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The Myths of the Self-Ownership Thesis

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The Myths of the Self-Ownership Thesis

The idea of self-ownership lies close to the heart of libertarianism. The view affirms that each person, no matter their background, ethnicity, gender, social or economic status has a right to live their own life as they see fit, consistent with the same rights for others. As self-owners, we do not need permission to take a certain job. As self-owners, we do not need permission to move to a different place. As self-owners, we can say no to those who want to touch us or use our bodies in ways we do not want.

Perhaps because the idea is so central, many commentators treat self-ownership as the foundation or starting point of libertarian theories. Most famously (or infamously), Robert Nozick's *Anarchy, State, and Utopia* (1974) is said to heavily rely on this idea. The principle of self-ownership is supposed to move us to accept Nozick's libertarian outlook. For Nozick, it is said, self-ownership is the premise, libertarianism the conclusion. (See Cohen 1995; Taylor, 2004; Mack, 2002; Vallentyne and Steiner, 2002)

Critics of Nozick, and libertarianism in general, thus take their task to be simply the undermining of the idea of self-ownership. Consider Dave Sobel's recent comments:

> Because property rights in this tradition have been understood to create such powerful moral side constraints on permissible action, such libertarians have been able to offer a very simple, intuitive, principled, and not very hostage to empirical fortune rationale for the central conclusions we associate with libertarianism. Why may the state not forcibly take some of my money or blood and give it to others who need it more badly than I do? Because to do so would be to violate my morally very powerful property rights. Why may the state not act paternalistically toward its citizens? Again, because doing so would wrongly suppose that you rather than I may decide what will happen to things I own. Why may the state not regulate what kind of sex I may have with consenting competent adults or what I may smoke in ways that infringe on no one else's rights? Ditto. (Sobel 2012, pp. 33-4)

Similar sentiments can be found in Thomas Nagel (1975) and G.A. Cohen (1995).

We disagree. On our reading, Nozick is not best understood in this way. And, more importantly, libertarianism as a theory is not best understood in this way. Contrary to the critics' popular view, self-ownership is the conclusion at which libertarian theories aim. It's the idea that results, or arises, once we take seriously the arguments that libertarians, including Nozick, have to offer. In part, then, self-ownership is an attractive moral ideal because its denial is morally very unattractive.

As a result, every reasonable or remotely plausible theory of justice will have to recognize some role for the self-ownership thesis. And disputes between libertarians and left-liberals are not really about whether individuals are self-owners, but rather about *which* conception of self-ownership is the correct one. So, self-ownership is not a

myth. But there are a number of myths about it, including A) that's a foundational premise in libertarian, especially Robert Nozick's, thought, and B) that left-liberals deny it while libertarians accept it.

Re-Reading Nozick

Many read Nozick as making the following kind of argument, the Self-Ownership Implies Libertarianism Argument:

1. Every moral agent is a self-owner.
2. To be a self-owner implies very weighty rights over one's own body, as well as (under the right circumstances) weighty rights to acquire, hold, and transfer property at one's will.
3. For the modern nation-state to produce (most) regulation, paternalistic laws, public goods, and social insurance, it has to violate these rights.
4. Therefore, the modern nation-state is to that extent unjust.

We suspect Nozick, at least as of writing *Anarchy, State, and Utopia*, did accept each of the premises of this argument. As a result, he would have to say the argument is sound.

But at the same time, it seems Nozick recognizes that that the premises, especial premise 2, is controversial. For, aside from a remark in the preface that summarizes the puzzle he intends to engage with (Nozick 1974, p. ix , he nowhere appears to actually *make* this argument. In fact, throughout the book, Nozick doesn't make much use of the concept of self-ownership at all. If anything, it seems like Nozick thinks of the self-ownership thesis as a conclusion, not a premise.

The term "self-ownership" appears only once in *Anarchy, State and Utopia*, on p. 172. In that passage, Nozick says that certain conceptions of distributive justice do seem to represent a shift from the classical liberal thought that people own themselves to a view that people have partial ownership rights in one another. You could delete this short paragraph from the book, and it would have no effect on the overall argument.

