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such goals. On this question, Rawls and Dworkin are explicitly reformist rather than revolutionary. They both argue that respect for people's liberty takes precedence over, and puts limits on, the pursuit of a just distribution of material resources (Rawls 1971: 303; 1982b: 11; Dworkin 1987: 48–9). I cannot discuss this issue here, although these stipulations seem quite arbitrary, and unjustified in terms of the motivations of Rawls's contractors (Pogge 1989: 127–48).

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Libertarianism

1. PROPERTY-RIGHTS AND THE FREE MARKET

(a) The diversity of right-wing political theory

Libertarians defend market freedoms, and demand limitations on the use of the state for social policy. Hence they oppose the use of redistributive taxation schemes to implement a liberal theory of equality. But not everyone who favours the free market is a libertarian, for they do not all share the libertarian view that the free market is inherently just. For example, one common argument for unrestricted capitalism is its productivity, its claim to be maximally efficient at increasing social wealth. Many utilitarians, convinced of the truth of that claim, favour the free-market, since its efficiency allows for the greatest overall satisfaction of preferences (Barry 1986: chs. 2–4). But the utilitarian commitment to capitalism is necessarily a contingent one. If, as most economists agree, there are circumstances where the free market is not maximally productive—e.g. cases of natural monopolies—then utilitarians would support government restrictions on property-rights. Moreover, some utilitarians argue that redistribution can increase overall utility even when it decreases productivity. Because of declining marginal utility, those at the bottom gain more from redistribution than those at the top lose, even when redistribution lessens productivity.

Others defend capitalism on the grounds not of maximizing utility, but of minimizing the danger of tyranny. Giving governments the power to regulate economic exchanges centralizes power, and since power corrupts, market regulations are the first step on 'the road to serfdom', in Hayek's memorable phrase. The more governments are able to control economic life, the more able (and willing) they will be to control all aspects of our lives. Hence

capitalist freedoms are needed to preserve our civil and political liberties (Hayek 1960: 121; Gray 1986a: 62–8; 1986b: 180–5). But this defence of market freedom must also be a contingent one, for history does not reveal any invariable link between capitalism and civil liberties. Countries with essentially unrestricted capitalism have sometimes had poor human rights records (e.g. McCarthyism in the United States), while countries with an extensive welfare state have sometimes had excellent records in defending civil and political rights (e.g. Sweden).

So these two defences of the free market are contingent ones. More importantly, they are instrumental defences of the free market. They tell us that market freedoms are a means for promoting maximal utility, or for protecting political and civil liberties. On these accounts, we do not favour the free market because people have rights to property. Rather we give people property-rights as a way of increasing utility or stabilizing democracy, and if we could promote utility or stability some other way, then we could legitimately restrict property-rights.

Libertarianism differs from other right-wing theories in its claim that redistributive taxation is inherently wrong, a violation of people's rights.¹ People have a right to dispose of their goods and services freely, and they have this right whether or not it is the best way to ensure productivity. Put another way, government has no right to interfere in the market, even in order to increase efficiency. As Robert Nozick puts it, '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: ix). Because people have a right to dispose of their holdings as they see fit, government interference is equivalent to forced labour—a violation, not of efficiency, but of our basic moral rights.

(b) Nozick's 'entitlement theory'

How do libertarians relate justice and the market? I will focus on Nozick's 'entitlement theory'. The central claim in Nozick's theory, as in most other libertarian theories, is this: if we assume that everyone is entitled to the goods they currently possess (their 'holdings'), then a just distribution is simply whatever distribution results from people's free exchanges. Any distribution that arises by

free transfers from a just situation is itself just. For the government to tax these exchanges against anyone's will is unjust, even if the taxes are used to compensate for the extra costs of someone's undeserved natural handicaps. The only legitimate taxation is to raise revenues for maintaining the background institutions needed to protect the system of free exchange—e.g. the police and justice system needed to enforce people's free exchanges.

More precisely, there are three main principles of Nozick's 'entitlement theory':

1. a principle of transfer—whatever is justly acquired can be freely transferred;
2. a principle of just initial acquisition—an account of how people come initially to own the things which can be transferred in accordance with (1);
3. a principle of rectification of injustice—how to deal with holdings if they were unjustly acquired or transferred.

If I own a plot of land, then (1) says that I am free to engage in any transfers I wish to make concerning that land. Principle (2) tells us how the land initially came to be owned. Principle (3) tells us what to do in the event that (1) or (2) is violated. Taken together, they imply that if people's current holdings are justly acquired, then the formula for a just distribution is 'From each as they choose, to each as they are chosen' (Nozick 1974: 160).

The conclusion of Nozick's entitlement theory is that 'a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified' (Nozick 1974: ix). Hence there is no public education, no public health care, transportation, roads, or parks. All of these involve the coercive taxation of some people against their will, violating the principle 'from each as they choose, to each as they are chosen'.

As we have seen, Rawls and Dworkin also emphasize that a just distribution must be sensitive to people's choices. But they believe that this is just half of the story. A just distribution must be ambition-sensitive, as Nozick's is, but it must also be endowment-insensitive, as Nozick's is not. It is unfair for the naturally disadvantaged to starve just because they have nothing to offer others in free exchange, or for children to go without health care or education just because they were born into a poor family. Hence

liberal egalitarians favour taxing free exchanges in order to compensate the naturally and socially disadvantaged.

Nozick says this is unjust, because people are entitled to their holdings (if justly acquired), where 'entitled' means 'having an absolute right to freely dispose of it as one sees fit, so long as it does not involve force or fraud'. There are some limits on what I can do—my entitlement to my knife does not include the right to deposit it in your back, since you are entitled to your back. But otherwise I am free to do what I want with my resources—I can spend them on acquiring the goods and services of others, or I can simply give them away to others (even to the government), or I can decide to withhold them from others (including the government). No one has the right to take them from me, even if it is to keep the disabled from starving.

Why should we accept Nozick's claim that people's property entitlements are such as to preclude a liberal redistributive scheme? Some critics argue that Nozick has no argument—he gives us 'libertarianism without foundations' (Nagel 1981). But a more generous reading will detect two different arguments. As with Rawls, the first argument is an intuitive one, trying to draw out the attractive features of the free exercise of property-rights. The second is a more philosophical argument which attempts to derive property-rights from the premiss of 'self-ownership'. In line with my general approach, and I think with Nozick's intentions, I will interpret this self-ownership argument as an appeal to the idea of treating people as equals.

Other writers defend libertarianism by quite different arguments. Some libertarians argue that Nozick's entitlement theory is best defended by an appeal to liberty, rather than equality, while others attempt to defend it by an appeal to mutual advantage, as expressed in a contractarian theory of rational choice. So, in addition to Nozick's arguments, I will examine the idea of a right to liberty (s. 4), and the contractarian idea of mutual advantage (s. 3).

(c) *The intuitive argument: the Wilt Chamberlain example*

Firstly, then, Nozick's intuitive argument. As we have seen, his 'principle of transfer' says that if we have legitimately acquired something, we have absolute property-rights over it. We can freely dispose of it as we see fit, even though the effect of these transfers is

likely to be a massively unequal distribution of income and opportunity. Given that people are born with different natural talents, some people will be amply rewarded, while those who lack marketable skills will get few rewards. Due to these undeserved differences in natural talents, some people will flourish while others starve. And these inequalities will then affect the opportunities of children, some of whom are born into privileged circumstances, while others are born into poverty. These inequalities, which Nozick concedes are possible results of unrestrained capitalism, are the source of our intuitive objections to libertarianism.

