to give the immigrants an equal amount of clamshells to spend at the auction. Roark suggest to let the agents bid with their power to appropriate other resources. In the latter's proposal, all agents have an equal power to appropriate external resources in the state of nature and so the auction could be organized so as to bid for ownership rights over resource X with one's power to appropriate resources Y and Z. That is, one could acquire ownership rights over resource X by renouncing one's power to acquire Y and Z.

Equal bidding power indeed seems the fairest way to allocate prior rights, at least *prima facie*. For one thing, since all agents have an equal claim to the worldly resources, equal bidding power in the auction seems the default position (Dworkin, 1981b; Roark, 2013; Steiner, 1994; Van Parijs, 1995). But also, and more importantly, by giving everyone an equal amount of clamshells, for example, the auction will set the value of resources in a way that is equally sensitive to the preferences of all agents (Dworkin, 1981b; Roark, 2013, p. 119; Van Parijs, 1995). Given that all agents have an equal privilege to use worldly resources in the pursuit of their ends, it seems plausible that a justifiable way to set the value of these resources shows equal respect to the ends of all those agents. Of course, such an auction will never take place

[175] Those authors only argue for equal bidding power on the assumption of equality in endowments owed to genetics, childhood environment or some other cases of brute luck. If there are no brute luck inequalities, equality of external resources is a fair starting point. I agree with those authors that deviations from equality in external resources is necessary if natural and social endowments are not equal (cf. infra).

in the real world. Still, it does give us an idea of how to think about the competitive value of worldly resources. And it provides an argument for why some form of (limited and regulated) market economy is an inherent feature of a just society (Dworkin, 2000; Steiner, 1994; Van Parijs, 2009).

The careful reader will now see that the competitive value of a worldly resource is not fixed. It depends on the preferences of agents and on the most productive use to which a resource can be put (Roark, 2013, p. 120; Steiner, 1994, p. 272; 1997, p. 301). These factors differ from one society to another. So whereas a worldly resource in a hunter-gatherer society might have a competitive value of fifty (of the relevant currency, e.g. clamshells), this might be different in a more developed world. That is, the demand for resources differs based on the societal circumstances one lives in. For example, different uses of a resource might be available due to technological improvements. This will increase the demand for this resource which, in turn, leads to a higher competitive value. So whereas raw oil might not be very valuable in a pre-historical hunter-gatherer society, its competitive value is a lot higher in a world in which it can serve as fuel for cars.

A fully developed theory must also decide whether the competitive value of a resource is paid to the social fund by means of a one-off payment (the purchase price of the worldly resource) or by means of multiple temporal payments. The latter would imply that one more or less 'rents' the resource, so the *competitive rent value* of the resource must then be paid if one aims to appropriate it. I believe the rent version of the payment requirement is to be preferred. Most importantly, the rent conception will better deal with the permanent changes in the supply and demand of worldly resources (Steiner, 1994, pp. 272-273; Vallentyne, 1998, pp. 616, 620). For example, it is impossible to determine the total competitive value of almost any resource because we lack knowledge about the influence of technological improvements on its value in, say, fifty years from now. The competitive rent value, on the other hand, is sensitive to those changes and is, therefore, a more accurate way to let agents pay the actual value of the resources they appropriate.

There are plenty of problems that are still unresolved by this very general framework. For example, a fully developed theory will have to decide which rights we are actually bidding for (full liberal ownership rights, or something different?) and in how many shares we will divide the available worldly resources (e.g. will the auction sell big plots of land or, in contrast, very small parts and pieces of natural resources?). I shelve these difficult questions for now and

will, in what follows, focus on the distribution of the revenue of the competitive rent tax on worldly resources (i.e. the distribution of the social fund).

2. The equalisandum: distribution of the social fund

Now we know how to conceive of the distribuendum of a plausible left-libertarian theory, we must investigate according to which equalisandum resources should be distributed among agents. In other words, now we know where the revenues of the social fund come from, we need to figure out how the fund must be spent. We already saw that left-libertarians claim that all agents have a right to a 'fair share' of the distribuendum. But what is a 'fair share' of worldly resources? The current section aims to answer this question.

Left-libertarians suggest, broadly speaking, two distinct ways to distribute the distribuendum. Some argue that a fair share of worldly resources means, straightforwardly, an equal share. Others claim that a fair share consists of unequal shares, as we should use the collective fund to compensate adversities caused by a lack of valuable innate abilities or unfavourable childhood and societal environments. The idea is that agents who suffer from such brute luck inequalities should receive a larger than average share of the competitive rent value of worldly resources. I will reject the first strategy, *Equal Share Georgism*, and defend the second, *Equalizing Share Georgism*.

2.1. Equal Share Georgism

Equal Share Georgism holds that we should split the collective fund equally among all agents. Steiner (1977, 1994, 2009a) offers the most famous and well-developed contemporary statement of this view, so most of my discussion of Equal Share Georgism will focus on his theory. But also other contemporary theorists defend this view, like Arthur (1987) and Tideman (2000, 2001; Tideman & Vallentyne, 2001).

The idea is very simple: everyone gets an equal share of the revenues of the worldly-resource-tax. If the total revenue of the tax is ten, and only you and I live in this world, we both receive five. Note that this does not imply that we both end up with an equal amount of total income and wealth. You might be very productive, efficient and innovative and create extra value by transforming worldly resources into more valuable resources. In contrast, I may choose to live

my life only with my equal share of the social fund and surf all day. Equal Share Georgism accepts such inequalities. What it does guarantee, though, is that all agents get an equal share of the competitive rent value of all worldly resources.

The rationale for Equal Share Georgism is equally straightforward. Because no one has a special claim over the unowned natural resources and artefacts, the default position seems to be that all have an *equal claim* to those resources. One standard way to respect this equal claim is to grant all agents an initial right to an *equal portion* of the value of worldly resources. To give all agents an equal share of the worldly-resource-tax is to give all their equal portion of the value of the world's 'manna from heaven'.

Note that, if we imagine that all worldly resources are appropriated by someone, some agents will be net-beneficiaries of the fund while others will be net-contributors. That is, those agents that appropriate less than their equal share of worldly resources will pay less to the social fund than they will receive when the fund is distributed equally among all agents. Those who appropriate more than their equal share of worldly resources, on the contrary, will have to pay more to the social fund than what they will receive from it. The first group are 'under-appropriators', while the latter group are 'over-appropriators' (Steiner, 1994, p. 268). Whether or not one is an under-appropriator or an over-appropriator, the system makes sure that all agents get an equal share of the competitive value of those resources.

So far I have explained Equal Share Georgism pretending that it provides a homogenous conception of an equal distribution of worldly resources. Nevertheless, there are two different versions of Equal Share Georgism. Quong (2011) helpfully divides these two versions into *Strict Resourcism* and *Extensive Resourcism*. They are accurately labelled as 'resourcist' theories because both versions of Equal Share Georgism focus on equalizing resources rather than some other metric (like wellbeing or capabilities). They differ, though, on what they consider to be part of the set of 'worldly resources' that should be distributed equally. They differ, thus, on how 'strict' or 'extensive' the distribuendum of Equal Share Georgism should be interpreted. I will now reject both conceptions of Equal Share Georgism.

2.1.1. Strict Resourcism

According to Strict Resourcism, the proper distribuendum consists only of *external* (or *impersonal*) resources (Arthur, 1987; George, 1879; Steiner, 1974, 1977, 1981, 1987;

Tideman, 2000, 2001). External resources, that is, are resources that are external to the person of agents. Resources that are part of an agent's person, like one's body or brain, are internal (or personal) resources. Of course, not all external resources are fit for redistribution. The claim is simply that all of the resources that are part of the distribuendum are external resources. Thus, there is only a tax-liability if one appropriates certain external resources, like raw external natural resources (e.g. a plot of land or some raw oil) or abandoned artefacts. According to Strict Resourcism, being the owner of an agent's person (e.g. owning oneself), or part of an agent's person, does not require to pay a related resource-tax to a social fund. Strict Resourcism, in short, is the most straightforward conception of Equal Share Georgism. I suppose it is the idea most have in mind when they first encounter this theory.

The strict resourcist conception of Equal Share Georgism is implausible. It is insufficiently egalitarian, because it fails to take into account differences between agents that are due to brute luck (Cohen, 1995, pp. 102-105; Otsuka, 2003, p. 26; Quong, 2011, pp. 68-70; Roark, 2013, pp. 121-123; Van Parijs, 1995, chapter 3). Call this the *Egalitarian Objection*. For example, in our two person world, inhabited by you and me, you might be born severely disabled while I might be born with highly valuable innate abilities. My half of the value of worldly resources, to which I have a right according to Equal Share Georgism, provides me with sufficient resources to live a tremendous life. I am highly skilled and capable to transform worldly resources into more valuable artefacts, which leads to even more income and wealth and opportunities to live my life in the way I prefer. That is, I am capable of using my self-owned person and my equal share of the value of worldly resources in a highly valuable and productive fashion. In contrast, your innate disabilities make your life barely worth living. You can hardly do anything with your equal share of the value of worldly resources as you cannot transform them into something more valuable by yourself. You even find it difficult to sustain yourself by making use of your equal share of the social fund. For almost anything you want to do in life, you need my help. Nevertheless, if you would receive a larger than equal share, say 2/3 of the value of worldly resources, the quality of your life and the level of success you have the opportunity to achieve would improve significantly and, as a result, might be equal to mine. Would it really be fair, in this case, to distribute the collective fund equally between us? Such a distribution would let all the costs of your brute bad luck fall on your shoulders. This seems vastly unfair. Your disabilities are not the consequence of a choice or fault of your own. Nor are my extraordinary innate abilities the consequence of any

act for which I could claim responsibility. My natural talents are just as much a matter of brute luck as are your disabilities.

A plausible egalitarian theory must incorporate brute luck inequalities into its conception of equality. Equality is not accomplished by distributing the social fund in a way that does not take into account that the starting position of agents differ significantly. There is something deeply troubling if some agents can live fantastic lives while others live lives hardly worth living due to no choice or fault of their own. Therefore, it is too quick to state that equality requires equal shares of the value of worldly resources. Rather, to treat agents equally means to accept that not everyone encounters the same brute luck in life.

Before I engage with Steiner's innovative response to the Egalitarian Objection (i.e. Extensive Resourcism), let me first note that the theoretical framework of Strict Resourcism already includes one way to soften this criticism. That is, Strict Resourcism can already explain why compensation is owed for many kinds of adversities that are due to bad brute luck. Many such adversities, namely, straightforwardly follow from the whims of nature (Steiner, 1997, p. 305; 2002a, pp. 350-353; 2011b, pp. 113-114). Given that all agents have a claim to an equally valuable share of nature's products, inequalities that are due to natural circumstances should be rectified. For example, it is already implied by Strict Resourcism that inequalities that follow from earthquakes, tornadoes, floods, lightning strikes and viral and bacterial infections should be redressed via the collective fund. The value of the natural resources that are affected by such natural disasters, standardly, decreases significantly. Consequently, the natural-resource-tax owed by their owners will diminish. The owners of such natural resources will also receive more benefits from the fund in order to ensure they receive their equal share. Besides, if one's own person is negatively affected by such an event of nature (e.g. bodily injury, illness), one receives extra compensation on the ground that the natural resources one had previously appropriated (i.e. the spot where the natural disaster took place) turned out to be negatively valuable. In short, "owners of sites that are less subject to such destructive natural forces will […] owe more to the global fund than owners of sites more exposed to them" (Steiner, 1997, p. 305). Strict Resourcism, thus, already compensates for many (though clearly not all) brute luck adversities. Nevertheless, it still grants, implausibly, an equal share of the fund's revenues to, for example, innately very talented and very untalented agents.