Anarchy, State and Utopia is divided into three parts. Part I argues that a minimal state is compatible with the strong libertarian rights certain anarcho-capitalist libertarians believe all people have. That is, part I tries to show that a commitment to a very strong view of rights does not lead to anarchism. Part II argues that a more-than-minimal state is not defensible. Part III argues that a minimal state can be inspiring—that it can lead to something we might consider a kind of utopia. (See Brennan 2014 for a further defense of Nozick's utopia using G. A. Cohen's premises.)

Nozick begins *Anarchy, State and Utopia* as follows: "Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do." (Nozick 1974, p. ix.) In the next paragraph, Nozick says that his main conclusions will be that a minimal state can be justified, but a more-than-minimal state cannot. A more-than-minimal state will violate people's rights. The state may not use coercion to get some citizens to aid others, nor may the state engage

in any paternalistic activities. These opening paragraphs are misleading—they seem to cause most readers to misunderstand Nozick's argument.

Part I is primarily addressed to a subset of libertarians. It starts with the the idea—which Nozick defends only very briefly—that people have very strong rights against coercive interference. One reason that Nozick takes this starting point is to avoid begging the question on his own behalf. The people he wants to criticize (in particular the anarcho-capitalist Murray Rothbard) believe that we have strong rights and that these rights prohibit any sort of state. And Nozick wants to show that at least a minimal state can be justified, *even if* people like Rothbard are correct that we have such strong and extensive rights. Nozick's strategy here is to argue that a minimal state could, and indeed predictably would, arise naturally without violating anyone's rights. While much of what happens in Part I, such as his critique of utilitarianism, is addressed to everyone, Part I is not an argument against the defenders of the more-than-minimal state.

If Part I is primarily meant to convince the anarcho-capitalist libertarian that the minimal state is justifiable, Part II is addressed to everyone else who would like the state to be more than minimal. Following Thomas Nagel (1975), many readers complain that *Anarchy, State and Utopia* lacks foundations. They complain that Nozick simply assumes—without much argument—that people have very strong and extensive rights (including property rights) against coercive interference. Philosophers worry that this makes his argument against the more-than-minimal state too easy. If we have a nearly absolute right to my rightfully acquired property—a right that can presumably be overridden only in order to prevent "catastrophic moral horror" (Nozick 1974, p.30)—then of course we cannot be taxed to provide a social minimum or public education.

Nozick does, of course, argue that such a more extensive state cannot be justified. But he crucially does not do this in the same way he argued in Part I. He does not simply appeal again to the rights he's invoked in Part I and argue that the more-than-minimal state is incompatible with them. Instead, he goes through a lengthy and complex set of arguments to show that the most popular defenses of the more-than-minimal state are untenable. Thus, Nozick constructs lengthy internal critiques of Marx, Rawls, and others. He also draws out what sees as the undesirable implications of the more than minimal state, arguing that it is incompatible with the liberal ideas Rawlsians and others espouse. If Nozick's argument in part II were just that the minimal state is incompatible with Rothbard's view of rights, then part II would only need to be about 3 pages long.

The first two paragraphs of *Anarchy, State and Utopia* mislead critics. However, the remainder of the book, and especially the last paragraph on p. xi, could have made them realize their mistake. Here's Nozick summarizing Part II again:

> Part II contends that no more extensive state can be justified. I proceed by arguing that a diversity of reasons which purport to justify a more extensive state, don't… [Nozick then discusses his internal critique of Rawls at great length] … Other reasons that some might think justify a more extensive state are criticized, including equality, envy, workers' control, and Marxian theories of exploitation. (Nozick 1974, p. xi)

Nozick argues against the more-than-minimal state not by showing it is incompatible with self-ownership, but by trying to show that a wide range of arguments for the more-than-minimal state fail. He tries to point out flaws in each of these arguments, usually by showing how these arguments clash with commonsense and widely shared moral beliefs, or by showing that these arguments, if taken seriously, would not only show that the state can regulate the economy, but should severely curtail civil rights as well.

For instance, in chapter 8, Nozick considers a left-liberal argument on behalf of the claim that the government should regulate the economy and redistribute wealth in order to produce equal opportunity. His response is to note that the appeal of such arguments seem to rely on the metaphor of society being a race, a zero-sum game, and that they claim winners should compensate losers. And because the metaphor is problematic and misleading in its own right (as society is *not* like a race), these arguments are not compelling. Society is a cooperative venture for mutual gain, not a race. It is a positive-sum game, not zero-sum game. The arguments are not so much mistaken as they are *irrelevant*; egalitarians are giving us theories of justice for societies that work differently from actual commercial societies.