How then can Nozick hope to provide an intuitive defence of these rights? He asks us to specify an initial distribution which we feel is legitimate, and then argues that we intuitively prefer his principle of transfer to liberal principles of redistribution as an account of what people can legitimately do with their resources. Let me quote his argument at length:

It is not clear how those holding alternative conceptions of distributive justice can reject the [entitlement theory]. For suppose a distribution favoured by one of these non-entitlement conceptions is realized. Let us suppose it is your favourite one and let us call this distribution D1; perhaps everyone has an equal share, perhaps shares vary in accordance with some dimension you treasure. Now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction. . . . He signs the following sort of contract with a team: In each home game, twenty-five cents from the price of each ticket of admission goes to him. . . . The season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it. They are excited about seeing him play; it is worth the total admission price to them. Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has. Is he entitled to this income? Is this new distribution D2, unjust? If so, why? There is *no* question about whether each of the people was entitled to the control over the resources they held in D1; because that was the distribution (your favorite) that (for the purposes of argument) we assumed was acceptable. Each of these persons *chose* to give twenty-five cents of their money to Chamberlain. They could have spent it on going to the movies, or on candy bars, or on copies of *Dissent* magazine, or of *Monthly Review*. But they all, at least one million of them, converged on giving it to Wilt Chamberlain in exchange for watching him play basketball. If D1 was a just distribution, and people voluntarily moved from it to D2, transferring parts of their

shares they were given under D1 (what was it for if not to do something with?), is not D2 also just? If the people were entitled to dispose of the resources to which they were entitled (under D1), did not this include their being entitled to give it to, or exchange it with, Wilt Chamberlain? Can anyone else complain on grounds of justice? Each other person already has his legitimate share under D1. Under D1, there is nothing that anyone has that anyone else has a claim of justice against. After someone transfers something to Wilt Chamberlain, third parties *still* have their legitimate shares; *their* shares are not changed. By what process could such a transfer among two persons give rise to a legitimate claim of distributive justice on a portion of what was transferred, by a third party, who had no claim of justice on any holding of the others *before* the transfer? (1974: 160–2)

Because D2 seems legitimate, Nozick argues, his principle of transfer is more in line with our intuitions than redistributive principles like Rawls's difference principle.

What are we to make of this argument? It has some initial attraction because it emphasizes that the whole point of having a theory of fair shares is that it allows people to do certain things with them. It is perverse to say that it is very important that people get their fair share, but then prevent people from using that share in the way they desire. But does this confront our intuition about undeserved inequalities? Let us assume that I specified an initial distribution D1 that was in line with Rawls's difference principle. Hence each person starts with an equal share of resources, regardless of their natural talents. But at the end of the basketball season, Chamberlain will have earned \$250,000, while the handicapped person, who may have no earning power, will have exhausted her resources, and will be on the verge of starvation. Surely our intuitions still tell us that we can tax Chamberlain's income to prevent that starvation. Nozick has persuasively drawn on our intuition about acting on our choices, but his example ignores our intuition about dealing fairly with unequal circumstances.

Indeed when Nozick does confront the question of unequal circumstances, he concedes the intuitive strength of the liberal position. He admits that it seems unfair for people to suffer undeserved inequalities in their access to the benefits of social co-operation. He 'feels the power' of this objection. However,

The major objection to speaking of everyone's having a right to various things such as equality of opportunity, life, and so on, and enforcing this

right, is that these 'rights' require a substructure of things and materials and actions; and *other* people may have rights and entitlements over these. No one has a right to something whose realization requires certain uses of things and activities that other people have rights and entitlements over. (1974: 237–8)

In other words, we cannot tax Wilt Chamberlain to compensate for people's handicaps because he has absolute rights over his income. But Nozick concedes that our intuitions do not uniformly favour this account of property-rights. On the contrary, he accepts that some of our most powerful intuitions favour compensating undeserved inequalities. The problem with fulfilling that intuitively attractive idea, however, is that people have rights over their income. While Mackie's idea of a general right to 'a fair go' in life is intuitively attractive, 'the particular rights over things fill the space of rights, leaving no room for general rights to be in a certain material condition' (1974: 238).

Do 'particular rights over things fill the space of rights', leaving no room for a right to a fair go in life? I will examine Nozick's second, more philosophical, argument for that view later. But his attempt to provide an intuitive defence of it through the Wilt Chamberlain example is misleading. To see this more clearly, we can separate theories of distributive justice into three elements (cf. van der Veen and Van Parijs 1985: 73).

- (P) Moral principles (e.g. Nozick's principle of 'self-ownership', or Rawls's principle of the 'moral arbitrariness' of natural talents);
- (R) Rules of justice that govern the basic structure of society (e.g. Nozick's three rules of justice in appropriation, transfer, and rectification, or Rawls's 'difference principle');
- (D) A particular distribution of holdings in a given time and place (e.g. which particular people are currently entitled to which particular resources).

The moral principles (P) define the rules of justice (R), which in turn generate a particular distribution (D).

What Nozick hopes to do in the Chamberlain example is support his account of moral principles (P) and just rules (R) by showing that we intuitively support a distribution (D2) which is generated by those rules. Even though the initial distribution D1 was generated by a different set of rules and principles (Rawls's

difference principle, in my case), Nozick claims that we intuitively accept a subsequent distribution D2 that is generated by his rule of justice in transfer. But in fact Nozick's argument only seems to work because he interprets the initial distribution (D1) in terms of his own account of principles (P) and just rules (R). While Nozick allows us to specify the initial distribution of holdings, he assumes that we are thereby distributing full property-rights over these holdings, as required by his preferred theory of just rules. But this assumption is misleading, since our preferred theory of just rules may not involve distributing such particular rights to particular people.

For example, the reason I suggested a D1 based on Rawls's theory is that it removes undeserved disadvantages in people's circumstances. Giving particular people access to particular resources is a way of implementing the more general right to a fair go in life that underlies Rawls's theory. That very motivation for D1 would also give me a reason to put limits on the way that resources can be transferred. For example, I would put a redistributive taxation scheme in place as a way of continuing to mitigate the effects of undeserved natural disadvantages after that initial distribution. I would include that redistributive scheme alongside the initial distribution because my motivation in specifying D1 was not to give 'particular rights over particular things [to] particular people'. It was, rather, to implement some more general right to a fair go in life. D1 was my preferred distribution because it was generated by my preferred R (just rules), which in turn reflect my fundamental moral premisses (P) about moral equality, undeserved rewards, etc. And just as D1 was generated by my preferred conception of R and P, so I would want any distributions which come out of D1 to be consistent with them—i.e. to respect people's right to a fair go in life.

Nozick twists this around. He takes my D1 as specifying a set of absolute rights over particular things. He then says that because particular people have absolute rights over these particular things, therefore we cannot use redistributive taxation to meet the general right to a fair go. Whereas I gave particular people access to particular resources in order to implement a more general right to a fair go in life, Nozick makes it seem as if I gave particular people rights to particular things that prevent the implementation of a general right to a fair go. He thus distorts what I allowed in D1, and

why I allowed it. I recommended that people have some control over resources in D1, because that distribution dealt fairly with unequal circumstances. Nozick says that I gave absolute control over the resources, and uses that fact to block attempts to deal fairly with unequal circumstances. It is of course true that if people were accorded absolute rights over the particular things distributed in D1, then it would be wrong to tax Chamberlain's income in order to support the disadvantaged. But I did not accord such rights, and the fact they would prevent us from keeping the disadvantaged from starving is a very good reason why I did not.

If we realize what Nozick is up to, then we can respond in a different way to his example. The best response to his offer to specify D1 is to refuse to specify any distribution at all. For if Nozick insists on treating D1 as endowing absolute rights, then we may not believe there is a fair initial distribution of such rights. If we realize that Nozick is saying, 'Here are some absolute rights to property—distribute them as you like', then we should politely refuse his offer. For the legitimacy of such rights is precisely what is in question.

2. THE SELF-OWNERSHIP ARGUMENT

(a) *The principle of self-ownership*

The Wilt Chamberlain example reveals the implausibility of defending libertarianism by a simple appeal to our intuitions about justice. A successful defence, therefore, will have to show that libertarianism, despite its unattractive features, is the unavoidable consequence of some deeper principle that we are strongly committed to. Libertarians differ, however, on what this deeper principle is. Some libertarians appeal to a principle of mutual advantage, others to a principle of liberty. I will examine these two defences later. Nozick, on the other hand, appeals to a principle of 'self-ownership', which he presents as an interpretation of the principle of treating people as 'ends in themselves'. This principle of treating people as ends in themselves, which was Kant's formula for expressing our moral equality, is also invoked by Rawls, and by utilitarians. It is indeed a principle to which we are strongly committed, and if Nozick can show that it yields self-ownership,

and that self-ownership yields libertarianism, then he will have provided a strong defence of libertarianism. I will argue, however, that Nozick fails to derive either self-ownership or property-ownership from the idea of treating people as equals, or as ends in themselves.²

The heart of Nozick's theory, laid out in the first sentence of his book, is that 'Individuals have rights, and there are things no person or group may do to them (without violating their rights)' (1974: ix). Society must respect these rights because they 'reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent' (1974: 30-1). This 'Kantian principle' requires a strong theory of rights, for rights affirm our 'separate existences', and so take seriously 'the existence of distinct individuals who are not resources for others' (1974: 33). Because we are distinct individuals each with our own distinct claims, there are limits to the sacrifices that can be asked of one person for the benefit of others, limits that are expressed by a theory of rights. This is why utilitarianism, which denies the existence of such limits, is unacceptable to Nozick. Respecting these rights is a necessary aspect of respecting people's claim to be treated as ends in themselves, not means for others. According to Nozick, a libertarian society treats individuals, not as 'instruments or resources', but as 'persons having individual rights with the dignity this constitutes. Treating us with respect by respecting our rights, it allows us, individually or with whom we choose, to choose our life and to realize our ends and our conception of ourselves, in so far as we can, aided by the voluntary co-operation of other individuals possessing the same dignity' (1974: 334).