2.1.2. Extensive Resourcism

In his later writings, Steiner does take the Egalitarian Objection seriously (Steiner, 1994, 1997, 2002a, 2009a). He agrees with the general luck egalitarian idea that gains and losses that (primarily) result from one's 'circumstances' are most acceptably shifted, while those that (primarily) follow from one's 'choices' are least acceptably shifted (Steiner, 1997; 2009a, p. 5). His suggestion is to interpret the category of 'natural resources' more broadly, or more 'extensively', so as to include natural talents and abilities. The general idea is that the tax-revenues should be increased via a *tax on the competitive value of genetic endowments*. Like the appropriation of external worldly resources, the 'appropriation' of innate abilities is governed by an egalitarian proviso which holds that all agents have a right to an equal share of their value. Agents who appropriate more valuable natural talents will, thus, pay more to the collective fund. If the fund is then distributed equally, a redistribution takes place from agents who appropriated more valuable talents to agents who appropriated less valuable talents.

Note that the most obvious way to think about such a scheme is not an available option. That is, most logically it would be the agents *themselves* who have to pay the competitive rent value of *their own* innate abilities to the social fund (Otsuka, 2009b). More talented agents would have to pay more to the fund and less talented agents would have to pay less. Afterwards, the fund would be distributed equally and everyone would get their equal share of the competitive value of internal natural resources. Such a scheme would treat an agents appropriation of internal and external resources the same and it would equalize every agent's share of the total amount of the value of internal endowments and worldly resources. This suggestion is implausible, though, as it would generate the 'slavery of the talented' (Dworkin, 1981b; Van Parijs, 1995, chapter 3; see also chapter IV of this PhD). In particular, the proposal at hand would require a talented agent to pay a lump-sum tax to the collective fund for having above-average natural endowments. The level of this tax will in large part be determined by the earning powers of the innate abilities she 'appropriates'. So if one's abilities open the option of becoming a highly paid neurosurgeon, one's tax-level will be very high. The problem is that one's tax-burdens might become so high, because of one's particularly marketable talents, that one can only comply with the tax-duty if one actually performs a high-paid job. To be able to pay the lump-sum tax, the talented might thus be forced into jobs that pay well. If so, they cannot choose freely which job to perform or, as an alternative option, not to take any job at all and live of one's equal share of the value of

worldly resources (e.g. surf all day). Whether she likes it or not, the agent with the talents to become a highly paid neurosurgeon might be forced, because of the high tax-burden, to actually become a neurosurgeon. To require that agents pay the competitive value of their natural endowments to the social pot might, thus, enslave the talented into high-paid jobs. This would be a violation of the self-ownership principle and severely limit the right of agents to live their lives as they see fit.[176]

For this reason, Steiner suggests an alternative scheme. He thinks we should focus on the appropriation of human 'germ-line genetic information', as, for Steiner, this is a natural resource just like apples and raw oil (1994, pp. 237-248, 275-280; 1997, pp. 305-306; 2009a, p. 4). The idea is that, given Darwin's theory about the origins of human animals, the first agent that ever existed on earth has been created out of natural resources.[177] In particular, the germ-line genetic information of this first agent is a natural resource that has been appropriated and transferred, in different compositions, to all subsequent human beings. All agents thus have a right to an equal share of the value of this natural resource. Because of the role the germ-line genetic information plays for the constitution of one's abilities, it indeed has a value. Namely, the germ-line genetic information of one's parents, together with mutational factors, determines the genetic endowments of an agent. The constitution of these genes, in turn, are a key factor in the determination of one's talents, health, abilities and disabilities.[178] And these talents and abilities, of course, have a value or disvalue.

Interestingly, in contrast with the earlier suggestion to let agents pay a lump-sum tax on the value of their own natural endowments, Steiner thinks it are the *parents* who have the duty to pay for the value of the germ-line genetic information that was used to create their child. Namely, in the process of procreation, parents appropriate germ-line genetic information (a natural resource) and mix their labour with it. Therefore, it are the parents, being the relevant appropriators, rather than their agent herself, who have to pay the competitive value of the natural resource to the collective fund. Like in the case of worldly resources, those who appropriate very valuable genetic information owe more to the social fund than those who

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[176] On self-ownership and the importance of the freedom of occupation, see Otsuka (2009a).

[177] As Steiner (1994, p. 247) writes: "Consider a representative pair of primordial persons whom we'll uninventively call Adam and Eve. One thing we know from Darwin about Adam and Eve is that their parents were not persons. Nor, *ex hypothesi*, were they the products of persons' labour. So these parents (and their predecessors) were natural resources."

[178] Genetic endowments are, though, not the only factor that determines one's abilities and disabilities. Obviously, 'nurturing inputs' also play a role (Steiner, 1997, p. 306).

appropriate less valuable genetic information. Moreover, it are also parents rather than agents themselves who will be compensated, via the distribution of the fund, for appropriating a less-than-average portion of the value of germ-line genetic information. Steiner thinks that this extension of the distributable set of natural resources accurately captures our strong intuition that those born with genetically determined disabilities or health issues should be compensated so as to offset (as much as possible) this brute luck disadvantage. His suggestion indeed installs a redistribution of resources from the parents of the talented, abled and healthy to the parents of untalented, disabled and unhealthy.[179]

Nevertheless, the inclusion of germ-line genetic information in the distribuendum via taxes and benefits for parents is implausible. The extra tax-and-benefits system cannot perform the task we would like it to do if, as the Egalitarian Objection suggests, the aim is to undo bad brute luck inequalities due to differences in the innate abilities of agents. The reason for this is that the tax implausibly focusses on redistribution of resources between *parents.* It requires a redistribution of resources from the *parents* of talented children to the *parents* of untalented children. This feature generates the following three problems.

First, given the libertarian aversion against enforceable positive duties, the parents of an untalented or disabled child cannot be made to spend the extra resources on the child, let alone to spend it in a way that undoes the brute luck disadvantage. Even if (contrary to Steiner's position but in line with mine) we do not fully reject the enforcement of positive duties, it seems implausible to assume that such a duty of parents consists of spending (a) *all* these benefits to their untalented child and (b) in a way that *fully* offsets the inequality. Enforceable positive duties, as we have seen in chapter III, only exist in cases where the benefits of the duty vastly outweigh the costs of restricting the sovereign sphere of the duty-holder over her own person. It is highly doubtful that this balance of reasons will lead to an enforceable positive duty to use the extra resources to fully compensate one's innately disadvantaged child.

Steiner (2009a, p. 7, fn. 9) suggests that a solution to this problem might lie "in the possibility that parents who fail so to apply these extra resources [to the benefit of the child], and who thereby impose on their child a lesser degree of ability development that endures into his/her adulthood (self-ownership), would then be held responsible for that injury and accordingly be

[179] Olsaretti (2009) explains that, even more, redistribution also takes place from parents to non-parents, as the latter have not appropriated any germ-line genetic information at all.

then liable to him/her for compensation." But if parents can 'impose an injury' upon their child by not spending the extra resources to its benefit, surely this can only be the case if the resources, in fact, belong to the child rather than the parents in the first place. But this is not a line open to Steiner, as he believes the redistribution should take place between the parents, as they are the ones who appropriated unequal natural (genetic) resources.

Moreover, second, Steiner thinks that the rights of parents over their children are limited in duration (Steiner, 2009a, p. 4). They expire when their children become agents (i.e. adulthood). This seems plausible, as it is commonly accepted that the rights of parents to tell their children what they can and cannot do must terminate at some point. But if this is true, supposedly the rights and duties that follow from the original appropriation of germ-line genetic information also expire upon one's child's attainment of moral agency. Consequently, the duty of parents to pay the competitive rent value of the genetic endowments of one's child as well as the right to an equal share of the total value of such endowments disappear at the point of adulthood. But this means that Steiner's proposal cannot justify the redistribution of resources from (the parents of) innately talented *agents* to (the parents of) innately disabled *agents*. Steiner's theory implausibly implies that, once human beings attain moral agency, redistributive duties based on brute luck inequalities due to the gifts of birth disappear.

Third, a further problem with the proposal to redistribute resources between the parents of talented and untalented children is that, while it aims to compensate for brute luck inequalities generated by differential genes of children, it generates a new brute luck inequality between parents. Namely, a parent cannot standardly control the kind of germ-line genetic information she appropriates. She cannot choose the genetic composition of her child. It is, then, a matter of brute luck whether one appropriates the genes necessary for a child to become the best football player in the world, or those necessary and sufficient for a child to live a life as a disabled person. Obviously, most parents would prefer their child to be talented rather than untalented. But in Steiner's system one could say that, in fact, the parents of gifted football players like Ronaldo, Messi and Neymar are extremely unlucky. Namely, in Steiner's ideal world, their parents would have to pay massive amounts to the collective fund (at the time those footballers were children) as they have, without any choice or fault of their own, appropriated extremely valuable germ-line genetic information in the process of procreating their talented sons. It is problematic, of course, to respond to the Egalitarian Objection by

creating other brute luck inequalities. This ends my criticism against Steiner's germ-line genetic information tax.[180]

But even if the parental tax on germ-line genetic information is not as incoherent as I claim it to be, there remains a fundamental problem with Steiner's Extensive Resourcism: it compensates for some brute luck inequalities but not for others. As it includes germ-line genetic information, external raw natural resources, unowned resources and abandoned artefacts (including bequests) into the proper distribuendum, it can compensate, for example, for being unlucky to be born disabled (if we assume that the genes-tax works), for being the victim of a hurricane or a bear attack, or for never to bump into the abandoned cabin in the woods or not to receive a significant inheritance from one's parents.[181] Nevertheless, there are other kinds of brute luck adversities for which Extensive Resourcism does not have the tools to deal with.

In particular, there are plenty of brute luck inequalities that have nothing to do with the distribuendum of Extensive Resourcism but, rather, are the consequence of one's social, political or economic environment. Brute luck inequalities that are due to one's social environment are, for example, those related to one's childhood environment. It might make a massive difference whether one is born into a family where the parents are highly supportive and have plenty of time and other resources to spend on their children or, in contrast, to grow up in a situation where the upbringing is a struggle and negligence and aggression are part of everyday life. Another example of 'social environment brute luck inequalities' relates to the prejudices in one's community. For no choice or fault of one's own, one can be disadvantaged just for having a particular kind of gender or skin colour. With regards to one's political environment, it makes a difference for one's life-chances to live in a country in which there is

[180] For other criticisms against Steiner's inclusion of germ-line genetic information into the set of redistributable natural resources, see Armstrong (2017, pp. 66-68), Otsuka (2009b) and Curchin (2007). For some of his responses, see Steiner (2008, 2009b).

[181] Indeed, Steiner argues that a paradigmatic category of unowned resources that is fit for redistribution (i.e. part of the distribuendum) consists of resources that previously belonged to an agent who is now dead (Steiner, 1994, pp. 249-258). Steiner believes that the resources which are standardly considered to be part of an agent's heritage become unowned the moment she dies. The argument behind this idea is that rights, for Steiner and most other libertarians, protect the choice-making capacities of agents. Also the theory defended in this PhD grounds rights in the special moral status of agents as having the capacity to set and pursue their own ends. Given that dead persons cannot make choices, they lose the moral status they previously had as agents and, thus, or so Steiner claims, they cannot have rights. Therefore, the rights these previous agents had over external resources terminate at the point of death. To say the contrary, i.e. that dead human beings have the right to bequeath (what once was) their property to others, is conceptually incoherent. Steiner (1994, p. 258) concludes that, as far as justice is concerned, "the property of the dead […] joins raw natural resources in the category of initially unowned things: things to an equal portion of which […] each person has an original right."

a well-developed and efficient democratic system or, in contrast, a state in which respect for human rights and a transparent and efficient institutional framework are relatively new phenomena which still have to be established fully. Similarly, with regards to one's economic environment, it is a matter of brute luck whether or not the level of unemployment in one's country is high and whether the economy focusses on the lucrative service sector or, rather, on industries related to raw materials. These inequalities in 'social endowments' are just as much a matter of brute luck as one's natural endowments. And still, Steiner's Extensive Resourcism cannot explain why they need to be addressed in a similar way.