One reason the race metaphor is problematic is because of its implications in related contexts. Nozick asks us to suppose that his wife married him for his keen intelligence and good looks (Nozick 1974, p. 237-8). Suppose that he beat other suitors who were dumber and uglier. Should he or society as a whole have to compensate those other suitors for their loss? Should they pay for the suitors' plastic surgery, or for classes to improve their intelligence? Should we consider handicapping smart, good-looking men in order to prevent them from having unfair and unearned advantages on the dating market? Nozick expects that the left-liberals against whom he argues would consider such suggestions evil and absurd. And so, by extension, they should abandon their arguments for equality of opportunity in other contexts as well, unless they can somehow identify a principled reason why these arguments apply in some cases and not others.

Similar remarks apply to question of "having a say over what affects you" (Nozick 1974, 268-71). Nozick notes that many on the Left say that because individuals should have "a right to a say in important decisions that affect their lives," the state government should have extensive control over the economy (Nozick 1974, 168). But, Nozick notes, at least at first glance, this argument applies equally well for allowing the state to submit personal decisions about whom to marry to democratic control. He asks us to imagine a woman has four suitors. We would never think that these five people, or their friends and family, should get to vote on her decision, even though they "should have a right to say in important decisions that affect their lives". She has the right to say no, even if saying no devastates the suitors and their families.

Nozick uses arguments like this to point out something odd about how some left-liberals (and others) think. They often maintain that certain arguments or reasons justify restricting economic liberty, or, at more weakly, justify forcing those who do better under freedom to compensate those who do worse. For instance, someone on the Left might say, "Allowing competition on the market can hurt competitors, so we

should restrict economic freedom or require winners to compensate losers." But, Nozick points out, none of them would *also* say, "Allowing competition for friends and lovers can hurt competitors, so we should restrict freedom of association or require winners to compensate losers." Or, a left-liberal might say, "Asymmetric information in auto markets means that some people can exploit others, so the government ought to heavily regulate auto markets." A Nozickian response might be, "There's even more asymmetric information in dating markets, and the effects of bad relationships are even more devastating than paying too much for a used car. Should the government thus heavily regulate dating?" A left-liberal would probably say that of course it shouldn't, but, Nozick might say, this tells us that the asymmetric information argument isn't doing the real work for that left-liberal.

A Nozickian Rejoinder to Nagel and Murphy's Myth of Ownership

One of Nozick's main moves in Part II is to show the left typically *assumes*, rather than *proves*, that economic liberty is of lower status and importance than civil liberty. Leftist philosophers offer some argument for restricting personal economic liberty. Nozick asks whether this argument isn't also an argument for restricting the civil liberties we all agree people ought to have? If an argument for regulating the market applies equally well as an argument for regulating friendship, then why think it only "works" as an argument for state control of the economy? Unless we're offered a principled, non-question-begging reason to distinguish the two, the argument is again to be rejected.

We can see the force of this style of argument by considering Liam Murphy and Thomas Nagel's recent attack on a certain conception of property rights in *The Myth of Ownership* (2002). Murphy and Nagel appear to have a quick, decisive objection to natural rights libertarianism, as well as what they called "everyday libertarianism" (Murphy and Nagel 2002, p. 37). But if their argument succeeds, we might say following Nozick, that doesn't just show libertarianism to be false, but causes trouble for their own brand of left-liberalism as well.

Most people are so-called everyday libertarians. That is, they believe they have at least a prima facie claim or defeasible right to their pre-tax income. Murphy and Nagel want to argue that people have no such claims. Pre-tax income, they say, is an accounting fiction. What is properly ours is whatever remains after taxes.

Let's call Murphy and Nagel's argument against libertarianism the Institutional Dependence Argument (IDA). It goes like this. The current scheme of income and patterns of property holdings would not exist without government and the taxes that support it. Therefore, I cannot be said to have a natural right to my income, because my income results from social convention. In the state of nature, I have no income to have a natural right to.

Suppose Jason makes $300K a year pre-tax. Without the scheme of taxation that supports government and public goods, Jason would not be making $300K a year. Everyday libertarians talk as if the government is taking people's income when taxes them, but citizens would have little or no income if the government were not providing the background institutions needed to sustain the market system.