There are important continuities here between Nozick and Rawls, not only in Nozick's appeal to the abstract principle of equality, but also in his more specific arguments against utilitarianism. It was an important part of Rawls's argument that utilitarianism fails to treat people as ends in themselves, since it allows some people to be sacrificed endlessly for the greater benefit of others. So both Rawls and Nozick agree that treating people as equals requires limits on the ways that one person can be used for the benefit of others, or for the benefit of society generally. Individuals have rights which a just society will respect, rights which are not subject to, or the product of, utilitarian calculations.

Rawls and Nozick differ, however, on the question of which rights are most important in treating people as ends in themselves. To over-simplify, we can say that for Rawls, one of the most important rights is a right to a certain share of society's resources. For Nozick, on the other hand, the most important rights are rights over oneself—the rights which constitute 'self-ownership'. The idea of having ownership rights over oneself may seem bizarre, as it suggests that there is a distinct thing, the self, which one owns. But the term 'self' in self-ownership has a 'purely reflexive significance. It signifies that what owns and what is owned are one and the same, namely, the whole person' (Cohen 1986a: 110). The basic idea of self-ownership can be understood by comparison with slavery—to have self-ownership is to have the rights over one's person that a slaveholder has over a chattel slave.

It is not immediately apparent what this difference amounts to. Why cannot we accept both positions? After all, the claim that we own ourselves does not yet say anything about owning external resources. And the claim that we have rights to a fair share of society's resources does not seem to preclude the possibility that we own ourselves. Nozick believes, however, that the two are not compatible. According to Nozick, Rawls's demand that goods produced by the talented be used to improve the well-being of the disadvantaged is incompatible with recognizing self-ownership. If I own my self, then I own my talents. And if I own my talents, then I own whatever I produce with my self-owned talents. Just as owning a piece of land means that I own what is produced by the land, so owning my talents means that I own what is produced by my talents. Hence the demand for redistributive taxation from the talented to the disadvantaged violates self-ownership.

The problem is not that Rawls and Dworkin believe that other people can own me or my talents, the way that a slave is owned by another person. On the contrary, as I have tried to show, their hypothetical positions are intended to model the claim that no one is the possession of any other (ch. 3, s. 3 above). There are many ways in which liberals respect individuals' claims over their own talents. Liberals accept that I am the legitimate possessor of my talents, and that I am free to use them in accordance with my chosen projects. However, liberals say that because it is a matter of brute luck that people have the talents they do, their rights over their talents do not include the right to accrue unequal rewards

from the exercise of those talents. Because talents are undeserved, it is not a denial of moral equality for the government to consider people's talents as part of their circumstances, and hence as a possible ground for claims to compensation. People who are born naturally disadvantaged have a legitimate claim on those with advantages, and the naturally advantaged have a moral obligation to the disadvantaged. Thus, in Dworkin's theory, the talented owe insurance premiums that get paid out to the disadvantaged, while in Rawls's theory, the talented only benefit from their talents if it also benefits the disadvantaged.

For Nozick, this constitutes a denial of self-ownership. I cannot be said to own my talents if others have a legitimate claim on the fruits of those talents. Rawls's principles '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 1974: 172). According to Nozick, this liberal view fails to treat people as equals, as ends in themselves. Like utilitarianism, it makes some people mere resources for the lives of others, since it makes some part of them (i.e. their natural attributes) a resource for all. Since I have rights of self-ownership, the naturally disadvantaged have no legitimate claim over me or my talents. The same is true of all other coercive interventions in free-market exchanges. Only unrestricted capitalism can fully recognize my self-ownership.

We can summarize Nozick's argument in two claims:

1. Rawlsian redistribution (or other coercive government interventions in market exchanges) is incompatible with recognizing people as self-owners. Only unrestricted capitalism recognizes self-ownership.
2. recognizing people as self-owners is crucial to treating people as equals.

Nozick's conception of equality begins with rights over one's self, but he believes that these rights have implications for our rights to external resources, implications that conflict with liberal redistribution.

This is an untenable position, for two reasons. Firstly, Nozick is mistaken in believing that self-ownership necessarily yields absolute property-rights. Self-ownership is compatible with various regimes of property-ownership, including a Rawlsian one. Secondly, the

principle of self-ownership is an inadequate account of treating people as equals, even on Nozick's own view of what is important in our lives. If we try to reinterpret the idea of self-ownership to make it a more adequate conception of equality, and select an economic regime on that basis, we will be led towards, rather than away from, the liberal view of justice.

(b) Self-ownership and property-ownership

I will examine these two objections in turn. Firstly, how does self-ownership yield property-ownership? Nozick claims that market exchanges involve the exercise of individuals' powers, and since individuals own their powers, they also own whatever comes from the exercise of those powers in the marketplace.

But this is too quick. Market exchanges involve more than the exercise of self-owned powers. They also involve legal rights over things, over external goods, and these things are not just created out of nothing by our self-owned powers. If I own some land, I may have improved the land, through the use of my self-owned powers. But I did not create the land, and so my title to the land (and hence my right to use the land in market exchanges) cannot be grounded solely in the exercise of my self-owned powers.

Nozick recognizes that market transactions involve more than the exercise of self-owned powers. In his theory, my title to external goods like land comes from the fact that others have transferred the title to me, in accordance with the principle of transfer. This assumes, of course, that the earlier owner had legitimate title. If someone sells me some land, my title to the land is only as good as her title, and her title was only as good as the one before her, and so on. But if the validity of my property-rights depends on the validity of previous property-rights, then determining the validity of my title over external goods requires going back down the chain of transfers to the beginning. But what is the beginning? Is it the point where someone created the land with their self-owned powers? No, for no one created the land. It existed before human beings existed.

The beginning of the series of transfers is not when the land was created, but rather when it was first appropriated by an individual as her private property. On Nozick's theory, we must go down the chain of transfers to see if the initial acquisition was legitimate. And

nothing in the fact, if it is a fact, that we own our talents ensures that anyone can legitimately appropriate for themselves something they did not create with their talents. If the first person who took it did so illegitimately, then she has no legitimate title over it, and hence no legitimate right to transfer it to someone else, who would then have no legitimate right to transfer it to me. Hence if I am to be entitled to all of the rewards which accrue to me from market exchanges, as Nozick believes I am, I must be the legitimate owner not only of my powers, but also of initially unowned external resources.

This question about the initial acquisition of external resources is prior to any question about legitimate transfer. If there was no legitimate initial acquisition, then there can be no legitimate transfer, on Nozick's theory. So Nozick owes us an account of how external resources come to be initially acquired by one individual for her own use. Nozick is aware that he needs such an account. There are times when he says that 'things come into the world already attached to people having entitlements over them' (1974: 160). But he realizes that everything which is owned today includes an element which did not come into the world as private property, legally or morally. Everything that is now owned has some element of nature in it. How then did these natural resources, which were not initially owned by anyone, come to be part of someone's private property?

(i) Initial acquisition

The historical answer is often that natural resources came to be someone's property by force, which raises a dilemma for those who hope Nozick's theory will defend existing inequalities. Either the use of force made the initial acquisition illegitimate, in which case current title is illegitimate, and there is no moral reason why governments should not confiscate the wealth and redistribute it. Or the initial use of force did not render the acquisition illegitimate, in which case we can, with equal justification, use force to take it away from its current owners and redistribute it. Either way, the fact that initial acquisition often involved force means that there is no moral objection to redistributing existing wealth (Cohen 1988: 253-4).