Steiner has two responses against the criticism that his Extensive Resourcism is insufficiently egalitarian as it cannot explain why we ought to compensate for brute luck inequalities due to one's social, political and economic environment. First, he claims that many of the adversities that people *think* are due to brute luck *actually* are caused by specific other persons who should be held responsible for the harm they cause (Steiner, 1994, pp. 277-279; 1997, pp. 303-304; 2002a, pp. 348-353). The idea is that if one is hit by a truck which runs a red light, this is not a matter of bad brute luck that should be compensated via the social fund. Rather, it is a consequence of the choices of the truck driver and, therefore, he must be held responsible for the harm done to you and offer you compensation (Steiner, 1997, p. 308). Luck egalitarians far too rapidly classify adversities as matters of bad brute luck that should be compensated by the collective fund, or so Steiner claims. Second, Steiner argues that those instances of harm and adversity that still appear clear cases of brute luck rather than consequences of the choices of agents (either one's own choices or the choices of others), fall under the broad label of "the doings of Mother Nature" (Steiner, 2009a, p. 5). So, for example, "if the *reasonably unforeseeable* consequences of a chosen action count as instances of brute luck, they should be causally attributed to Mother Nature's doings, and both their costs and benefits should accrue to Mother Nature's owners" (Steiner, 2011b, p. 113, fn. 7). The idea is that if one cannot reasonably foresee a consequence of one's action, surely it must be because of a natural factor that intervenes with (or affects in some other way) the action.

Nevertheless, these two replies fail. They fail because they give the impression that the disadvantages caused by one's social, political and economic environment are always, or almost always, traceable to the doings of others for which, moreover, they can be held responsible. The thought is that many of those disadvantages are like being hit by the truck; someone can be held responsible for the adversity and should provide due compensation. This thought might be true for some harms caused by one's environment, but it is not for others. So

maybe we can hold parents responsible for the harm done to their children by often smoking tobacco nearby.[182] And maybe we can hold specific persons of a dictatorial regime responsible for the harm they caused to their subjects. But who is to be held responsible for the disadvantage suffered by children whose parents do not speak the language of the society they newly arrived at after having fled economic destitution? Or who is responsible for the disadvantage caused to agents who become unemployed because the directors of the automotive factory in town, in which they worked for years, decide to delocalize the production line to a country at the other side of the globe? One cannot point at the directors as they, arguably, act within their rights.

The latter might be a case of what Steiner means when he refers to 'reasonably unforeseeable consequences of one's doings' as caused by 'Mother Nature'. If one started to work in the local automotive factor in the early 1990's, for example, it might have been reasonably unforeseeable that it would ever shut down and delocalize completely. Nevertheless, to catalogue a delocalization of a factory as a 'doing of Mother Nature' seems extremely far-fetched. So either Steiner cannot explain why compensation is due to agents who suffer circumstantial brute luck adversities or he stretches the concept of 'nature' to an extent which seems both ridiculous and unnecessary. As we will see shortly, there is an easy way open for left-libertarians to accommodate the issues raised by brute luck inequalities, irrespective of whether they are the consequence of doings of nature or of one's social, political and economic circumstances.

Equal Share Georgism, both in its strict resourcist and in its extensive resourcist version, is insufficiently egalitarian. It fails to adequately address the issue of brute luck adversities. In its strict resourcist conception, it does not take into account inequalities caused by the morally arbitrary facts of nature and of one's social environment. The extensive resourcist improvement is still implausible, as (a) its tax on germ-line genetic information is incoherent and, even if this first claim is incorrect, (b) it fails to adequately compensate for brute luck inequalities due to the social, political and economic circumstances of the place in which one grows up and lives one's adult life.[183]

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[182] But, as Otsuka (2009b, pp. 135-136) asks, what if the parents destroyed themselves and their property before any compensation could have been extracted and before the children were old enough to buy insurance against suffering insufficiently redressable harm from others?

[183] Another way in which Steiner's Extensive Resourcism is insufficiently egalitarian is that it claims that all gifts *inter vivos* are tax-immune (Otsuka, 2009b).

2.2. Equalizing Share Georgism

As an alternative to Equal Share Georgism, some left-libertarians suggest, more plausibly, *Equalizing Share Georgism* (Roark, 2013; Vallentyne in: Tideman & Vallentyne, 2001; Vallentyne, 1998; Van Parijs, 1995, 2009). Just like Equal Share Georgism, Equalizing Share Georgism is a 'Georgist view' and thus requires agents to pay the competitive rent value of a worldly resource to the collective fund in order to be permitted to appropriate the resource. Nevertheless, different from Equal Share Georgism, Equalizing Share Georgism suggests to spend the revenues of the fund in an unequal fashion, sensitive to brute luck inequalities. The basic idea is that agents who suffer from bad brute luck receive a larger than average share of the social fund, whereas agents who suffer no such disadvantages receive a smaller than average share. Everyone has a right to a share of the collective fund that is 'equalizing' or 'equality-promoting' rather than 'equal'.

One advantage of Equalizing Share Georgism compared to Equal Share Georgism is that the former allows to distinguish the distribuendum from the equalisandum. That is, for Equalizing Share Georgism, the questions (a) 'what does the (re)distributable pot of resources consist of?' and (b) 'what is it that agents should have equal amounts of?' can get different answers. For Equal Share Georgism the answer is the same for both questions: the competitive rent value of worldly resources. Equalizing Share Georgism also gives this answer to the first question, but allows for a different answer to the second question (i.e. equal opportunity for a good life, cf. infra). And this seems to make sense. There is no reason to assume that the ground for taxation must be tightly connected to the purpose of redistribution.

The aim of Equalizing Share Georgism is to 'equalize' the opportunities for a good life, whatever 'a good life' means.[184] The goal is, thus, to employ the revenues of the social fund to undue inequalities in opportunities for a good life. Most obviously, those opportunities depend on the amount of *external resources* that are available to use in the pursuit of one's projects. The more external resources one owns, the more opportunities one has to live a good life. Therefore, assuming that there are no brute luck inequalities, everyone should receive,

[184] Roark (2013, p. 120) refers to 'Equal Opportunity Georgism' to express the same theory. Nevertheless, because Steiner's Extensive Resourcist conception of Equal Share Georgism also aims to equalize opportunities and to compensate for brute luck disadvantages, the view at hand does not have the left-libertarian monopoly on 'equality of opportunity' as an ideal. Therefore, I prefer the label 'Equalizing Share Georgism'.

initially (i.e. at the start of adult life or before any choices are made for which the agent can be held responsible), an equal share of the value of worldly resources (cf. Equal Share Georgism). Nevertheless, as we have seen, this assumption is implausible, and therefore the social fund should compensate for the following three broad categories of brute luck inequalities: doings of nature, childhood environment and societal background conditions.

The collective fund should be used, first and foremost, to compensate for inequalities that follow from *nature's doings*. Innate abilities are one important group of such inequality-generating natural factors. Some agents are extremely naturally gifted, while others are born with physical and mental disabilities, learning disorders or illnesses. But also adult human beings can be struck by a natural disaster (e.g. hurricane, earthquake, an epidemic). The social fund should be used to compensate for these inequalities. Agents with less valuable talents and abilities, for example, should receive a larger than average share of the fund to equalize the opportunities for a good life. Note that this compensation could include money transfers, but it could also entail compensation *in kind* via health care provisions.

A second major source of inequality of opportunity for a good life is an agent's *childhood environment*. The care of one's parents and family, the language one speaks at home, the quality of the teachers at primary school and the social network of one's friends and their families, for example, could all make a massive difference for one's opportunities to develop the necessary skills and knowledge to lead a good life later on. One clear and important way to employ the fund to undue brute luck inequalities due to childhood environment is to ensure that all children receive high quality education that pays special attention to inequalities due to the children's circumstances.

Another, third, important ground for compensation are differences in *societal background conditions*. Given that the world exists of societies that differ from each other based on, among other grounds, history, culture, economic and political institutions, religions and languages, societal background conditions significantly impact the opportunities one has for a good life. These conditions affect an agent's opportunities in several ways (Tideman & Vallentyne, 2001). First, the initial beliefs and practical knowledge of one's society matter. These are often socially inherited and, thus, unchosen, but might generate inequalities in opportunities between agents of different societies. For example, if one lives one's life in a society in which there are false beliefs about health and science (e.g. the general belief is that one can cure a fever by swimming in ice water and that milk is a contraceptive), one has less

opportunities for a good life. Second, the general social climate in one's society matters. It makes a difference whether or not others are naturally or socially inclined to interact and cooperate. One's opportunities for a good life are affected by the willingness of others to collaborate, form agreements and trade with one another. If one lives in a society where there is a general tendency for rivalry and conflict, this will slow down progress due to no fault or choice of the agent herself. A third societal background condition that affects an agent's opportunity for a good life is the vicinity to desirable natural resources. That is, although one owes the competitive rent value of a natural resource to the collective fund if one appropriates it, such resources generally provide benefits to their owners that exceed the competitive rent value. Proximity to natural resources, thus, affects one's opportunities to access those extra benefits. Fourth, there is the general inheritance from previous generations. Most importantly, this inheritance consists of material wealth, like infrastructure (e.g. roads, airports, ports) and economic wealth (e.g. manufactories, employment market), and an institutional inheritance (e.g. the efficiency and effectiveness of political institutions). All these societal background conditions could affect an agent's opportunities for a good life in a way for which she, nor anyone else, can be held responsible. Whether or not the constitution of these conditions works in an agent's favour is a matter of brute luck. Therefore, compensation from the social fund is apt if they turn out to be disadvantageous relative to how they work for others.

The general framework of Equalizing Share Georgism is plausible and attractive. Equalizing Share Georgism explains how the collective fund must be distributed in a way that is sensitive to brute luck inequalities. If one has bad brute luck due to the contingencies of the natural or social lottery, this version of left-libertarianism attractively explains why one has a right to a greater than average share of the social fund. Namely, such contingencies are not the consequence of any choice or fault of one's own and, thus, could happen to all of us. But no one deserves to be disadvantaged due to bad brute luck and it would, moreover, be deeply unfair if morally arbitrary facts about one's innate abilities, childhood environment or societal background conditions significantly determine how well one's life goes. Therefore, the costs and burdens of such brute luck should fall on all of us. It is an extra advantage of Equalizing Share Georgism, in contrast to Steiner's Expansive Resourcism, that it establishes this luck egalitarian ideal without having to expand the concept of 'nature's doings' so as to implausibly include all brute luck factors and without having to establish a genes-tax on the parents of naturally gifted children. Rather, according to Equalizing Share Georgism, taxes are only to be paid on the appropriation of certain external, impersonal resources and to be

distributed in a way that compensates for all kinds of brute bad luck, whether or not nature is 'responsible' for the brute luck.