On Murphy and Nagel's view, government and the taxes supporting it *create* a set of property holdings and an income distribution. Some of this creation comes about directly, through subsidies and government employment, but most of it comes indirectly, through market forces operating against the background of the government-provided rule of law. From this, Murphy and Nagel conclude that we cannot evaluate the justice of taxes separately, as if taxes were an intrusion onto our rightful holdings, but must instead evaluate the justice of the system as a whole. Murphy and Nagel claim that a person's level of benefit from the system can roughly be measured by the difference between her earnings in that system versus her expected earnings in the state of nature or in pre-civilized society (Murphy and Nagel 2002, p. 16). For a $300K/year earner, this is nearly all of her income. They conclude that people have no entitlement to their pre-tax income (Murphy and Nagel 2002, p. 32).

Murphy and Nagel use the IDA to block objections to taxation. However, the IDA generalizes to block *other* objections to other government actions. In particular, the IDA can be used to generate a large range of illiberal conclusions that egalitarian liberals (such as Murphy and Nagel) would want to reject. It's a dangerous argument for liberals to advance.

For example, consider we might could call "everyday liberalism". Everyday liberalism holds that people have a special claim to their bodies and deciding what to do with their time. Why can't the government set up a corvée—a tax paid by labor—or labor armies in lieu of or in addition to monetary taxes? On the reasoning of the IDA, we do not own our pre-corvée time any more than We own our pre-tax income. After all, in the state of nature (which Murphy and Nagel use as a baseline to judge our benefit from government), we would not have 85 years of expected life; we'd maybe have 25 years, if even that. So, we receive at least 60 years of expected life from government action. Government and the taxes supporting it *create* our longevity and the distribution of life expectancies. (Some of this creation comes about directly, through health provisions, but most of it comes indirectly, through market forces operating against the background of the rule of law.) Accordingly, according to the IDA, people have no entitlement to their pre-corvée time. Most of (or at least a big chunk of) our lifetime results from social convention or government action. So, we cannot be said to have a natural right to choose how to spend our time. In the state of nature, we have no time to spend. We cannot evaluate the justice of the corvée separately, as if the corvée were an intrusion onto our time, but must instead evaluate the justice of the social system as a whole. (Similar arguments could be made concerning other purported liberal rights.)

On its face, the IDA works equally well against liberalism as it does against libertarianism. It undermines equally well A) the view that we have a special, non-conventional claim to our pre-corvée time and B) the view that we have a special, non-conventional claim to pre-tax income received from labor. Yet, despite this, we would not accept that the IDA succeeds in defeating liberal objections to the corvée. Accordingly, Murphy and Nagel must think the IDA does not show that we lack at least a prima facie right over our time. Why is this? Why would the IDA work to block a libertarian's objection to income taxation but not a liberal's objection to the corvée? What's the difference?

Murphy and Nagel anticipate something similar to this objection, and give the following as an response: "Egalitarian liberals simply see no moral similarity between the right to speak one's mind, to practice one's religion,…and the right to enter into a labor contract…unencumbered by a tax bite" (Murphy and Nagel 2002, p. 65). Murphy and Nagel say that some liberties are at "the core of the self" and must be protected against the state; others are not at the core. They believe this holds even though by their own logic they must admit that their favored kinds of liberties would have little worth (or would not exist) outside of the state's protection, and so the state makes these rights possible.

As far as we can tell, this is why Murphy and Nagel would think the corvée violates our rights in a way that income taxes do not. They would object to the corvée because it violates what they consider our independently-determined rightful liberties, but they would accept income taxes because they believe income taxes do not violate our independently-determined rightful liberties. That is, the corvée violates something like Rawls's first principle of justice, while the income tax does not. Rawls's first principle—the liberty principle—guarantees every citizen an equal, fully adequate scheme of basic liberties. Murphy and Nagel, like Rawls, but unlike natural rights libertarians and so-called "everyday libertarians", do not think that a right to contract, to untaxed income, or to hold private property in the means of production are among the liberties in this scheme.

Fair enough. But this suggests they believe the IDA is *irrelevant* to determining whether a government action violates our rightful liberties or holdings. Rather, in the debate between Murphy and Nagel and libertarians, the action is over which liberties are basic and non-conventional. And this, Murphy and Nagel more or less admit, is *not* decided by the IDA. Otherwise, they have no principled reason to reject the corvée.