Nozick's response to this problem is the first one. The use of force makes acquisition illegitimate, so current title is illegitimate (1974: 230-1). Hence those who currently possess scarce resources have no right to deprive others of access to them—e.g. capitalists are not entitled to deprive workers of access to the products or profits of the existing means of production. Ideally, the effects of the illegitimate acquisition should be rectified, and the resources restored to their rightful owner. However, it is often impossible to know who the rightful owners are—we do not know from whom the resources were illegitimately taken. Nozick suggests that we could rectify the illegitimacy of existing title by a one-time general redistribution of resources in accordance with Rawls's difference principle. Only after this redistribution will the libertarian principle of transfer hold. Where we do know the rightful owners, however, we should restore the resources to them. For example, Nozick's view supports returning much of New England to the American Indians, whose initial title was unjustly taken away (Lyons 1981).

This rejection of the legitimacy of current title is not a curiosity of Nozick's presentation that can be detached from the rest of his theory. If one really believes in Nozick's entitlement theory, then current title is only as legitimate as previous titles. If previous title was legitimate, then any new distribution which results from market exchanges is just. That is what libertarians propose as their theory of justice. But the corollary of that theory is that if previous title was illegitimate, so is the new distribution. The fact that the new distribution arose from market transactions is irrelevant, since no one had any right to transfer those resources through market exchanges. This, as much as the first case, is an essential part of Nozick's theory. They are two sides of the same coin.

Because most initial acquisition was in fact illegitimate, Nozick's theory cannot protect existing holdings from redistribution. But we still need to know how acquisition could have arisen legitimately. If we cannot answer that question, then we should not only postpone the implementation of Nozick's principle of transfer until historical titles are ascertained or rectified, we should reject it entirely. If there is no way that people can appropriate unowned resources for themselves without denying other people's claim to equal consideration, then Nozick's right of transfer never gets off the ground.

What sort of initial acquisition of absolute rights over unowned resources is consistent with the idea of treating people as equals?

This is an old problem for libertarians. Nozick draws on John Locke's answer to it. In seventeenth-century England there was a movement towards the 'enclosure' (private appropriation) of land which had previously been held in common for general use. This land ('the commons') had been available to all for the grazing of animals, or for gathering wood, etc. As a result of this private appropriation, some people became wealthy while others lost their access to resources, and so lost their ability to sustain themselves. Locke wished to defend this process, and so needed to give an account of how people come, in a morally legitimate way, to have full ownership rights over the initially unowned world.

Locke's answer, or at any rate one of his answers, was that we are entitled to appropriate bits of the external world if we leave 'enough and as good' for others. An act of appropriation that meets this criterion is consistent with the equality of other individuals since they are not disadvantaged by that appropriation. Locke also gave other answers—e.g. that we can appropriate that with which we have mixed our labour, so long as we do not waste it. But the 'enough and as good' criterion seems to do most of the work, even in Locke's own examples. He gives the example of picking up acorns where there are more than enough for everyone, or drinking water from a stream. In neither of these cases is there any real labour-mixture, and so long as enough and as good is left for others, who can object even if I waste some of the acorns or water? If my appropriation leaves everyone as well off as before, then who has been treated unjustly?

Locke realized that most acts of appropriation (unlike the two examples above) do not leave enough and as good of the object being appropriated. Those who enclosed the land in seventeenth-century England clearly did not leave enough and as good land for others. But Locke says that appropriation is acceptable if it leaves people as well or better off overall. While I have less land available to me, the result of enclosing the commons may be that many of the goods I buy will become cheaper, leaving me better off overall. So the rest of a legitimate appropriation is that it does not worsen anyone's overall condition. Nozick calls this the 'Lockean proviso', and he adopts it as his test of legitimate acquisition: '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' (1974: 178).³ Emphasizing the question of whether the condition of others is worsened is appropriate, because it enforces the principle of equal consideration of people's interests. Acquisition does not violate equal consideration if it does not worsen anyone's situation.

What kinds of appropriation meet this test? It depends on what counts as being made worse off from an act of appropriation. Nozick's answer is that appropriation of a particular object is legitimate if its withdrawal from general use does not make people worse off in material terms than they had been when it was in general use. For example, consider Amy and Ben, who both live off land which is initially under general use. Amy now appropriates so much of the land that Ben cannot live off the remaining land. That might seem to make Ben worse off. But Amy offers Ben a wage to work on her land which exceeds what he was originally producing on his own. Amy also gets more resources than she initially produced, due to the increased productivity arising from a division of labour, and the increase in her share is larger than the increase in his share. Ben must accept this, since there is not enough land left for him to live as he used to. He needs access to the land that she appropriated, and she is able to dictate the terms of that access, so that he gets less than half of the benefits of the division of labour. Amy's act of appropriation satisfies Nozick's proviso, since the situation after her appropriation is better than general use in terms of material resources, for both Amy and Ben. (Actually, it need not be better for Ben, so long as it is not worse.)

In this way, the unowned world comes to be appropriated, with full property-rights, by self-owning people. Nozick believes that the proviso is easily met, and so most of the world will quickly come to be privately appropriated. Hence, self-ownership yields absolute ownership of the external world. Since initial appropriation includes the right of transfer, we will soon have a fully developed market for productive resources (i.e. the land). And since this appropriation excludes some people from access to those productive resources, we will soon have a fully developed market in labour. And since people will then legitimately own both the powers and the property which are involved in market exchange, they will be legitimately entitled to all the rewards which accrue from those exchanges. And since people will be entitled to all their

market rewards, government redistribution to help the disadvantaged would be a violation of people's rights. It would be using some people as a resource for others.

(ii) *The Lockean proviso*

Has Nozick given us an acceptable account of fair initial acquisition? We can summarize it this way:

1. People own themselves.
2. The world is initially unowned.
3. You can acquire absolute rights over a disproportionate share of the world, if you do not worsen the condition of others.
4. It is relatively easy to acquire absolute rights over a disproportionate share of the world. Therefore:
5. once people have appropriated private property, a free market in capital and labour is morally required.

I will concentrate on Nozick's interpretation of (3), his account of what it is to worsen the condition of others. His account has two relevant features: (a) it defines 'worse off' in terms of material welfare; (b) it defines pre-appropriation common usage as the standard of comparison. I will argue that both of these features are inadequate, and the flaws are so serious that they require not just a modification of Nozick's test, but an abandonment of it. Any plausible test of initial acquisition will yield only limited property-rights.

Material welfare The reason why Nozick emphasizes self-ownership, we have seen, is that we are separate individuals, each with our own life to live (s. 2a above). Self-ownership protects our ability to pursue our own goals, our 'conceptions of ourselves', since it allows us to resist attempts by others to use us merely as means to their ends. One would expect Nozick's account of what it is for an act of appropriation to worsen the condition of others similarly to emphasize people's ability to act on their conception of themselves, and to object to any appropriation that puts someone in an unnecessary and undesirable position of subordination and dependence on the will of others.

But notice that the fact that Ben is now subject to Amy's decisions is not considered by Nozick in assessing the fairness of the

appropriation. In fact, Amy's appropriation deprives Ben of two important freedoms: (1) he has no say over the status of the land he had been utilizing—Amy unilaterally appropriates it without asking or receiving Ben's consent; (2) Ben has no say over how his labour will be expended. He must accept Amy's conditions of employment, since he will die otherwise, and so he must relinquish control over how he spends much of his time. Before the appropriation, he may have had a conception of himself as a shepherd living in harmony with nature. Now he must abandon those pursuits, and instead obey Amy's commands, which might involve activities that exploit nature. Given these effects, Ben may be made worse off by Amy's appropriating the land, even though it leads to a small increase in his material income.

Nozick should consider these effects, on his own account of why self-ownership is important. He says that the freedom to lead our lives in accordance with our own conception of the good is the ultimate value, so important that it cannot be sacrificed for other social ideals (e.g. equality of opportunity). He claims that a concern for people's freedom to lead their own lives underlies his theory of unrestricted property-rights. But his justification of the initial appropriation of property treats Ben's autonomy as irrelevant.