Note that Equalizing Share Georgism is a view about the opportunities of agents to live a good life, rather than on the outcomes that agents realize. The aim of Equalizing Share Georgism is not to equalize the total amount of happiness, or income, of wealth, of preference satisfaction or any other metric, after agents have made choices and lived their lives. In short, the aim is not to make sure everyone is equal 'at the finish line'. Rather, the aim is to grant everyone equal opportunities to live the life of their own choosing, which means to compensate for those inequalities that are not the consequence of the choices agents, but to leave inequalities in place that follow from differential choices and, thus, differential option luck. This view is attractive as it shows appropriate respect for the capacity of agents to set and pursue their own ends. Part of showing respect for this capacity is to hold agents responsible for the choice they make, and to let the burdens and benefits that come from those choices fall on the agents themselves.

Although we have seen so far that Equalizing Share Georgism is to be preferred over Equal Share Georgism (both in its strict and extensive form), there still is some indeterminacy to what extent compensation is due. For although we know that it is fair to spend the collective fund in a way that compensates for brute luck adversities, we do not yet know how to measure inequalities generated by such adversities. Precisely how much compensation is sufficient to compensate for brute luck inequalities and to equalize the opportunities of agents to live a good life? There are, broadly speaking, two different ways in which left-libertarians measure the appropriate amount of compensation. A first is based on wellbeing. The second is based on resources. In what follows, I will explain and reject the wellbeing account and defend a resourcist version of left-libertarianism.

2.2.1. Equalizing opportunities for wellbeing

Some theorists defend a welfarist conception of Equalizing Share Georgism. Vallentyne (in: Tideman & Vallentyne, 2001; 1998, 2012a) and Roark (2013), for example, hold that all agents have a right to a share of the social fund that equalizes their opportunities for

wellbeing.[185] These authors claim that the collective fund should be divided unequally, in a way that promotes equal opportunities for wellbeing. I will call this view *Equal Opportunity for Wellbeing Georgism* (compare with Roark, 2013, p. 126). Also Otsuka (2003, 2009b) argues for a welfarist version of left-libertarianism but, as we have seen, he defends an Actual-Shares Proviso rather than a Georgist account.

The general idea of welfarist accounts of the currency of egalitarian justice is that resources, like income, wealth and services are only instrumentally valuable to agents. There is no point of equalizing (the opportunities for) a certain amount of money, for example, because agents do not fundamentally care about money as such. Money is just a means to live a good life, it is not itself what constitutes a good life. For this reason, to focus on the equalization of resources might be fetishist (Lippert-Rasmussen, 2015, chapter 4; Sen, 1980, p. 218). An agent's welfare or wellbeing, in contrast, or so the welfarist argument goes, is indeed something everyone has reason to value non-instrumentally. Therefore, welfarists conclude that (opportunity for) wellbeing is a plausible candidate to serve as the currency of egalitarian justice. Still, this conclusion might entail different things.

Broadly speaking, there are three different welfarist accounts (Lippert-Rasmussen, 2015, pp. 95-99, see also Cohen, 2011, pp. 6-7). The first account focusses on the mental states of agents. According to mental-state based accounts, positive wellbeing consists of things like pleasure and enjoyment whereas negative wellbeing is linked to pain and frustration. A second welfarist account focusses on the satisfaction of one's preferences. An agent has more welfare, and her life goes better, the more of her preferences, or the more of her important preferences, are satisfied. Third, one could defend an objective-list account of wellbeing. According to this view, an agent's wellbeing is higher the more of the items on the list she experiences. Typical items on the list are deep personal relationships, knowledge, rational activity and the development of one's abilities (Lippert-Rasmussen, 2015, p. 98).

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[185] In fact, they both argue that agents have a right to a share of the global fund that equalizes their *initial* opportunity for wellebing, rather than their opportunity for wellbeing *tout court*. The difference is that 'initial opportunity for wellbeing', in contrast to 'opportunity for wellbeing', holds that it is more important to *maximize* the equal initial opportunities for wellebing of agents (i.e. at the start of their adult life) than to equalize all opportunities for wellbeing during one's whole life (i.e. to constantly compensate for brute luck inequalities). In other words, if one has to choose, because of reasons of efficiency, between (a) a case in which all agents have more equal opportunities for wellebing at the start of their adult lives but in which not all brute luck inequalities are compensated during their lives and (b) a case in which all agents have less initial equal opportunities for wellebing but in which all brute luck inequalities are compensated during their lives, initial opportunity for wellebing prefers the former over the latter. For a defence of this view, see Vallentyne (2002). I will neglect this issue as it would require a complicated analysis of luck egalitarianism. My aim is not to defend a very detailed version of luck egalitarianism. Rather, my focus is on defending a plausible version of left-libertarianism.

Although welfarist accounts differ from one another in several ways, Vallentyne (2002, p. 529) and Roark (2013, p. 125, fn. 27) happily refer to Arneson (1989) and Cohen (1989) as their welfarist examples. That is, Vallentyne and Roark argue that Equal Opportunity for Wellebing Georgism is best interpreted along the lines of the welfarist accounts of the latter two luck egalitarians (who themselves are not left-libertarians). For Arneson, welfare is understood in terms of preference satisfaction. "The more an individual's preferences are satisfied, as weighted by their importance to that very individual, the higher her welfare" (Arneson, 1989, p. 82). The relevant preferences are not an agent's actual preferences, because they might be informed by false beliefs. I might, for example, have an actual preference to go to the cinema to watch a movie called 'Baywatch', because I believe that it is a documentary about the most beautiful bays on earth. Nevertheless, had I had full information, I would have known Baywatch is in fact a low-standard movie about some persons rescuing others at a beach. With this information I would have had no preference at all to spend my time in the cinema. Therefore, the relevant preferences are an agent's hypothetical, well-informed, preferences.[186] According to this account of welfare, a distribution is just if it grants all agents the equal opportunity to achieve or realize one's informed preferences. The opportunity for wellbeing, or preference satisfaction, is all what matters for Arneson.

Cohen agrees with Arneson that the welfare of agents is vastly important to determine how well their lives go, but disagrees with the idea that wellbeing is all that matters. For Cohen, the proper metric of egalitarian justice combines (opportunities for) wellbeing and resources. He thinks the best metric has a welfarist component in order to accommodate the intuitively attractive idea that it is relevant to know, irrespective of the amount of resources an agent has to her disposal, what wellbeing she can derive from the set of resources. If an agent has a tremendous amount of resources but can hardly derive any wellbeing from this wealth, this is a concern for egalitarian justice, or so is Cohen's thought. The correct conception of wellbeing, for Cohen, is based on the mental states of agents (e.g. utility) and their preference satisfaction. He combines, thus, the two subjective accounts of wellbeing. He dismisses objective-list accounts of welfare "since most philosophers would consider them alternatives

[186] Arneson's view is, in fact, more nuanced. He believes that the relevant hypothetical preferences are an agent's second-best rational preferences. These are not the ideally-informed and ideally-reflected-upon preferences, but rather, as Lippert-Rasmussen explains, "the preferences one's ideally rational self would want one to have given one's actual irrationality and the cost and prospects of overcoming it" (Lippert-Rasmussen, 2015, p. 25). For more details on the view, see Arneson (1989, p. 83).

to any sort of welfare theory" (Cohen, 2011c, p. 6, fn. 4). This welfarist component must be supplemented by a resourcist component to accommodate the intuitively attractive idea that, irrespective of an agent's level of wellbeing, if one has a severe disability one always has a right to some compensation to share its costs and burdens. Thus, a legless agent who is naturally blessed with an extremely happy character is still entitled to a socially funded wheelchair even if this extra resource is not necessary to equalize her opportunity for wellbeing. So whereas Arneson's metric of egalitarian justice solely focusses on wellbeing (i.e. preference satisfaction), Cohen's account combines a welfarist component, based on mental states and preference satisfaction, with a resourcist component. Cohen (2011c, pp. 13-14) calls his combined conception of welfare and resources 'advantage', and his preferred currency of egalitarian justice "equal access to advantage". Because both Arneson and Cohen endorse subjective theories of wellbeing, I will shelve objective-list accounts for now.

Equal Opportunity for Wellbeing Georgism thus distributes the revenues of the collective fund in a way that equalizes the opportunity for wellbeing or advantage of all agents. If some agents have more opportunities for wellbeing than others, because, for example, they have highly marketable innate abilities, are very handsome, have a happy character or live in a social environment in which there are plenty of opportunities to live a life of one's choosing and, thus, to satisfy one's well-informed preferences, the social fund must be employed in a way that enhances the position of those with less opportunities so as to equalize overall opportunities for welfare. So understood, Equal Opportunity for Wellbeing Georgism is highly attractive. First of all, it is a version of Equalizing Share Georgism and thus aims to compensate for brute luck adversities. Second, welfarism is *prima facie* attractive because it is obviously true that resources like income, wealth and services are only instrumentally important for a good life. Most agents only care about resources as a means for something more fundamentally valuable, like their welfare.

Nevertheless, there are several strong arguments against theories that accept wellbeing as (part of) the proper equalisandum of egalitarian justice.[187] I will here consider only one of those arguments: the *offensive tastes objection*. This argument is, I believe, sufficient to question the plausibility of welfarist accounts of the equalisandum of egalitarian justice and is exemplary for the most important problem that these theories face. That is, the offensive tastes objections show that welfarism is implausible because it lacks an independent account

[187] For the most comprehensive rejection of equality of (opportunity for) wellbeing, see Dworkin (1981a, 2000).

of equality which can delineate the reasonable limits on demands for compensation (Dworkin, 1981a).[188]

The offensive tastes objection states that welfarist accounts cannot accommodate the fact that certain tastes and preferences are irrelevant for an account of justice because they are offensive (Dworkin, 2000, pp. 22-24; Rawls, 1999, pp. 27-28). For example, imagine that Donald takes pleasure in discriminating against Muslims and Mexicans. His level of happiness and preference satisfaction would be substantially higher if these groups were, say, not legally allowed to travel freely (in contrast to all other groups of people). Unfortunately for Donald, the institutions of his society do not discriminate against Muslims and Mexicans in the ways he would gain most wellbeing. That is, there are currently no legal bans on free travel for Muslims and Mexicans in Donald's country. Equality for wellbeing requires that justice takes Donald's discriminating preferences into account and compensates for his welfare deficit. Nevertheless, this seems highly implausible. We clearly have strong independent reasons to hold that such offensive preferences deserve condemnation. They are unreasonable because they do not treat other agents as having an equal moral status. Therefore, Donald's discriminating preferences do not generate a claim for compensation.

Note that it seems irrelevant for the force of the offensive tastes objection whether one defends 'equality of wellbeing' or 'equality of opportunity for wellbeing'. That is, it does not seem to matter whether Donald *deliberately* developed his discriminating preferences or whether he simply harvested them as a consequence of a racist upbringing. In either case, it is extremely counterintuitive to grant Donald compensation for the lack of wellbeing he experiences because Muslims and Mexicans are not discriminated against. The reason for this, it seems, is that discriminating preferences conflict with the ideal of equality irrespective of how the preferences were developed. Equality requires to respect all agents as having equal moral status and, therefore, discriminating tastes conflict with equality. The offensive tastes objection does apply as well to welfarist accounts who stress the importance of equality of opportunity and aim to track brute luck inequalities.[189]

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[188] Another forceful argument against welfarist accounts that comes to the same conclusion is the famous *expensive tastes objection*. I believe this objection against equality (of opportunity) for wellbeing is decisive as well. For an insightful discussion of the expensive tastes objection, see most notably Dworkin (2000, chapters 1 and 7) and Cohen (2011c, chapters 1 and 4).