Perhaps Murphy and Nagel are right, that is, perhaps for some reason not offered in their book, economic liberty does not merit a high degree of protection while civil liberty does. However, notice how this response just neuters their entire book. Murphy and Nagel's book doesn't *prove* natural rights libertarianism is false; it *presupposes* natural rights libertarianism is false and their view of liberalism is right. Their argument against libertarianism or even "everyday libertarianism" doesn't actually appear in *The Myth of Ownership*.

In summary, they offered the IDA as an argument against libertarianism. The libertarian can respond, Nozick-style, by asking, "Doesn't the IDA undermine left-liberalism as well, not just libertarianism?" They respond by saying, "Oh, no, because civil liberties, unlike economic liberties, are *special*, for reasons we haven't articulated here."

The (Supposed) Trivial Incursion Problem

Some left-liberals claim to find the idea of self-ownership perplexing. For instance, David Sobel argues that the idea of self-ownership is untenable because of what we might call the trivial incursion-problem. As Sobel sees it, and summarizing very quickly, we must back away from self-ownership because such rights would give people absolute protection against unwanted incursions. However, such a right would prohibit

both severe and very minor (or trivial) incursions, and many ordinary human activities lead to such incursions. Self-ownership is unacceptable, then, because it would mean that people wouldn't be able to drive a car for fear of having even a speckle of dust land on someone's person, say. Self-ownership paralyzes humanity.

According to Sobel, once we move away from self-ownership in this way, the door is open to all other sorts of weakening of our rights over our persons as well. It becomes an open question whether the state may forcibly take some of our blood and give it to others who need it more badly. It becomes an open question whether the state regulate what kind of sex we may have with consenting competent adults. It becomes an open question whether the state may prohibit us from eating or drinking certain substances in ways that infringe on no one else's rights. And so on.

Sobel is perplexed about self-ownership, but we are perplexed about this argument. Perhaps we think differently about property. In fact, upon reflection, we believe that pretty much all liberals accept some version of a self-ownership thesis. What they disagree about is what that self-ownership amounts to.

To explain why, let us sketch out a way of understanding self-ownership. Let's begin with thinking about ownership more generally. Property rights are bundles of rights. The strength and nature of these rights can vary from owned item to owned item. Even a relatively simple form of ownership such as the possession of a car can be violated or negated in a variety of ways. Your car can be stolen or damaged, you can be prevented from using it, you can be prohibited from selling it or giving it away, your car can be wrongfully expropriated by the government, and so on. Each of these violates or negates your property rights. But they affect your ownership in very different ways.

We can put this in more technical terms, using the Hohfeldian analysis of rights (Hohfeld 1919).[1] When someone steals or damages your car, they thereby deny your claim-right to exclude them from your possessions. When you are wrongfully prevented from using your car, this denies your liberty to use what you own. When the law prohibits a sale, it thereby denies your power to transfer your rightful possessions to others. And when the government wrongfully expropriates you, it thereby violates your immunity against having your rights unilaterally altered or extinguished.

Systems of private property standardly recognize all these elements of ownership. However, this analysis masks a still greater complexity. Property rights confer different kinds of liberties, claims, powers, and immunities on owners. We can have rights to possess, use, or manage our property, rights to the income we can garner using it, rights to the capital that the property represents, and so on (Honore 1961). These rights will involve several kinds of Hohfeldian incidents. The right to possess, for example, will typically involve both the claim-right to exclude and the immunity against expropriation. A right to the income one can make using property will typically involve the power to (temporarily) transfer the property to others, or the right to use the property, in exchange for payment, as well as other rights protecting this power (such as, again, the claim-right to exclude and the immunity against having these rights annulled).

There is great variation among different legal regimes in how rights to property are organized. The law can recognize, alter, or abridge various claim-rights, liberties,

powers, and immunities with respect to different parts and aspects of ownership. One might thus have the liberty to grow crops on one's land, but lack the liberty to build a structure without a permit. An owner may have a claim that others not trespass on his property, but also be subject to an easement which gives others the liberty to walk across the property in designated places. One may have the power to transfer, but not be immune from government expropriation through eminent domain. One can be a partial or shared owner, as a shareholder in a firm. One can be a conditional owner, as the holder of a mortgage-backed security. The list goes on.