It is interesting that although Nozick claims that Ben is not made worse off by the appropriation, he does not require that Ben consent to the appropriation. If consent was required, Ben might well refuse. If Ben is right to refuse, since it really would make him worse off, then the appropriation should not be allowed. Perhaps Ben would be mistaken in refusing, since the gain in material welfare outweighs the loss of autonomy. In that case, we might allow Amy's appropriation as an act of paternalism. But Nozick claims to be against such paternalism. For example, he is against mandatory health insurance or pension plans that are instituted for people's own benefit. But appropriating private property can contradict a person's will as much as levying a tax on him can. It seems that Nozick opposes paternalism when it threatens property-rights, but willingly invokes it when it is required to generate property-rights. If we exclude paternalism, and emphasize autonomy, as Nozick himself does elsewhere in his theory, then justifying private appropriation becomes much more difficult (cf. Kernohan 1988: 70; Cohen 1986a: 127, 135).

Arbitrary narrowing of the options Nozick's proviso says that an act of appropriation must not make others worse off than they were when the land was in common use. But this ignores many relevant alternatives. Let us say that Ben, worried about the possibility of Amy unilaterally appropriating the land, decides to appropriate it for himself, and then offers Amy a wage to work on what is now his land, keeping to himself the bulk of the benefits of the increased productivity. This too passes Nozick's test. Nozick considers it irrelevant who does the appropriating, and who gets the profits, so long as the non-appropriator is not worsened by it. Nozick is, in effect, accepting a first-come, first-served doctrine of appropriation. But why should we accept this as a fair procedure for appropriation, rather than, for example, a system which equalizes chances for appropriation? Which is more in line with our intuitions about fairness, or with Nozick's own account of our interests? Should the most important value—our ability to lead our own lives—be dependent on the arbitrariness of a first-come, first-served doctrine?

Consider another alternative. This time Ben, who is a better organizer of labour, appropriates the land, and organizes an even greater increase in productivity, allowing both to get more than they got when Amy appropriated the land. They are both worse off when Amy appropriates than they would be when Ben appropriates. Yet Nozick allows Amy to appropriate, and denies that Ben is thereby made worse off, since he does better under Amy's appropriation than he did under common use of the land, which is the only alternative Nozick considers relevant.

Finally, what if Amy and Ben appropriate the land collectively, exercising ownership rights jointly, and dividing the labour consensually? If appropriation is going to take place amongst a community of self-owners, then Ben should have the option of collective ownership, rather than having Amy unilaterally deprive him of his ability to pursue his own conception of himself. Surely this is a relevant possibility, the existence of which puts in question the legitimacy of any act of unilateral appropriation that leaves others with insufficient access to resources to support themselves.

According to Nozick's proviso, all these alternatives are irrelevant. It does not matter to the legitimacy of an appropriation that some other appropriation better serves people's material interests, or their autonomy. But since all of these are genuine options, and

since each option spares somebody a harm that will occur under Nozick's scheme, Nozick needs to explain why people are not made worse off when they are excluded. Unfortunately, Nozick simply ignores these possibilities.

These problems with Nozick's proviso are made clearer if we move to the level of capitalism as an ongoing system. The acts of initial appropriation which Nozick allows will quickly lead to a situation in which there are no more accessible useful unowned things. Those who were able to appropriate may have vast wealth, while others are entirely without property. These differences will be passed on to the next generation, some of whom will be forced to work at an early age, while others have all the privileges in life. This is acceptable to Nozick, so long as the system of appropriation and transfer continues to meet the Lockean proviso—i.e. just as individual acts of initial appropriation are legitimate if they do not make people worse off than they were when the world was unowned, so capitalism as an ongoing system is just if no one is worse off than they would have been without privatization of the external world.

Nozick invokes familiar accounts of capitalism's productivity and wealth-creation to support the claim that capitalism passes this test (1974: 177). Notice, however, that capitalism passes that test even though the propertyless are dependent for their survival on those with property wanting to buy their labour, and even though some people may starve because no one does want to buy their labour. This is acceptable to Nozick since people who lack marketable skills would have starved anyway had the land remained unowned. The propertyless lack a just grievance because 'those propertyless persons who do manage to sell their labor power . . . will get at least as much and probably more in exchange for it than they could have hoped to get by applying it in a Lockean state of nature; and those propertyless persons whose labor power is not worth buying, although they might therefore, in Nozick's non-welfare state, die, . . . would have died in the state of nature anyway' (Cohen 1986b: 85 n. 11).

This is an absurdly weak requirement. It is not enough that unrestricted capitalism does not make people worse off than they would have been without any private appropriation. These are not the only two options that are relevant to judgements about the legitimacy of appropriation. It is absurd to say that a person who

starves to death is not made worse off by Nozick's system of appropriation when there are other systems in which that person would not have died. Nozick's refusal to consider these other possibilities is arbitrary and unjust.

The test of a legitimate appropriation, if it is to treat each person with equal consideration, must consider all the relevant alternatives, keeping in mind people's interest in both material goods and autonomy. Can we modify the Lockean proviso to include these considerations, while retaining its intuitive point that the test of appropriation is whether it worsens someone's condition? We might say that a system of appropriation worsens someone's condition if there is another possible scheme in which they would do better. Unfortunately, every system of property allocation will fail that test. The person who lacks marketable skills would be worse off in Nozick's pure capitalism than he would be under Rawls's difference principle; the person with marketable talents would be worse off under Rawls's regime than under Nozick's. In any given system, there will be someone who would do better in another system. That test is unreasonable anyway, for no one has a legitimate claim that the world be maximally adapted to suit their preferences. The fact that there is a possible arrangement in which I would be better off does not show that the existing system has harmed me in any morally significant sense. We want to know whether a system of appropriation makes people worse off, not compared to a world which is maximally adapted to their particular interests, but compared to a world in which their interests are fairly attended to.

It is an insufficient test of justice that people benefit relative to the initial state of common holdings. But nor can people demand that they have whatever system benefits them the most. The proviso requires a middle ground. It is difficult to say what that middle ground is, or how different it would be from the principles of Rawls and Dworkin. John Arthur argues that the appropriate test is an egalitarian one—appropriation worsens someone's condition if, as a result, they get less than an equal share of the value of the world's natural resources. This is the only decision that makes sense, he argues, 'in light of the fact that [each person] is as entitled to the resources as anybody else. He wasn't born deserving a smaller share of the earth's wealth, nor is anybody else naturally entitled to a larger than average share' (Arthur 1987: 344; cf. Steiner 1977: 49).

Cohen argues that Rawls's difference principle might provide a fair standard of legitimate appropriation (Cohen 1986a: 133–4). Other possible tests would lead to different results, but no plausible test would allow Nozick's unrestricted property-rights.

If the proviso recognizes the full range of interests and alternatives that self-owners have, then it will not generate unrestricted rights over unequal amounts of resources. Some people will be made worse off in important ways, compared to morally relevant alternatives, by a system which allows people to appropriate unequal amounts of the external world. And if, as Nozick himself says, 'Each owner's title to his holding includes the historical shadow of the Lockean proviso on appropriation', then, on any plausible interpretation, 'the shadow thrown by [the proviso] so entirely envelops such titles as to render them indiscernible' (Steiner 1977: 48; Nozick 1974: 180). Any title that self-owning people have over unequal resources will be heavily qualified by the claims of the propertyless.

Initial ownership of the world There is another problem with Nozick's proviso that blocks the move from self-ownership to unrestricted capitalism. Recall my summary of Nozick's argument:

1. People own themselves.
2. The world is initially unowned.
3. You can acquire absolute rights over a disproportionate share of the world, if you do not worsen the condition of others.
4. It is relatively easy to acquire absolute rights over a disproportionate share of the world. Therefore:
5. once private property has been appropriated, a free market in capital and labour is morally required.

My first argument concerned Nozick's interpretation of (3), which turned out to be too weak, so that (4) is false. But there is a second problem. Why accept (2), the claim that the world is initially unowned, and hence up for grabs? Why not suppose that the world is jointly owned, such that each person has an equal veto over the disposal of the land (Exdell 1977: 146–9; Cohen 1986b: 80–7)? Nozick never considers this option, but others, including some

libertarians, claim that it is the most defensible account of world-ownership (Locke himself believed that the world initially belonged to everyone, not no one, for God 'hath given to men the world in common'—cf. Christman 1986: 159–64).