[189] But see Lippert-Rasmussen (2015, pp. 105-112) for a counter-argument. He does believe that it matters, at least insofar equality is concerned, whether or not Donald deliberately developed his offensive tastes. Offensive tastes that are the consequence of bad brute luck, or so he claims, provide grounds for compensation (insofar

Instead, a welfarist could respond that the offensive tastes objection fails to take into account that the relevant preferences are hypothetical, well-informed preferences rather than actual preferences (cf. Arneson). The thought might be that such preferences will never be offensive and always in line with the requirements of justice. This response fails, I believe, in two ways. First, equality of wellbeing runs the risk of becoming an irrelevant ideal. Namely, one of its most defining features is that it accepts that agents who have the same resources could be vastly unequal in terms of the wellbeing they derive from those resources. The reason for this inequality are differences between agents in character and preferences. But this feature of equality of wellbeing might become irrelevant if it turns out that only preferences consistent with the proper account of justice or equality are to be taken into account (as this response proposes). For an account of justice does not only specify that discrimination is wrong, it delineates many other rights and duties as well. If the proper account of justice is very specific and comprehensive about the different rights and duties of agents, this welfarist response entails that we can derive the well-informed preferences of everyone simply by looking at the ideal theory of justice or equality. This would make subjective accounts of wellbeing irrelevant. Second, it seems that a theory who refers to the wickedness or unreflectiveness of an agent to condemn compensation for offensive tastes misses the point (Dworkin, 2000, p. 23). Compensating offensive tastes is not wrong because the agent has misinformed preferences. Rather, compensating offensive tastes is wrong because the tastes are offensive. And we know that these tastes are offensive because of an independent conception the correct theory of justice or equality.

Interestingly, Cohen (2011: 9-10) accepts the offensive tastes objection against welfarist accounts. This is noteworthy because Cohen himself, as we have seen, holds that wellbeing is at least part of the proper equalisandum. Being a (partial) welfarist himself, he proposes that the welfarist ideal should be amended in order only to take *inoffensive* welfare into account in its theory of equality. So whereas Donald's discriminating preferences can never be a ground for compensation, his preferences for, say, personal mobility, poetry and football may provide such a ground. The latter, but not the former, are inoffensive. But how is Cohen to determine

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equality is all that matters). Although I believe Lippert-Rasmussen convincingly shows that Cohen's use of the offensive tastes objection is inconsistent with the latter's ideas on expensive tastes (see, especially, Lippert-Rasmussen, 2015, p. 111), Lippert-Rasmussen's main error is that he equalizes the ideal of equality with luck egalitarianism. Although compensating for brute luck inequalities is an important component of the ideal of equality, accepting that others have the same special moral status as oneself (and, consequently, respecting their rights and liberties) is, arguably, also part of the demands of equality.

what constitutes an offensive preference and what constitutes an inoffensive preference? He can only do so, it seems, by developing an independent account of the proper theory of equality. Independent, that is, from any reference to wellbeing. Namely, we can only determine whether a preference for poetry is offensive if we have a standard of right and wrong that is not itself grounded in tastes and preferences (cf. Dworkin, 2000, p. 23).

2.2.2. Equalizing resources

A more plausible suggestion is to accept 'resources' as the appropriate metric of equality.[190] The main aim of a resourcist metric is to specify rights over resources based on an independent and self-standing account of equality. Independent and self-standing, that is, from the preferences and wellbeing of agents. Rather than to look at the level of wellbeing agents (have the opportunity to) achieve, a resourcist account delineates the rights of individuals and, then, holds agents responsible for the ends and projects they set and pursue with their share of the resources.

Resourcists start from the observation that agents, in effect, set and pursue a whole plurality of different conceptions of the good. This is fine, or so is the thought, because agents should be allowed to decide for themselves what is important in life and thus to pursue their own ends. But to have a right to set and pursue one's own projects generates a responsibility for those ends (Dworkin, 2000; Rawls, 1999). One implication is that an agent must bear the consequences of her choices. That is, the choice to pursue a certain conception of the good may not burden other agents and decrease their opportunity to set and pursue *their* ends. So, for example, if the projects of an agent are particularly expensive, this does not ground a claim for more resources. In short, the set of resources, its content and size, must be determined independent from an agent's particular conception of the good.

But how then are we to specify each agent's fair share of resources if we cannot refer to the importance of equal (opportunity for) wellbeing? That is, what distribution of the social fund (collected by a tax on the appropriation of unowned resources) (a) holds agents responsible for the ends and projects they set and pursue and (b) compensates for brute luck adversities (as is required by any conception of Equalizing Share Georgism)? I believe there are two

[190] Famous resourcists are Rawls (1999), Dworkin (1981b, 2000, 2011), Steiner (1994) and Van Parijs (1995).

plausible ways to answer these questions. The first is a proposal by Van Parijs (1995, see in particular chapter 3) and holds that equality requires that there is *undominated diversity* in a society. The second plausible answer is based on a deliberation behind a *veil of ignorance*. I will set out both proposals and express a tentative preference for the second. This preference is tentative because I realize that a deeper analysis of both proposals is necessary to come to a final conclusion.

2.2.2.1. Undominated diversity

Van Parijs suggests that the proper conception of equality strives for a distribution of resources in society which establishes *undominated diversity*.[191] In particular, equality conceived as undominated diversity is a measure which compares the *comprehensive endowments* of all agents, including internal endowments like talents and disabilities and external endowments like social environment. It strives for a situation in which no one's endowments are dominated by someone else's endowments. The comprehensive endowments of an agent A dominate the comprehensive endowments of another agent B "if and only if every person (given her own conception of the good life) would prefer to have the former than the latter" (Van Parijs, 1995, p. 73). In the abstract, the idea is that the collective fund should be used so as to first compensate agents who's endowments are dominated by someone else's. Only when, after compensation has taken place, there is no agent B left who's comprehensive endowments are dominated by some other agent A (i.e. there is no unanimous agreement about the fact that B's endowments are worse than A's), there is undominated diversity in society. So, for example, consider that B has a severe disability (e.g. she is legless and thus cannot walk) but is 'normal' or 'average' with regards to all other endowments (e.g. other natural talents, social environment, family background). Quite possibly, under standard conditions, there will be an agent A who's endowments are judged preferable to B's endowments by everyone in that society. This might be the case, for example, if A is 'normal' or 'average' with regards to all endowments including having standard legs. If indeed everyone prefers A's endowments over B's endowments, B's endowments are dominated and thus generate a claim for compensation from the social fund. According to equality as

[191] Van Parijs (1995, p. 73) attributes the original idea to Ackerman (1980, p. 116).

undominated diversity, the social fund must be used in a way to compensate all those agents who's endowments are dominated by the endowments of someone else.

The idea of undominated diversity comes down to the claim that the social fund must be used to compensate for the most severe and obvious brute luck adversities (Van Parijs, 1995, pp. 73-74).[192] That is because for any two 'normal' or 'average' agents A and Z there will hardly ever be unanimous agreement among all members of society about who's comprehensive endowments are preferable. Some members of society will prefer the endowments of A while others will be convinced that it is better to live one's life with Z's endowments. Given that there is a plurality of conceptions of the good among members of one's society, no domination occurs between the 'normal' or 'average' endowments of A and Z and therefore no compensation from the social fund is due. Nevertheless, if the endowments of legless B are compared with those of A or Z, it might indeed be the case that the former's endowments are unanimously considered worse than those of A or Z. If so, compensation from the social pot to B is necessary to accomplish equality as undominated diversity. Note that it does not have to be the case that B's endowments are unanimously seen as worse than those of *all* other members of society (including both A and Z). To justify compensation it is sufficient that there is unanimous agreement about the fact that B's endowments are worse than the endowments of one single other agent in society (e.g. A, or Z).[193] The focus of compensation will thus be on clear and obvious brute luck adversities; on, that is, "unanimously recognized overall disadvantages" (Van Parijs, 1995, p. 75). Note that these disadvantages do not have to be as significant as those of legless B. More modest endowment disadvantages may also meet the threshold like, for example, having few marketable talents so that unemployment is often a realistic threat during one's lifetime. Compensation from the social fund to those agents with dominated endowments stops when there is no unanimous agreement anymore because at least one person prefers the comprehensive endowments (including compensation) to the endowments of someone else.

What is attractive about the idea of undominated diversity is that it combines two features that any plausible conception of equality must accept. The first is that the proper conception of

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[192] Once undominated diversity has been established in society, Van Parijs suggests to distribute the social fund equally among all agents via an unconditional basic income (Van Parijs, 1995, 2000).

[193] There is a caveat here. To avoid that we spend (close to) the whole social fund to a few very disabled persons, Van Parijs suggests, plausibly, to allow for small violations of equality understood as undominated diversity if "very large further transfers would only produce a hardly noticeable improvement in the beneficiary's situation" (Van Parijs, 1995, p. 84).

equality must be able to explain why compensation is to be paid to agents who are disadvantages due to bad brute luck. It is vastly unfair if an agent has to bear on her own all the consequences of events and situations that occur to her and for which so cannot be held personally responsible. Second, we want a theory of equality which holds agents responsible for the choices they make with regards to the ends and projects they set and pursue and the values they uphold. Undominated diversity meets both criteria. It provides a measure to determine which adversities can be reasonably thought to be matters of bad brute luck and for which inequalities agents can be held responsible. Namely, as long as everyone holds that an agent is worse off than someone else due to no fault or choice of her own, compensation is due. But if someone holds a conception of the good which conceives of an agent's comprehensive endowments as at least equally good than the endowments of another agent, a person cannot claim more compensation. As long as there is a conception of the good open to the agent in which her endowments are not worse than those of someone else, the agent can be held responsible for not adopting that conception of the good. This is not to say that the agent *should* adopt another conception of the good or that the agent has no reason to envy the comprehensive endowments of someone else. It is to say, rather, that if we want to respect the diversity of conceptions of the good in a pluralistic society, we must stop compensating agents whose comprehensive endowments are not unanimously judged as inferior to someone else's (Van Parijs, 2003b, p. 204). Therefore, once undominated diversity has been achieved, the distribution of endowments is fair and brute luck adversities have been adequately compensated.

A potential problem of the suggestion to understand equality as undominated diversity is that the amount of redistribution that the measure justifies might, in effect, be very small. That is, the amount of compensation for brute luck adversities that it supports might be at best inadequate and at worse negligible. The reason for this potential lack of redistribution is the plurality of conceptions of the good. Agents differ significantly in the kind of ends and projects they value and wish to pursue, so the danger is that, while almost everyone prefers the endowments of one over those of another, there can always be found one agent who holds the minority position and prefers the endowments of the latter. And to satisfy the condition of undominated diversity it is sufficient that there is *just one single agent* who holds a different opinion about the comparative value of the endowments. Van Parijs anticipated this objection and stresses that the diverging opinion of that one agent (i.e. the one who judges the endowments of two agents differently from the rest) must be "genuine and somehow available

to the people concerned" (Van Parijs, 1995, p. 77) . This means that the judgement must be based on a conception of the good that is well-informed and one that is not only available to some isolated group of people (e.g. only available to agents of a particular sect). Although this response indeed softens the objection, the worry remains. Indeed, in more recent writings Van Parijs himself expresses this concern (Van Parijs, 2003b, p. 204; 2009, p. 159). The concern is particularly worrisome to theorists who believe the scope of justice is global rather than local. Globally, the plurality of conceptions of the good is even bigger than on a local or national level. This fact significantly increases the chance that, when we compare the endowments of two agents, there can always be found at least one agent who genuinely prefers the endowments of the one over those of the other based on a conception of the good that is available to the agent concerned. Undominated diversity, especially when applied to a global level, runs the risk of only justifying compensation (if any) for a very small range of extremely grave disabilities and accidents. Therefore, it seems that equality as undominated diversity is insufficiently egalitarian.