Some philosophers have concluded from this complexity that there is no "core" to property rights. Instead, it is said, property rights are like a bundle of sticks, with each stick representing one of these many possible incidents. But the bundle can be put together in many different ways, and none of the sticks is really essential. As long as the bundle is recognizable as a property right, any one incident (or stick) may be present or absent. (Grey 1980)

Others have challenged this thought. Some say that, while no particular incident is essential, at least the presence of certain incidents requires the presence of others (Attas 2006). Others maintain a stronger view and say that some incidents really are the "core" of property. Perhaps, for example, the right to exclude is practically unavoidable if property rights are to function as they should (Schmidtz 2011). As John Locke famously writes in section 138 of *The Second Treatise*: "I have truly no *Property* in that, which another can by right take from me, when he pleases, against my consent." (Locke 1988 [1698])

It plausible that for a system of property to be acceptable or justified, it will have to contain a number of regularly occurring features, including the claim-right to exclude. But even at the conceptual level, it is true that any recognizable system of property will have certain regularly occurring features. A society that generally abolishes or even heavily curtails people's rights to exclude others, to use their possessions, and their powers to enter into economic exchange, has not just changed one form of property into another. It will have effectively abolished it altogether. And, by extension, a theory of the self that seriously undercuts people's ability to control their own lives and bodies, or gives others (including the government) a standing permission to use their lives and bodies for their own purposes, will do violence to the idea of self-ownership.

None of this, however, means that self-ownership, like other forms of ownership, must be absolute, or must be construed in such a way that any encroachment counts as a violation. When Bas drives his car past Jason's parked car, and his tires fling a small rock against Jason's tires, no system of property would consider this a violation of Jason's property right. Jason's property right is consistent with such a tiny incursion; it wasn't meant to protect people against *that*. Or, more mildly, if Bas sheds some skin cells on Jason's car when walking by, no one would consider that a trespass, and no one thinks that this thereby shows the concept of car ownership is untenable or should be backed away from. Or, even more trivially, when Bas walks by Jason's car and slightly distorts its shape through gravity, one would consider that a violation of Jason's property right in his car, and no thinks this means this concept of car ownership is untenable and must be back away from.

Jason's property right in his car is meant to protect him against theft, vandalism, and so on. The fact that tiny incursions are not protected by Jason's rights make us doubt that he genuinely *owns* his car. It doesn't make us think again about whether Bas can take it for a spin without asking first. It doesn't make us think again about whether Bas can crash his car into Jason's. And it doesn't make us think that the government could simply confiscate Jason's car and give it to someone else.

The kind of infractions to which Sobel refers are consistent with ownership in general, then. But if that's the case, then they are *a fortiori* consistent with self-ownership in particular. Self-ownership rights were never meant to protect us from speckles of dust that might fly up or from the gravitational distortion of passers-by. They're meant to protect us from coercion, violence, and the need to ask leave of the socially or politically more privileged before we can live our own lives.

Sobel's point about minor incursions not only fails to undercut the idea that people really are self-owners, his arguments also suffer from the same problem that plagued Murphy and Nagel's Institutional Dependence Argument above. Suppose we grant that having an ownership-like right over one's body means (contrary to the facts) that one is protected against trivial incursions in a way that paralyzes humanity. And suppose that this is good enough reason to reject the idea that we have ownership-like rights over our bodies. Perhaps, then, the state really can regulate our personal affairs, as long as doing so doesn't incur on other values too much. Perhaps the state really can take our money and give it to others, even though we used our own bodies and time to produce it.

Is there any principled or non-question begging reason to stop there? Nozick asks why we should think that people aren't allowed to opt out of the welfare state while continuing to live within a country, but are allowed to opt out of the welfare state by leaving. Or, similarly, why would it be acceptable for the state to forcibly take 40% of the money we make using our bodies and time and give it to others, say, and not okay for the state to force us to work 40% of our time for the sake of those who need to be taken care of. These questions come running back in. If we are to follow Sobel and be open to supporting the former, it seems we also ought to be open to supporting the latter. And that, *pace* Sobel, remains simply unacceptable.