What would happen if the world was jointly owned, and hence not subject to unilateral privatization? There are a variety of possible outcomes, but in general they will negate the inegalitarian implications of self-ownership. For example, the disadvantaged may be able to use their veto to bargain for a distributive scheme like Rawls's difference principle. We might end up in this way with a Rawlsian distribution, not because we deny self-ownership (such that the disadvantaged could have a direct claim on the advantaged), but because we are joint owners of the external world (such that the untalented can veto uses of the land that benefit the talented without also benefiting them). A similar result might also arise if we view the external world as neither up for grabs, nor jointly owned, but as divided equally amongst all the members of the human community (Cohen 1986b: 87–90).

All of these accounts of the moral status of the external world are compatible with the principle of self-ownership, since self-ownership says nothing about what kind of ownership we have over external resources. And indeed various libertarians have endorsed these other options.⁴ Each of these options has to be evaluated in terms of the underlying values that Nozick professes to care about. Nozick does not begin this evaluation, but it is clear that absolute property-rights over unequal bits of the world are only secured if we invoke weak and arbitrary premisses about appropriation and the status of the external world.

(c) Self-ownership and equality

I have tried to show that the principle of self-ownership does not by itself generate a moral defence of capitalism, since a capitalist requires not only ownership of her self, but also ownership of resources.⁵ Nozick believes that self-ownership inevitably leads to unrestricted property-rights, but we are in fact confronted by a variety of economic regimes that are compatible with self-ownership, depending on our theory of legitimate appropriation, and our assumptions about the status of the external world. Nozick believes that self-ownership requires that people be entitled to all

the rewards of their market exchanges, but different regimes vary in the extent to which they allow self-owning individuals to retain their market rewards. Some will allow the naturally talented to translate their natural advantages into unequal ownership of the external world (although not necessarily to the extent allowed by Nozick); others will redistribute market income so as to ensure that the naturally disadvantaged have equal access to resources (as in Rawls or Dworkin). Self-ownership is compatible with all these options.

Which would Nozick favour? We can assume that he would prefer those regimes which leave property-rights as unrestricted as possible. Can he give us any reason to prefer such libertarian regimes over liberal egalitarian ones? I can think of three arguments he might give. These arguments draw on aspects of, but also go beyond, the idea of self-ownership, since that idea by itself is insufficient to identify a just distribution. One argument concerns consent, the second concerns the idea of self-determination, the third concerns dignity.

Nozick might say that the choice of economic regime should be decided, if possible, by the consent of self-owning people. And, he might claim, self-owning people would all choose a libertarian regime, were it up to them. But that is wrong. As we have seen, Nozick's own scheme of acquisition depended on Ben not having to give his consent to Amy's appropriation. Different people would do best in different economic regimes, and so would consent to different regimes. One could try to ensure unanimous consent by seeking agreement behind a veil of ignorance, as Rawls does. But that will not help Nozick, since, as we have seen, that leads to liberal, not libertarian, results.

Secondly, Nozick might claim that the assumptions which lead to liberal results, while formally compatible with self-ownership, in fact undermine the value of self-ownership. For example, the assumption that the world is jointly owned, or that it should be collectively appropriated, would nullify the value of self-ownership. For how can I be said to own myself if I may do nothing without the permission of others? In a world of joint ownership, do not Amy and Ben jointly own not only the world but also in effect each other? Amy and Ben may have legal rights over themselves (unlike the chattel slave), but they lack independent access to resources. Their legal rights of self-ownership are therefore purely formal,

since they require each other's permission whenever they wish to use resources in the pursuit of their goals. We should select a regime that contains not only formal self-ownership, but also a more substantive self-ownership that provides one with effective control over one's life.

Following Charles Fried, I will use the term 'self-determination' to describe this more substantive conception of self-ownership. He says that it requires a 'determinate domain . . . free of the claims of others' (Fried 1983: 55). Similarly, Jon Elster says that substantive self-ownership involves 'the right to choose which of one's abilities to develop' (Elster 1986: 101). Common to both these interpretations of substantive self-ownership is the idea that in the central areas of our life, in our most important projects, we should be free to act on our own conceptions of the good. Both argue that respecting self-determination is an important part of treating people as ends not means, as distinct individuals each with their own life to lead.

I think that Nozick appeals to both the formal and substantive conceptions of self-ownership. He explicitly defends the formal conception, dealing with legal rights over one's physical being. But at least part of Nozick's defence of formal self-ownership is that it promotes substantive self-ownership—it promotes our ability to act on our conception of ourselves. So it seems plausible that Nozick would endorse selecting the regime which best promotes substantive self-ownership (within the constraints imposed by formal self-ownership). While different economic regimes are compatible with formal self-ownership, he might argue that liberal regimes render self-ownership purely formal, whereas the more libertarian regimes ensure substantive self-ownership, since libertarian property-rights leave people free to act without others' permission.

But this will not work, for in a libertarian regime only some people can translate their formal self-ownership into substantive self-determination. Libertarians cannot guarantee each person substantive control over her life, and indeed, Nozick explicitly says that formal self-ownership is all that people can legitimately claim. He says that the worker who lacks any property, and who must sell her labour on adverse terms to the capitalist, has full self-ownership (1974: 262–4). She has full self-ownership even though, Nozick concedes, she may be forced to agree to whatever terms the

capitalist is offering her in order to survive. The resulting 'agreement' might well, as in Victorian England, be essentially equivalent to the enslavement of the worker. The fact that the worker has formal rights of self-ownership means that she cannot be the legal possession of another person (unlike the chattel slave), but economic necessity may force her to agree to terms which are just as adverse.

Lack of property can be just as oppressive as lack of legal rights. As Mill put it:

No longer enslaved or made dependent by force of law, the great majority are so by force of poverty; they are still chained to a place, to an occupation, and to conformity with the will of an employer, and debarred by the accident of birth both from the enjoyments, and from the mental and moral advantages, which others inherit without exertion and independently of desert. That this is an evil equal to almost any of those against which mankind have hitherto struggled, the poor are not wrong in believing. (Mill 1967: 710)

The full self-ownership of the propertyless worker is no more substantive than the self-ownership of Amy or Ben in a world of collective ownership. Amy has no access to productive resources without Ben's permission, but the same is true of the worker who is dependent on the agreement of the capitalist. In fact, people in a situation of collective ownership have more real control over their lives, since Amy and Ben must strike a deal in order to use their resources, whereas a capitalist need not strike an agreement with any particular worker in order to survive, especially if the worker does not possess a talent required by the capitalist.

Libertarianism not only restricts the self-determination of the propertyless worker, it makes her a resource for others. Those who enter the market after others have appropriated all the available property are 'limited to gifts and jobs others are willing to bestow on them', and so 'if they are compelled to co-operate in the scheme of holdings, they are forced to benefit others. This forced compliance with the property system constitutes a form of exploitation and is inconsistent with the most basic of [Nozick's] root ideas, rendering as it does the latecomers mere resources for others' (Bogart 1985: 833–4).

What regime best promotes substantive self-ownership? Self-determination requires resources as well as rights over one's

physical being. We are only able to pursue our most important projects, free from the demands of others, if we are not forced by economic necessity to accept whatever conditions others impose on us in return for access to needed resources. Since meaningful self-determination requires both resources and liberties, and since each of us has a separate existence, each person should have an equal claim to these resources and liberties.

But, if so, then the concern for self-determination leads us towards liberal regimes, not libertarian ones. Libertarians claim that liberal welfare programmes, by limiting property-rights, unduly limit people's self-determination. Hence the removal of welfare redistribution programmes (Nozick), or their limitation to an absolute minimum (Fried), would be an improvement in terms of self-determination. But that is a weak objection. Redistributive programmes do restrict the self-determination of the well off to a limited degree. But they also give real control over their lives to people who previously lacked it. Liberal redistribution does not sacrifice self-determination for some other goal. Rather, it aims at a fairer distribution of the means required for self-determination. Libertarianism, by contrast, allows undeserved inequalities in that distribution—its concern with self-determination does not extend to a concern for ensuring the fair distribution of the conditions required for self-determination. In fact, it harms those who most need help in securing those conditions. If each person is to be treated as an end in herself, as Nozick says repeatedly, then I see no reason for preferring a libertarian regime to a liberal redistributive one.