2.2.2.2. The veil of ignorance

Another, second, resourcist proposal is to let agents decide together behind a *veil of ignorance* how to spend the revenues of the collective fund to compensate for brute luck adversities.[194] The idea is that if agents can decide how to spend the social fund, the distribution of resources reflects the choices of agents themselves. Of course, it would not be fair to let 'real-world agents', i.e. agents as they are, decide how to spend the fund. The reason for this is twofold. First, agents in the real world have some knowledge about the probability that they will suffer disadvantages from bad brute luck. For instance, some are already disabled while others foresee that they will very likely become involuntarily unemployed in the near future. These agents would press for extra compensation for agents who suffer from disabilities and involuntary unemployment while they would neglect other forms of bad brute luck. Second, agents in the real world might lack certain knowledge about the economic, legal and social institutions of their society which is necessary to adequately judge the importance of compensation for certain brute luck adversities. Some agents might, for example,

[194] For a distinct left-libertarian proposal based on a thought experiment behind a veil of ignorance veil of ignorance, see Roark (2013, pp. 117-118).

underestimates the effects of blindness for one's social capacities and overestimate the medical knowledge and possibilities to overcome this disability. Real-world agents thus run the risk to decide about the distribution of the collective fund based on partial and misinformed reasons.

It is for this reason that we should let agents decide about how to distribute the social fund behind a *veil of ignorance*. A thought experiment behind a veil of ignorance is a hypothetical device to reflect on how agents *would* decide in a situation where they lack certain knowledge about their person and its life and/or have more knowledge and information than is standard in the real world. The idea is that a veil of ignorance generates a fair decision procedure (e.g. Dworkin, 2000; Rawls, 1999). The veil of ignorance which I suggest to use here is similar to the one Dworkin uses in his hypothetical insurance scheme (Dworkin, 2000). That is, the information about the agents and their lives that the veil hides and the increase in knowledge of agents about their societal institutions that the veil assumes are similar as in Dworkin's hypothetical case. In particular, we should let agents decide about how to distribute the social fund behind a veil of ignorance that ensures (a) that all agents have a high level of knowledge and information about the economic, political, social, legal and medical structures of their society, (b) that no information is available about the 'antecedent probability' that a particular agent will suffer from bad brute luck while (c) agents bear in mind their conception of the good life. This veil of ignorance has the following implications. First, it entails that everyone has extensive knowledge about the effects and implications of bad brute luck (e.g. medical costs, likelihood to recover and the effects on sociability, self-respect and status, etc.). Second, no one knows whether he has an innate disability. Third, the veil allows agents to know their talents, but it hides the economic value of those talents. Fourth, it assumes that everyone has the same risk to encounter bad brute luck, like the development of a mental or physical handicap. Fifth, the veil enables agents to reflect on the proper distribution of the social fund based on their own values, ends and projects.[195]

The task of the agents behind the veil of ignorance is to decide, first, for which disadvantages to provide compensation and, second, to compare brute luck disadvantages with one another in order to prioritize certain adversities over others. This exercise must lead to a list of disadvantages for which compensation is due and an ordering of disadvantages based upon

[195] Dworkin's veil of ignorance is thinner than Rawls', as the latter's veil also hides knowledge about one's talents and values. Behind Dworkin's veil agents know which talents (except for traditional handicaps) and values they have, but do not know how marketable those talents are.

which the amount of compensation can be calculated. With regards to the first task, it is to be expected that the agents will grant compensation only for inequalities that do not reflect the choices and responsibility of agents. That is, compensation will be provided for brute luck inequalities. We have already discussed multiple examples of bad brute luck in this chapter. I believe agents behind the veil of ignorance will decide to compensate (primarily) for the kind of adversities Dworkin's hypothetical insurance market would also compensate. In particular, it would compensate for adversities like handicaps and disabilities, bad health and illnesses, low income due to a lack of marketable talents, unemployment and retirement, and bad inheritance luck (Dworkin, 2011).[196] I would add to this list also compensation for other forms of bad brute luck, like having an disadvantageous social environment (e.g. family background and social, economic and political institutions of one's country).

The amount of compensation inevitably depends on the total sum collected in the social fund. We can assume that agents behind the veil of ignorance know the yield of the left-libertarian tax on the appropriation of natural resources and abandoned artefacts. The idea is that agents decide together, based on their needs and conceptions of the good, which brute luck adversities are more severe than others and, consequently, what the appropriate level of compensation is. It is important to note, as a last point, that the agents behind the veil of ignorance also need to decide how compensation will be provided. That is, will compensation be given by means of goods and funds like cash money or are public services (e.g. public health care, public education, etc.) more appropriate? Given the plurality of conceptions of the good, I believe agents behind the veil of ignorance will have a strong bias in favour of compensation in cash. Nevertheless, quite possibly they might also decide to provide certain services to everyone in the same way so as to protect a certain minimum access for all.

3. Conclusion

The aim of this chapter was, like the previous one, to investigate which principle of distributive justice should inform the distribution of resources above the sufficiency threshold. Given the implausibility of right-libertarianism above the threshold (cf. chapter V), I have zoomed in on left-libertarianism here. Left-libertarianism supplements a defence of self-ownership with an egalitarian distribution of natural resources. A left-libertarian distribution

[196] If inheritance is, contrary to Steiner's position (cf. supra), not justifiably taxable at a rate of 100%.

of resources has, I believe, intuitive force and considerable plausibility. Nevertheless, there are different version of left-libertarianism and, therefore, there is a question of which version is most plausible.

The chapter proceeded towards a plausible left-libertarianism via two big steps. The first consisted of an investigation of the proper distribuendum of egalitarian justice. I argued that there indeed are good reasons to distribute natural resources in a fair or egalitarian fashion. Nevertheless, at least some of those reasons also apply to non-natural resources, which might provide a ground for extending the tax-base. It should include at least abandoned artefacts as well, but potentially even (parts of) gifts and bequests. A further issue is whether agents have rights to an *in kind* share of the distribuendum or to its competitive value. The second is more plausible, or so I have argued, because it better deals with the existence of future generations, is more practicable and more efficient. This means that I defend a Georgist account of left-libertarianism.

The second step was to take a stance in the debate about the equalisandum (or currency) of egalitarian justice. The most straightforward left-libertarian stance is Equal Share Georgism, which entails to distribute the distribuendum equally among all agents. Equal Share Georgism, both in its strict and in its extensive version, is implausible because it is vulnerable to the Egalitarian Objection. This objection states that a fair distribution of resources takes into account that some inequalities between agents are the result of bad brute luck, i.e. bad luck for which an agent cannot be held morally responsible. These kinds of bad luck are the result of morally arbitrary facts like one's innate abilities or social environment. A fair distribution of resources should compensate, at least in part, for bad luck adversities.

Therefore, Equalizing Georgism is more plausible than Equal Share Georgism. Equalizing Georgism spends the collective fund in a way that is equality-promoting in that it aims to ameliorate brute luck adversities. There are, broadly speaking, two ways in which Equal Share Georgism could try to do so. The first is to use the revenues of the social fund in a way that equalizes the opportunities for wellbeing of agents. This view is problematic, though, because it does not make use of an independent and self-standing conception of equality, which implies that the distribution of resources is too sensitive to the conceptions of the good of individual agents. The offensive tastes objection was one way to show this problematic feature of this view. Because of the lack of an independent account of equality, welfarism implausibly funds the dissatisfaction of offensive and discriminating tastes.

The second is to defend a resourcist view. The advantage of equalizing resources is that it indeed provides an independent account of equality so that all agents get their fair share irrespective of each agent's individual conception of the good life. I have tentatively defended a view in which the social fund is distributed by a collective decision of agents behind a veil of ignorance, but must admit that further study is needed to actually judge whether this view is better, all things considered, than the suggestion to conceive of equality as 'undominated diversity'. Both views at least share the attractive feature of any resourcist conception that agents are held responsible for the values they adhere to and the projects they pursue.

General Conclusion

1. Overview of the theory

The central question of the thesis runs as follows: is libertarianism *justifiable* as a theory of social and distributive justice? The motivation for this research question is, most importantly, the prima facie attractiveness of the self-ownership principle. Libertarianism is justifiable if it can be shown that there is a consistent, plausible and coherent version of the theory which is to be preferred over its most popular and convincing alternative: liberalism. I have only been able to provide a partial answer to this question. That is, given that libertarianism is still underdeveloped, both in terms of its specification as well as in terms of its justification, I have quickly taken one step back. I have limited the aim of the research to investigate the *plausibility* of libertarianism. In particular, I wondered whether libertarianism survives an analysis based on ordinary moral reasoning and, if so, what the outlook of the most defensible version of libertarianism is. In contrast to justifiability, plausibility does not require a detailed comparative exercise between libertarianism and liberalism. Rather, to establish plausibility it is sufficient to show that the principles of a theory cohere well with our considered judgements and some of our most deeply held moral convictions.

I have argued that libertarianism is indeed plausible and that the most tenable version of libertarianism is *moderate sufficiency-constrained left-libertarianism*. This theory is *libertarian* for several reasons. First, the theory defends the self-ownership principle. It holds that agents have very stringent and comprehensive rights with regards to their own person, which includes their body, mind and talents. Those rights most essentially imply that others have a duty to refrain from coercive interference with an agent's control, use and transfer of (parts of) her person. Second, it holds that the primary rights of agents are property rights. That is, most fundamentally agents have property rights in themselves and in resources external to their person. Those property rights delineate a sphere of personal liberty, a sphere in which agents are sovereign to set and pursue their own ends. Third, the theory stresses the importance of the history of property rights. Society's wealth is not like manna from heaven to which everyone has an equal claim. Also, the talents and capacities of agents are not simple means for the benefit of others. Rather, persons and external resources are owned by agents, and it is only because agents deploy their ownership rights in certain ways that there are 'benefits of social cooperation'. To determine the proper distribution of those benefits, we

need to investigate how agents can become the justified owners of resources. This is not to say that I have developed a purely historical theory. Rather, it is to say that the thesis accepts that the history of ownership rights plays an essential role in their justification. Fourth, it is a genuinely libertarian theory because it starts from the fundamental libertarian claim that agents should be respected in their capacity to set and pursue their own projects and that they, therefore, should be free to live their lives as they see fit. I believe moderate sufficiency-constrained left-libertarianism is a plausible development of this basic claim.

The theory defended is a version of *left*-libertarianism. Most importantly, it defends an egalitarian proviso on the initial acquisition of raw natural resources and abandoned artefacts. That is, it interprets the Lockean proviso on original appropriation, which is to leave 'enough, and as good' for others, quite strictly as a requirement to leave all agents a fair or egalitarian share. The best left-libertarian theory, or so I have argued, can be specified further as follows. The proper distribuendum of egalitarian justice consists of the competitive value of raw natural resources and abandoned artefacts. Such resources are special because (a) no claimant is responsible for their existence, (b) the resources are unowned and (c) scarce. These features ground the idea that all agents have a claim to a fair share of the value of those resources. If an agent uses her power to privately acquire such resources, she must pay the competitive rent value to a collective fund. This collective fund, in turn, must be divided according to the proper equalisandum. I have argued that the best equalisandum of egalitarian justice divides the social fund in a way that equalizes resources. This is not to say that every agent has a right to an equal share of the competitive value of all external (and potentially internal) natural resources and abandoned artefacts. Rather, equalizing resources means that the distribution of the collective fund is sensitive to brute luck adversities. This is plausible because it is unfair, all other things being equal, if some agents are worse off than others through no fault or choice of their own. The way to do so is to distribute the collective fund so as to realize undominated diversity in society or, probably even better, to distribute tax-revenues based on the decision of agents behind a veil of ignorance.