Note that it will *not* do here to resist Nozick's challenge by saying that the state doing the latter would interfere with our ability to live our own life, choose freely, or be autonomous. For those are exactly the kind of reasons that support the self-ownership thesis in the first place. If *our* choices are what matters, and it's important to protect our freedom to make them, then the state (or anyone else) doesn't get to choose what's important and what's not. The state (or anyone else) doesn't get to choose that taking your time is not okay, but taking the money to which you dedicated your time is.

Indeed, the Sobel-style argument threatens to obliterate rights, *tout court*. Consider a treasured liberal right like freedom of speech. It's true, of course, that our free speech rights protect us from things that deny us the ability to speak our mind. Does it protect us from trivial incursions on that ability? Suppose we say yes and point out that this would paralyze people's ability to speak. Surely the correct conclusion to draw from this is *not* that there are no real free speech rights at all. The correct

conclusion is that our rights to free speech were never meant to protect us against this. They are meant to protect one against censorship and the like. The trivial infringement argument, then fails.

Self-Ownership: Almost Uncontroversial

We own different things in different ways. The bundle of rights that constitutes ownership varies from thing owned to thing owned. The strength of these rights also varies. We can own a cat and a car, but our ownership of the cat—which is *real* ownership—doesn't allow us to do as much with it as with our ownership of a car. The way we own cats is different from how we own cars, which is different from how we own a guitar, which is different from how we own a plot of land, and so on.

Morally-speaking, not just legally speaking, the kinds of rights we have over these various things varies. But we really can own each of them. If you prefer to say that ownership is "more extensive" when we have the full bundle of rights with no moral constraints on use, that's fine. But even if there is more or less extensive ownership, it's still ownership. Your cat is *your* cat. You are not allowed to torture it, neglect it, or have sex with it, but that's not because the cat is partially society's or anyone else's. Nor is it because you don't really own it.

Different kinds of moral arguments—such as Kantian deontological principles, or claims about what it takes to realize certain moral powers, or arguments from a privileged "original position", or reflections on Strawsonian reactive attitudes, or sophisticated Millian consequentialism, or whatnot—lead us to believe that people have certain rights of exclusion and use over themselves, and possibly as well as some other rights over themselves. And once you see how these rights shape up, you notice that people's rights over themselves amount to the bundle of rights—to exclude, to use, to modify, etc.—that just so happens to look like what we call "property rights". It is in this sense, then, that we call people self-owners.

More precisely, we can think of self-ownership as being made up of two variables. On the one hand, self-ownership offers protections (in the form of Hohfeldian claim-rights) against unwanted incursions on one's person. On the other hand, self-ownership offers the freedom (in the form of Hohfeldian liberties) to use one's person. Since liberties logically entail the absence of duties (including duties correlating to claim-rights), it follows that the two variables (internal to the idea of self-ownership) can be traded off against each other.

The real question, then, is what *mix* of the two variables internal to the idea of self-ownership (the claim to exclude and the freedom to use) is morally most desirable. This should be obvious, of course. Bas is a self-owner with the freedom to use his person, but this does not license him in punching Jason in the face. Self-ownership is not best understood by completely maximizing on the freedom-variable, to the complete denial of the exclusion-variable. And, again *pace* Sobel, self-ownership is also not best understood by maximizing on the exclusion-variable, to the complete denial of the freedom-variable.[2]

Every liberal thinks we each have strong rights to freely use our persons, and exclude others from them. Every liberal thinks that a woman has the right to say no to a

demand for sex, on the grounds that it's her body. In this sense, then, all liberals accept some version of a self-ownership thesis, though many of them would not describe their beliefs as such. (On this point, note that G. A. Cohen thought the self-ownership thesis was the essence of liberalism, not libertarian liberalism specifically (Cohen 2000, p. 252).)

However, in this kind of story, the concept of self-ownership can do almost no work in *resolving* disputes among liberals. What liberals—both left-liberals and libertarians—disagree about is *how* people own themselves, not *that* they own themselves. Our disputes about how to best trade off the two variables internal to that very idea. Criticizing someone's preferred conception of self-ownership, in other words, is like denying their conclusion. It's a way of registering disagreement, but not an actual argument against their view.