A liberal regime which taxes the unequal rewards of undeserved talents does limit some people's self-determination. But it is an acceptable limit. Being free to choose one's own career is crucial to self-determination, but being free from taxation on the rewards which accrue from undeserved natural talents is not. Even if one's income is taxed in accordance with Rawlsian principles, one still has a fair share of resources and liberties with which to control the essential features of one's life. Taxing income from the exercise of natural talents does not unfairly disadvantage anyone in their substantive self-ownership, their ability to act according to their conception of themselves.

Finally, Nozick might argue that welfare redistribution denies people's dignity, and this dignity is crucial to treating people as equals (e.g. Nozick 1974: 334). Indeed Nozick often writes as if the

idea that other people have claims on the fruits of my talents is an assault on my dignity. But this is implausible. One problem is that Nozick often ties dignity to self-determination, so that it will be liberal regimes, not libertarian ones, which best promote each person's dignity. In any event, dignity is predicated on, or a by-product of, other moral beliefs. We only feel something to be an attack on our dignity if we are already convinced that it is wrong. Redistribution will feel like an assault on dignity only if we believe it is morally wrong. If we believe instead that redistribution is a required part of treating people as equals, then it will serve to promote, rather than attack, people's sense of equal dignity.

Libertarianism cannot be defended in terms of self-ownership, consent, self-determination, or dignity. All of these are either indeterminate or support liberal egalitarianism. Perhaps there is some other reason Nozick might give for endorsing libertarianism. It is hard to say, since he falsely believes that self-ownership requires libertarianism, and so did not consider the alternatives. But as it stands, Nozick fails to defend absolute property-rights, or the free-market system that is designed to respect such rights. Self-ownership does not preclude redistributive taxation, for many different economic regimes are formally compatible with self-ownership. And if we look beyond formal self-ownership to those regimes which best ensure substantive self-ownership, then Nozick has not given us any reason to prefer libertarian inequalities to liberal equality.

But why should we be concerned with formal self-ownership at all? In the above argument, I used the idea of substantive self-ownership as a test for deciding between those regimes that are compatible with formal self-ownership. But if we contrast these two conceptions, surely substantive self-determination is more fundamental. We do not endorse self-determination because it promotes formal self-ownership. Rather, we will endorse formal self-ownership in so far as it promotes self-determination. Indeed, as I mentioned earlier, Nozick himself sometimes treats the substantive conception as the more fundamental. So why not just start with self-determination as our preferred conception of treating people as equals? Rather than ask which of the regimes that are compatible with formal self-ownership best promotes self-determination, why not just ask which regime best promotes self-determination? It may be that the best regime, assessed in terms of self-determination, not only goes beyond formal self-ownership,

but also limits it. In that case, formal self-ownership should give way to the substantive self-determination that really matters to us (Cohen 1986b: 86).

This seems so obviously preferable that an explanation is needed for Nozick's emphasis on formal self-ownership. One explanation is simply that Nozick needed it in order to defend property-rights. But there is a more generous explanation. Nozick, like the classical liberals, wants to articulate a conception of equality which denies that anyone is by nature or by right subordinate to another. No one is merely a resource for others, the way a slave is the resource of his owner. If slavery is the paradigm case of a denial of equality, it might seem that the best way to affirm equality is to give each person the legal rights over himself that slave-owners have over their slaves; the best way to prevent the enslavement of one person to another is to give each person ownership over himself. Unfortunately, the fact that I have legal rights of self-ownership does not mean that I have the ability to avoid what is in effect enslavement to another. Even if the capitalist does not have the same legal rights over me that slave-owners had over slaves, I may not have any real ability to decide on the nature and terms of my living. The best way to prevent the sort of denial of equality that occurs in slavery is not to reverse the legal rights involved, but rather to equalize the substantive control each person possesses, in the form of equal liberties and resources.

Nozick's emphasis on the idea of formal self-ownership may also be due to the undifferentiated nature of that concept. The idea of self-ownership misleadingly suggests that we either have or lack self-ownership, as if the various rights and powers which constitute self-ownership must be accepted or rejected as a package. If that was indeed our choice, then it would make sense to emphasize self-ownership. But in reality there is a range of options, involving different kinds of control over one's choices and one's circumstances. The idea of self-ownership tends to prevent people from considering all the relevant options, as Nozick's own discussion reveals. The claim that undifferentiated self-ownership is crucial to treating each person as an end in herself is only plausible if it is being compared with the single option of the undifferentiated denial of self-ownership.

We need to distinguish different elements involved in controlling one's self, and see how they relate to the different elements involved

in controlling external resources. We should consider each of these rights and powers on its own terms, to see in what ways it promotes each person's essential interests. Which combination of rights and resources contributes to each person's ability to act on their goals and projects, their conception of themselves? The best mix will involve more than formal self-ownership (e.g. access to resources), but it may also involve less, for it may be worth giving up some formal self-ownership for the sake of substantive self-determination.

To summarize this section, I have argued that Rawlsian redistribution is compatible with formal self-ownership, and that it does a better job than libertarianism in promoting fairly substantive self-ownership. I have also argued that formal self-ownership is a red herring, for substantive self-determination is the more fundamental value. But there is a deeper problem with Nozick's self-ownership argument. Nozick has not adequately confronted Rawls's claim that people do not have a legitimate claim to the rewards of the exercise of their undeserved talents. I have tried to show that we can get a Rawlsian distributive scheme even without denying self-ownership, since redistribution could arise from the requirements of a fair theory of access to external resources. But I still think that Rawls's denial of self-ownership was perfectly sound. I think that we can treat people's talents as part of their circumstances, and hence as possible grounds, in and of themselves, for compensation. People have rights to the possession and exercise of their talents, but the disadvantaged may also have rights to some compensation for their disadvantage. It is wrong for people to suffer from undeserved inequalities in circumstances, and the disadvantaged have direct claims on the more fortunate, quite independently of the question of access to external resources. As I said in discussing his Wilt Chamberlain example, Nozick has not given us any reason to reject that Rawlsian intuition.

3. LIBERTARIANISM AS MUTUAL ADVANTAGE

Many libertarians acknowledge that Nozick's argument fails. The problem, they say, is not with Nozick's conclusions, but with his attempt to defend them by appeal to Kant's egalitarian idea of treating people as ends in themselves. If we start with the idea that each person matters equally, then justice will require something

other than Nozickian self-ownership. But, they claim, that just shows that libertarianism is not properly viewed as a theory of treating people as equals. What then is it a theory of? There are two main possibilities: in this section, I will consider libertarianism as a theory of mutual advantage; in the next section, I will consider it as a theory of freedom.

Mutual advantage theories of libertarianism are often presented in contractarian terms. This can be confusing, since liberal egalitarian theories have also been presented in contractarian terms, and the shared use of the contract device can obscure the fundamental differences between them. Before evaluating the mutual advantage defence of libertarianism, therefore, I will lay out some of the differences between the Rawlsian and mutual advantage versions of contractarianism.

For Rawls, the contract device is tied to our 'natural duty of justice'. We have a natural duty to treat others fairly, for they are 'self-originating sources of valid claims'. People matter, from the moral point of view, not because they can harm or benefit us, but because they are 'ends in themselves' (Rawls 1971: 179–80), and so are entitled to equal consideration. This is a 'natural' duty because it is not derived from consent or mutual advantage, but simply owed to persons as such (Rawls 1971: 115–16). The contract device helps us determine the content of this natural duty, for it requires that each party take into consideration the needs of others 'as free and equal beings'. To ensure that the contract gives equal consideration to each of the contractors, Rawls's original position abstracts from differences in talent and strength that might create unequal bargaining power. By removing these arbitrary differences, the contract device 'substitutes a moral equality for physical inequality' (Diggs 1981: 277), and thereby 'represents equality between human beings as moral persons' (Rawls 1971: 19). For Rawls, then, the contract is a useful device for determining the content of our natural duty of justice, because it properly represents our moral equality (ch. 3, s. 3 above).

Mutual advantage theorists also use a contract device, but for opposite reasons. For them, there are no natural duties or self-originating moral claims. There is no moral equality underneath our natural physical inequality. The modern world-view, they say, rules out the traditional idea that people and actions have any inherent moral status. What people take to be objective moral

values are just the subjective preferences of individuals (Buchanan 1975: 1; Gauthier 1986: 55–9; Narveson 1988: 110–21).