Besides, this PhD defends *sufficiency-constrained* left-libertarianism. First of all, I have argued that any version of libertarianism that grounds rights in the special moral status of agents as separate and independent purposive beings must accept a sufficiency proviso. This special moral status indeed grounds very stringent and comprehensive *self*-ownership rights, because such rights (a) show proper respect to agents and (b) are a necessary means to independently set and pursue one's own projects. But one cannot independently set and

pursue any project if one has no access to external resources which can be used in the pursuit of one's projects. Therefore, this rationale also grounds *world*-ownership rights. That is, to grant all agents rights to use, control and transfer sufficient external resources also (a) shows proper respect to agents and (b) is a necessary means for agents to independently set and pursue their own projects. This general argument for libertarian sufficiency naturally constrains the inegalitarian implications of right-libertarianism. More controversially, the sufficiency proviso also limits the implications of the most prominent left-libertarian theories.

There is a question about how the sufficiency proviso relates to the egalitarian distribution of the collective fund. I see two options. One option is that the social fund is first used to ensure sufficiency for all agents and, thereafter, the remaining funds (if any) are to be distributed in a way that equalizes resources (as chosen behind the veil of ignorance). The second option uses the funds the other way around. It first employs the collective fund to equalize resources but constrains the inegalitarian outcomes of such a left-libertarian distribution (because of the slavery of the talented or responsibility-sensitivity) at a sufficiency threshold. In this second option, the sufficiency threshold is only a relevant consideration if it turns out that despite the equalizing distribution of the social pot some agents have insufficient resources to live a life as a project pursuer. I think both options can meet the demands of sufficiency-constrained left-libertarianism and that the choice will have to be made at the institutional level rather than at the principled level. Reasons of efficiency and feasibility will be relevant to make this choice. Nevertheless, what *is* clear at a principled level is that ensuring sufficiency is more important than realizing equality. This becomes visible if we have another look at the moral status of agents. Agents are special, I have claimed, because they have certain purposive capacities. Because of those capacities, they deserve a certain respect. And because agents pass a certain threshold of purposiveness, they deserve equal respect rather than unequal respect. The duty to respect agents equally is thus derived from their purposive capacities. Respect for the purposive capacities is therefore logically prior to respect for equality. Given that the sufficiency proviso directly relates to the duty to respect agents as project pursuers, it is more important that agents have enough than that they have an equal or egalitarian share.

Lastly, I have defended a *moderate* version of libertarianism. By this I mean that the self-ownership rights implied by the theory are of less-than-absolute stringency. Indeed, I have argued in favour of near-full means principle-based self-ownership rights. Its most significant feature is that it holds near-full rather than full self-ownership. The former differs from the latter in that it sensibly accepts that the consequences of not infringing a right are relevant to

determine whether the infringement would be permissible. This backs away from the prototypical libertarian conception of the self-ownership principle, but is far more plausible. Indeed, as John Rawls (1999, p. 26) forcefully states, "all ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy". Near-full self-ownership accepts that it is sometimes permissible to infringe the self-ownership rights of another agent (based on a balance between consequences and respect for the moral status of that agent) and, thus, that not all rights-infringements are at the same time rights-violations. Furthermore, I have defended a version of near-full self-ownership which is means principle-based. This means that the stringency of a self-ownership right is in part a function of whether the agent, by not having her rights respected, would be used as a means to the benefit of others. The idea is that it is particularly difficult to justify infringing the rights of an agent based on the usefulness of the agent for others. The means principle thus understood adds some extra stringency to rights which protect agents against being used as a means. A peculiar (from a libertarian perspective) but plausible consequence of the view is that it is sometimes permissible to force an agent to come to the service of others (i.e. the enforcement of a positive duty). That is, if no right is absolute, because there is always an exception, even the protection against being forced to help others is sometimes justifiably infringeable.

2. Engagement with the literature

The thesis engaged with the existing body of literature in multiple ways. I will now reconsider four positions which might put into doubt the plausibility of moderate sufficiency-constrained left-libertarianism as it was defended here. This is another way to summarize some of the most important ideas and arguments that were developed as well as an opportunity to point at places where my ideas differ from those of others. Note that this overview does not provide an exhaustive list of criticisms dealt with in this book.

First, some authors, like Arneson, Dworkin and Fried, believe the self-ownership principle should be rejected because it is indeterminate. The thought is either that libertarians insufficiently specify the set of rights they defend, or, potentially more devastating, that ownership is a decomposable concept and that it is thus inherent to the concept that there are all kinds of different sets of rights that can constitute 'ownership' over a thing. Therefore, or so the criticism concludes, it is (close to) meaningless to state that agents own themselves.

This is the *indeterminacy objection*. Following Cohen, I have argued that whereas the concept of self-ownership might indeed be indeterminate, the prototypical libertarian conception of self-ownership is much more determinate. That is, libertarianism is standardly defined by a defence of full self-ownership. Full self-ownership entails a set of ownership rights over one's person which is maximally stringent (or absolute) and maximally comprehensive. Besides, extra determinacy was shown by an analysis of the meaning of rights and the meaning of liberal ownership. Rights consist of four incidents (claims, privileges, powers and immunities) and liberal ownership entails rights of control, transfer, enforcement, compensation and immunities to the non-consensual loss of those rights. Moreover, I have discussed three clear implications of full self-ownership. It (a) rejects all forms of paternalistic interferences, (b) morally forbids the enforcement of a positive duty and (c) has very limited income rights. Of course, one might not agree that these implications are justifiable, but this is different from a position which states that the self-ownership principle is indeterminate. It must be admitted, though, that many libertarians are indeed unclear about which conception of self-ownership they in fact defend. So I challenge all libertarians to better specify the extent to which their preferred conception of self-ownership is comprehensive and absolute.

Second, Sobel, Lippert-Rasmussen, Thomson, Arneson and many others have argued that full self-ownership, i.e. the prototypical libertarian conception of the self-ownership principle, is unacceptably fanatical. That is, it has implications no sensible theorist is willing to accept. This is the *fanaticism objection*. I believe the fanaticism objection is sound. Full self-ownership implausibly entails that each rights-infringement, however small and insignificant, is unjustifiable, irrespective of the good consequences that might be brought about by the infringement. This is implausible for three reasons. First of all, it leads to morally required paralysis. Namely, we permanently infringe, or threaten to infringe, the rights of others by daily acts like moving around and emitting small amounts of pollution. If these simple acts are impermissible, full self-ownership does not fit well with the framework of personal liberty which libertarianism aims to defend. Besides, full self-ownership cannot explain our strong intuitions which state that infringing a right as a side effect of pursuing the good is harder to justify than infringing a right as a means for the benefit of others. But to hold that those two forms of rights-infringement are equivalent is fanatical because it implies, for example, that it is never justifiable to bomb a military target of an enemy in an otherwise just war if it is foreseeable that a small amount of innocent civilians will be killed as a side effect. Lastly, full self-ownership fanatically condemns the enforcement of certain duties to help others. If you

could save a drowning child at small cost to yourself, surely it is permissible for me to force you to do so. Similarly, if children are 'drowning' because of poverty every day, surely it is permissible to install a small tax on the richest agents on earth to erase the gravest forms of destitution. Therefore, a more plausible conception of self-ownership loosens the requirements of full self-ownership a bit. I have argued that near-full means principle-based self-ownership is the way forward for libertarians.

Third, left-libertarians like Steiner, Vallentyne, Otsuka and Roark believe that their theory is to be preferred over right-libertarianism in part because, in contrast to the latter, left-libertarianism guarantees effective or substantive rights to set and pursue one's own projects. The thought is that the combination of formal self-ownership rights with an egalitarian share of the worldly resources will ensure that all agents can live a life as a project pursuer. Nevertheless, this is a mistake. Left-libertarianism, at least in the luck egalitarian way these authors defend and interpret the view, cannot guarantee that all agents have access to sufficient resources to independently set and pursue projects. One reason is that the discrepancy between the value of the talents of the most talented agents and those of the less talented agents might be so overwhelming that no compensation in external resources can ever fully equalize the total bundle of personal and impersonal resources or the total opportunity for wellbeing. If so, it is consistent with luck egalitarian left-libertarianism that the talented have (almost) no rights with regards to external resources and fall below the sufficiency threshold for project-pursuit. Another reason is that some agents might be responsible for their lack of access to external resources. Like all luck egalitarians, those left-libertarians want people to be held responsible for their choices. Nevertheless, unlike other luck egalitarians, left-libertarians have very few theoretical tools, if any at all, to counterbalance the harsh consequences of this view. That is, it seems harsh to refuse medical care or welfare benefits to any agent who desperately needs help in order to live a life worth living. Moreover, based on the 'independent project-pursuit rationale' it is always a problem if some have not enough resources to set and pursue any projects at all. This is harsh and problematic even if the agents are responsible for their own destitution. But luck egalitarian left-libertarianism cannot explain why these agents still have a claim to sufficient external resources. Therefore, a plausible left-libertarian theory must be constrained by a sufficiency proviso, which ensures that whatever the implications of the theory, all agents have a claim to sufficient external resources to live a life as a project pursuer. Moreover, these resources should be unilaterally claimable in order to protect the independence of each agent.

Fourth, some authors argue that if one defends both the self-ownership principle and an egalitarian version of the Lockean proviso on original appropriation, as left-libertarians do, surely one must hold that agents have a claim to an *equal* share of the competitive value of those resources rather than a claim to an unequal though *equalizing* share. This criticism comes in two versions. One version argues that if no one has a special or prior claim to unowned resources, the default position is that everyone has an equal claim. If so, the revenues of the social fund must be divided equally rather than in a way that is sensitive to brute luck adversities. This is a position is held by Equal Share left-libertarians like Tideman, Arthur and Steiner, and by Cohen. But there seems to be no reason to think that 'equality understood as equal shares' should get this privileged position. That is, it does not seem more *ad hoc* to hold that the social fund must be used to promote fairness or 'equality understood in a way that is sensitive to brute luck adversities'. Moreover, I believe we have good reasons to accept the promotion of luck egalitarian equality because, again, there is something deeply unfair if some are worse off than others due to the whims of the natural or social lottery.

Another version of the criticism claims that it is simply incoherent to, on the one hand, defend a position which states that agents own their person, including their talents, while, on the other hand, divide the social fund in a way that is sensitive to a lack of talents due to bad brute luck. That is, according to this objection, left-libertarians incoherently defend a very inegalitarian principle with regards to an agent's person and a very egalitarian principle with regards to worldly resources. This position is held by many critics of left-libertarianism like Cohen, Fried, Arneson, Risse, Eyal, Mack and Gaus (the last two writing together). Nevertheless, left-libertarians have a plausible explanation for this different treatment of agents and worldly resources. Namely, agents have a completely different moral status than external resources (like natural resources and abandoned artefacts). Agents are special, I have argued, because they have a capacity to rationally set and pursue ends. This grounds a moral status which requires others to respect agents as having value in and off themselves (i.e. as separate and independent project pursuers). Most importantly, it requires others to respect the boundaries of agents and to ensure that they do not use agents as a means for the benefit of others. Given that agents stand in a special relation towards their person, in that they intimately control their person and desperately need it to live a purposive life, respect for their special moral status requires not to coercively interfere with an agent's use and control of her person (including her body, mind, talents and energies). This reasoning does not, of course, apply to external resources. External resources do not have this special moral status and are

not protected against being used as a means. Indeed, quite possibly the opposite is true. External resources are, in essence, valuable only if they enable agents to set and pursue ends. The different treatment of agents and external resources is therefore very plausible. Whereas agents should be respected as self-owners, external resources that are unowned and over which no one has a special claim can plausibly be distributed in a fair or egalitarian fashion.