For instance, consider a variation of Peter Singer's famous thought experiment (Singer 1972). Imagine you see a toddler drowning in a puddle. Suppose you had bad legs and can't save the child. Suppose also there is a healthy bystander nearby who could save the child, but who says, "I can't be bothered. I don't want my shoes to get muddy." Now, finally, suppose you have a weapon, and so can *force* the bystander to save the toddler. May you do so? (Are you justified, or at least excused, in doing so?[3])

Perhaps you think the answer is yes. Does this somehow invalidate or make trouble for the self-ownership thesis? Consider a somewhat related thought experiment. Suppose a car is barreling towards your child, and the only way to rescue him is to push him out of the way onto someone's lawn. Or suppose your child is injured, and the only way to get him to the hospital and prevent her death is to hotwire a car. Or suppose you're stuck in the woods when an unexpected, freak blizzard hits in May, and the only way to survive is to break into someone's cabin. May you do any of these things? (Are you justified, or at least excused, in doing so?)

These are interesting questions, and virtually everyone agrees that the answer to these questions should be some kind of yes. (They disagree on what precise form that yes takes.) But we've never met anyone who, upon saying that because, in cases like this, you may be excused or justified in temporarily overriding others' property rights (with the stipulation that you might owe them compensation in some cases), that property is an inherently problematic concept and that private property doesn't exist. On the contrary, there are hundreds of years' worth of common-law cases dealing with such issues, which are meant to show just what property amounts to, not that property doesn't exist.

Again, something strange is going on with the critics of the self-ownership thesis. In order to show the thesis is incoherent or problematic, they have to make the position out to be something that no one would sensibly defend, and must use arguments that no one would find compelling against other forms of property. The compliment they pay to libertarians is that they straw man the position in order to critique it.

Conclusion

One myth is that what distinguishes libertarians from left-liberals is that libertarians endorse self-ownership but liberals do not. That's false. At most, what

distinguishes them is how they understand self-ownership or what they think it implies. Another myth is that Robert Nozick, or libertarians more generally, ground their views on a problematic and question-begging conception of self-ownership. This isn't true—it's based on a misreading of Nozick, one that fails to make sense of his book, and one that goes against his own explicit outline of his book. On the contrary, it's mostly the so-called "left-libertarians" who make heavy use of self-ownership as a foundational premise. For run-of-the-mill libertarians, self-ownership is more of a conclusion than a premise.

It's an attractive conclusion at that. For once we understand what self-ownership is—a bundle of rights—we see that denying it comes at a heavy cost. Anti-liberal, authoritarian philosophies of course deny it, and that's part of what makes their views unappealing. Whether the best conception of self-ownership turns out to be compatible with an extensive welfare and regulatory state is an interesting question, but to settle that question, we probably won't spend much time reflecting on the concept of self-ownership as such. Nozick sure didn't, and if he'd ever written a follow-up to *Anarchy, State, and Utopia*, he might well have started by asking, "What's all this fuss about?"

DISCUSSION QUESTIONS

1. If the state can tax 60% of your income (in effect, meaning that 60% of your working hours go to the state), why can't it instead require 5-10 years of mandatory national service or a corvée?
2. If we shine a flashlight on your house at night for 2 seconds, that isn't a wrongful trespass. If we shine a floodlight on your bedroom window at midnight for an hour, it is. At what point in between does the incursion become serious enough to count as a rights violation? Why?
3. The dating "market" is full of misinformation, asymmetric information, dishonesty, and misrepresentations, with often severe consequences. Should the government heavily regulate dating?

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[1] Hohfeld proposed an analytical understanding of rights as relations between parties. On this analysis, one party's liberty-right (sometimes called a privilege) to something entails the absence of a claim-right in another to the same thing. A claim-right to something, further, entails a duty for another party to that thing. (Consequently, a party's liberty-right to do something entails that the same party does not have a duty not to do it.) Third, a power-right denotes a party's ability to change a juridical or moral relation in some party. When one party has a power, this entails a liability for another party (a liability to have their juridical or moral position changed by the power-holder). Finally, an immunity-right protects one against the use of a power. When one has an immunity, some party has a disability (i.e. the absence of a power to change the immunity-holder's juridical or moral relation).

[2] For good discussion of this point, see Mack (2015)

[3] The difference between justification and excuse is as follows: When a person is justified in doing X, the action is *right*. When a person is excused, the action is wrong, but her blameworthiness is reduced as a result of duress. So, for instance, killing a murderous intruder in self-defense is a justified, while killing another person because a gunman coerced you into doing it on pain of your own death may be excusable.