3. The TINALT-objection

There is one objection against the conclusions of my research that deserves special attention. The main conclusion, recall, is that there exists a plausible libertarian theory of justice: moderate sufficiency-constrained left-libertarianism. Nevertheless, one could object that the theory defended in this PhD is not a libertarian theory at all. I will label this the *this-is-not-a-libertarian-theory-objection* (or the TINALT-objection). The TINALT-objection holds that my theory backs away from standard libertarianism to an extent that it no longer 'merits' the stamp of libertarianism. One reason for this conclusion could be my defence of 'near-full' rather than 'full' self-ownership rights. Another reason might be that I accept that, in some circumstances, an agent can be forced to come to the service of others. Still a further reason could be found in my defence of a sufficiency proviso, which clearly limits the responsibility-sensitivity that is characteristic of standard libertarian theories (both right and left).

Recall from the introduction that standardly this is not a worrisome criticism. That is because the goal of a political theorist is not to defend a particular theory (e.g. libertarianism), but to defend the correct theory (whatever its label). Nevertheless, it was my explicit purpose here to evaluate the plausibility of libertarianism. That is why this criticism should bother me.

Earlier in this conclusion I have already given some reasons why I believe the arguments in this dissertation result in a libertarian theory. That is, moderate sufficiency-constrained left-libertarianism defends a conception of the self-ownership principle, it recognizes the importance of ownership rights to delineate an agent's liberty, it stresses the importance of the history of a property rights for their justification and it is grounded in the basic libertarian thought that agents should be respected as separate and independent project pursuers and, therefore, that they must be free to live their life as they see fit. Nevertheless, if those reasons do not convince defenders of the TINALT-objection, I have a few more things to say in response.

First, I am hardly the only one who interprets libertarianism in a loose sense. Loose, that is, in that it is not necessary to defend prototypical *full* self-ownership to count as a libertarian. Lippert-Rasmussen (2008, p. 93), himself a critic of the view, for example, states that "to qualify as a libertarian, one has to defend what I shall refer to as *substantive* self-ownership rights, that is, a package of self-ownership rights that […] are much stronger than minimal self-ownership. Or to put things metaphorically, in the way Quinn does: persons need a primary say over their lives, not just a say and not necessarily a veto" (original italics). A similar thought is expressed by Wendt (2018, p. 172) when he writes that "a theory of justice should count as an overall 'libertarian' one when it gives *considerable weight* to self-ownership and […] private property" (my italics). Something very close to these definitions of libertarianism can also be found in Sobel (2013), Zwolinski (2008b, 2016), Mazor and Vallentyne (forthcoming) and Vallentyne, Steiner and Otsuka (2005). It seems that I am at least in respectable company in accepting a slightly more loose definition of libertarianism.

Second, there is no such a thing as '*the* libertarian position'. Some defend full self-ownership (e.g. Rothbard, Feser, Nozick, Wheeler) while others defend something less stringent and less comprehensive than full self-ownership (e.g. Otsuka, Zwolinski, Roark, Mack, Van Parijs). Most notably, of course, there is the division between right-libertarianism and left-libertarianism. With regards to the world-ownership principle, some argue for an inegalitarian conception while others argue for an egalitarian conception. But as we have seen, even within those broad categories there is a wide diversity of positions. Indeed, there is not even such thing as '*the* left-libertarian position'. Otuska himself beliefs that what binds his theory with that of other prominent left-libertarians like Vallentyne and Steiner is only "an overlapping consensus [rather] than a shared comprehensive doctrine" (Otsuka, 2009b, p. 132). It is not that far-fetched, I believe, to hold that moderate sufficiency-constrained left-libertarianism is consistent with that left-libertarian overlapping consensus.

Third, the gap between libertarianism and liberal-egalitarianism, the former's most challenging alternative, might not be as yawning as the defender of the TINALT-objection might think. Some theorists have argued that the difference between Nozick's right-libertarianism and Rawls' liberalism is relatively minor (Fried, 2013; Lomasky, 2005). Others have argued that, at least insofar *left*-libertarianism is concerned, there is no rivalry at all between libertarianism and liberal-egalitarianism (Quong, 2011, p. 87; Vallentyne et al., 2005). That is, according to these authors, left-libertarianism is *a version of* liberal-egalitarianism rather than its rival. Steiner (1997, p. 312) even goes as far as saying that the

difference between libertarianism and liberal-egalitarianism "may not consist in any difference of principle at all".

If this is all true, the following questions come to mind automatically: given that the likes of Rawls and Dworkin have already developed attractive and plausible liberal-egalitarian theories, why should we bother with left-libertarianism at all (see also Fried, 2004)? Why do we not simply stick with the existing liberal-egalitarian theories? Or, in other words, what can (other) liberal-egalitarian theories learn from left-libertarianism? First, one advantage of left-libertarianism is that it defends a version of the self-ownership principle. This is an attractive feature of the view as it captures the intuitive and liberal idea that, insofar as my body and labour are concerned, I ought to be free to live my life as I see fit. Subject to respect for the rights of others, the self-ownership principle protects an extensive sphere of personal liberty to live one's life in one's own chosen way. Agents have a very stringent right to choose their occupation, to decide whom to have sex with, to drink alcohol, to take recreational drugs, adhere to the religion or sect they prefer, to sell their organs and to express their opinion. As Quong (2011, p. 87) explains, "left-libertarians thus offer a more genuinely *liberal* theory than those offered by Rawls and some other liberal egalitarian philosophers whose theories protect only certain basic rights and liberties (some of which are declared inalienable), while leaving many other specific freedoms at the mercy of democratic majorities or perfectionist principles" (original italics). Second, left-libertarians can plausibly explain why the most fundamental duties of justice are global in scope. That is, given that the libertarian rights are natural rights, all agents have those rights irrespective of the society they live in. To defend their cosmopolitan argument they do not need to refer to a popular but worrisome argument that the world today consist of a global cooperative scheme and that, therefore, the benefits and burdens of that global cooperation should be distributed equally. This argument is worrisome as some inhabitants of this world do not participate in the global economy and considerations of justice would not apply to them. Rather, left-libertarians can take the more attractive route which states that agents have rights over their person and to a fair share of the world's bounty *simply because* they are agents and thus worthy of proper respect. Third, it is an unattractive feature of some liberal-egalitarian theories, like Rawls', that they conceive of the products of social cooperation as a kind of 'manna from heaven' ready to be redistributed. This neglects the history of those products. Namely, the benefits and burdens of social cooperation are the outcomes of a process packed with the choices of individuals to employ resources in certain ways. It is disrespectful towards those individuals to conceive of those

choices *only* as part of a collective endeavour. Rather, left-libertarianism explains that the history of the realization of this collective wealth is also relevant to determine the justifiability of private property rights.

If the defender of the TINALT-objection is still convinced that moderate sufficiency-constrained left-libertarianism cannot count as a libertarian theory, there is only one strategy left in my defence. That is to cater to her worries and claim, again, that not much might be lost. If this PhD indeed was not able to show the plausibility of libertarianism, I might hope it did provide some good arguments that contribute to the search for a justifiable theory of justice. And for anyone hoping to find such a theory, it is worth to have a look around the libertarian corner now and then. There is something to be learned over there.

4. Limitations and suggestions for future research

I would like to end this conclusion with reflections about three of the limitations of this thesis and, relatedly, suggestions for future research. One soft spot of my analysis is that some of my proposals need to be developed further, in more detail, in order for the theory to be action-guiding in certain hard cases and moral dilemmas. For example, precisely how relevant are the consequences of not infringing a right for the justification of the infringement? I have developed some guidelines, and argued that the stringency of a right is a function of (a) the disrespect the infringement shows for the moral status of agents, (b) the bad consequences for the right-holder's capacity to set and pursue projects, (c) the good consequences for someone else's capacity to set and pursue projects and (d) whether, by infringing the right, the right-holder is used as a means for the benefit of others. Nevertheless, these criteria leave open some considerable room for interpretation, which might lead to some indeterminacy with regards to harder cases. Another example at hand is the specification of the sufficiency threshold. How much, exactly, is enough to be able to live a life as an independent project pursuer? Obviously, one needs to have one's basic needs met, like having enough food, clothes and shelter. And, arguably, one also needs basic health care and a decent education to independently set and pursue ends. But what else should be included in the sufficiency proviso? As a last example, there is a question about what distribution of the social fund would be decided behind the veil of ignorance. That is, precisely which inequalities and disadvantages would agents positioned behind the veil define as consequences of bad brute luck? And which brute luck adversities would be considered more important, or deserving

prior or higher compensation, than others? These questions, as well as many others, were not answered in this book. The most important reason is, I believe, that this is only a PhD. This is not a complete theory of justice. Arguably, the three examples of underdevelopment just mentioned would all benefit from a separate PhD to be answered fully.

Besides, the concept of justice that was accepted for my analysis naturally limits the width of its implications. That is, as was explained in the introduction, I accepted that 'justice' is concerned with *the enforceable duties agents owe to each other*. This choice has some clear consequences. For example, I have not considered whether agents have certain enforceable duties that they owe to *themselves*. This is important. Consider the case of organ sale. The self-ownership principle holds that organ sale is permissible if all agents involved agree to the transfer. Given the concept of justice used in this PhD, we could ask: to which *other* person would a duty not to sell one's organ be owed? Quite plausibly, I believe, the answer is 'no one'. But maybe this is the wrong question. Maybe, that is, we do not owe it to *others* not to sell our organs but rather to *ourselves*. For instance, one might argue that an agent has an enforceable duty owed to herself to live an autonomous life, or to live a life that respects the special value of the human body. If successfully defended, such enforceable *self-regarding duties* limit the permissibility of organ sale. Nevertheless, these considerations were off the radar in this thesis. A full defence of the self-ownership principle must thus include a rejection of enforceable self-regarding duties. The same worry holds for enforceable *impersonal duties*. Impersonal duties are duties that are not owed to agents. For example, the duty not to destroy a beautiful piece of art is a typical impersonal duty. Even if you find an unowned Picasso in a cave in southern France the existence of which is unknown to everyone else, you have an enforceable duty not to destroy it. This is true even although the duty is not owed to someone else. A libertarian theory of justice in the way I conceived it is silent about such impersonal duties. A full development of libertarianism must either reject impersonal duties or provide a framework to fit in such duties.

To investigate the existence and justification of self-regarding and impersonal duties is also relevant to fill a further gap in the defence of a left-libertarian theory of justice. A complete defence of left-libertarianism, namely, shows the superiority of left-libertarianism over (other) liberal-egalitarian theories. In the introduction, I have explained that my PhD only partially uses the method of reflective equilibrium because it does not engage in a full comparison of libertarianism with liberalism or liberal-egalitarianism. Moreover, in chapter II, I have claimed that there does not seem to be a knockdown argument in favour of the self-ownership

principle because liberals, like Rawls, can use the same arguments to defend their liberty principle. Earlier in this conclusion, I have suggested that left-libertarianism might be a version of liberal-egalitarianism rather than a rival theory. Still, a defence of left-libertarianism would be stronger if it could be shown, by means of a comparative analysis, that, for example, the self-ownership principle overcomes some of the criticisms against the liberty principle held by certain liberal-egalitarians while it does not generate, at the same time, still other problems itself. One way to proceed would be to look at self-regarding and impersonal duties, as the existence of those duties seems to be one basis for the divide between left-libertarians and (other) liberal-egalitarians. I hope to take on some of those challenges in future research.

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