So there is nothing naturally 'right' or 'wrong' about one's actions, even if they involve harming others. However, while there is nothing inherently wrong in harming you, I would be better off by refraining from doing so if every other person refrains from harming me. Adopting a convention against injury is mutually advantageous—we do not have to waste resources defending our own person and property, and it enables us to enter into stable co-operation. It may be in our short-term self-interest to violate such an agreement on occasion, but acting on short-term self-interest makes mutual co-operation and constraint unstable, and thereby harms our long-term self-interest (it eventually leads to Hobbes's 'war of all against all'). While injury is not inherently wrong, each person gains in the long run by accepting conventions that define it as 'wrong' and 'unjust'.

The content of such conventions will be the subject of bargaining—each person will want the convention to protect their own interests as much as possible while constraining them as little as possible. While conventions are not really contracts, we can view this bargaining over mutually advantageous conventions as the process by which a community establishes its 'social contract'. While this contract, unlike Rawls's, is not an elaboration of our traditional notions of moral and political obligation, it will include some of the constraints that Rawls and others take to be 'natural duties'—for example, the duty not to steal, or the duty to share the benefits of co-operation fairly amongst the contributors. Mutually advantageous conventions occupy some of the place of traditional morality, and, for that reason, can be seen as providing a 'moral' code, even though it is 'generated as a rational constraint from the non-moral premisses of rational choice' (Gauthier 1986: 4).

This sort of theory is aptly described by David Gauthier, its best-known proponent, as 'moral artifice', for it is an artificial way of constraining what people are naturally entitled to do. But while the resulting constraints partially overlap with our traditional moral duties, the overlap is far from complete. Whether it is advantageous to follow a particular convention depends on one's preferences and powers. Those who are strong and talented will do better than those who are weak and infirm, since they have much greater bargaining power. The infirm produce little of benefit to others, and

what little they do produce may be simply expropriated by others without fear of retaliation. Since there is little to gain from cooperation with the infirm, and nothing to fear from retaliation, the strong do not gain from accepting conventions which recognize or protect the interests of the infirm. This is precisely what Rawls objected to in traditional state-of-nature arguments—they allow differences in bargaining power that should be irrelevant when determining principles of justice. But Gauthier is using the contract device to determine principles of mutual advantage, and differences in bargaining power are central to that question. The resulting conventions will accord rights to various people, but since these rights depend on one's bargaining power, mutual advantage contractarianism does 'not afford each individual an inherent moral status in relation to her fellows' (Gauthier 1986: 222).

It is hard to exaggerate the difference between these two versions of contractarianism. Rawls uses the device of a contract to develop our traditional notions of moral obligation, whereas Gauthier uses it to replace them; Rawls uses the idea of the contract to express the inherent moral standing of persons, whereas Gauthier uses it to generate an artificial moral standing; Rawls uses the device of the contract to negate differences in bargaining power, whereas Gauthier uses it to reflect them. In both premisses and conclusions, these two strands of contract theory are, morally speaking, a world apart.

I will question the plausibility of the mutual advantage approach momentarily. But, even if we accept it, how does it justify a libertarian regime in which each person has unfettered freedom of individual contract over her self and her holdings? It cannot, of course, yield self-ownership as a natural right. As Gauthier says, mutual advantage theories do not offer people an 'inherent moral status', and if there are no natural duties to respect others, then obviously there is no natural duty to respect their self-ownership, and hence no duty to treat them in ways they would voluntarily consent or contract to. But libertarians argue that respecting self-ownership is mutually advantageous—it is in each person's interest to accord self-ownership rights to others, and not try to coerce them into promoting our good, so long as they reciprocate. The costs of coercing others are too high, and the pay-offs too low, to be worth the risk of being coerced oneself. Mutual advantage does not, however, justify any further rights—rights to a certain

share of resources under Rawls's difference principle, for example. The poor would gain from such a right, but the rich have an interest in protecting their resources, and the poor lack sufficient power to take the resources, or to make the costs of protection exceed its benefits. Mutual advantage yields libertarianism, therefore, because everyone has both the interest and the ability to insist on self-ownership, but those who have an interest in redistribution do not have the ability to insist on it (Harman 1985: 321–2; cf. Barry 1986: ch. 5).

Does mutual advantage justify granting each person rights of self-ownership? Since people lack inherent moral status, whether one has the unfettered right of contract over one's talents and holdings depends on whether one has the power to defend one's talents and holdings against coercion by others. Mutual advantage libertarians claim that everyone does, in fact, have this power. They claim that humans are by nature equal, not in Rawls's sense of sharing a fundamental equality of natural right—rather, equality of rights 'is derivative from a fundamental *factual* equality of condition, in fact an equal vulnerability to the invasions of others' (Lessnoff 1986: 107). People are, by nature, more or less equal in their ability to harm others and their vulnerability to being harmed—and this factual equality grounds equal respect for self-ownership.

But this is unrealistic. Many people lack the power to defend themselves, and so cannot claim the right of self-ownership on mutual advantage grounds. As James Buchanan says, 'if personal differences are sufficiently great', then the strong may have the capacity to 'eliminate' the weak, or perhaps to seize any goods produced by the weak, and thereby set up 'something similar to the slave contract' (Buchanan 1975: 59–60). These are not abstract possibilities—personal differences are that great. It is an inescapable consequence of mutual advantage theories that the congenitally infirm 'fall beyond the pale' of justice (Gauthier 1986: 268), as do young children since 'there is little the child can do to retaliate against those jeopardizing its well-being' (Lomasky 1987: 161; Grice 1967: 147–8).

It is doubtful that many mutual advantage theorists really believe in this assumption of a natural equality in bargaining power. Their claim in the end is not that people are in fact equals by nature, but rather that justice is only possible in so far as this is so. By nature,

everyone is entitled to use whatever means are available to them, and the only way moral constraints will arise is if people are more or less equal in their powers and vulnerabilities. For only then does each person gain more from the protection of their own person and property than they lose by refraining from using other people's bodies or resources. Natural equality is not sufficient, however, for people of similar physical capacities may find themselves with radically unequal technological capacities, and 'those with a more advanced technology are frequently in a position to dictate the terms of interaction to their fellows' (Gauthier 1986: 231; Hampton 1986: 255). Indeed, technology may get us to the point where, as Hobbes put it, there is a 'power irresistible' on earth, and for Hobbes and his contemporary followers, such power 'justifieth all actions really and properly, in whomsoever it is found'. No one could claim rights of self-ownership against such power.⁶

Mutual advantage, therefore, subordinates individual self-ownership to the power of others. This is why Nozick made self-ownership a matter of our natural rights. Coercing others is wrong for Nozick, not because it is too costly for the coercer, but because people are ends in themselves, and coercion violates people's inherent moral status by treating them as a means. Nozick's defence of libertarianism, therefore, relies precisely on the premiss that Gauthier denies—namely, that people have inherent moral status. But neither approach actually yields libertarianism. Nozick's approach explains why everyone has equal rights, regardless of their bargaining power, but cannot explain why people's rights do not include some claim on social resources. Gauthier's approach explains why the vulnerable and weak do not have a claim on resources, but cannot explain why they have an equal claim to self-ownership, despite their unequal bargaining power. Treating people as ends in themselves requires more than (or other than) respecting their self-ownership (*contra* Nozick); treating people according to mutual advantage often requires less than respect for self-ownership (*contra* Gauthier).

Let us assume, however, that mutual advantage does lead to libertarianism. Perhaps Lomasky is right that it costs too much to determine who one can enslave and who one must treat as an equal, so that the strong would agree to conventions that accord self-ownership to even the weakest person (Lomasky 1987: 76–7). How would this constitute a defence of libertarianism? On our

everyday view, mutually advantageous activities are only legitimate if they respect the rights of others (including the rights of those too weak to defend their interests). It may not be advantageous for the strong to refrain from killing or enslaving the weak, but the weak have prior claims of justice against the strong. To deny this is 'a hollow mockery of the idea of justice—adding insult to injury. Justice is normally thought of not as ceasing to be relevant in conditions of extreme inequality in power but, rather, as being especially relevant in such conditions' (Barry 1989: 163). Exploiting the defenceless is, on our everyday view, the worst injustice, whereas mutual advantage theorists say we have no obligations at all to the defenceless.

This appeal to everyday morality begs the question, since the whole point of the mutual advantage approach is that there are no natural duties to others—it challenges those who believe there is 'a real moral difference between right and wrong which all men [have] a duty to respect' (Gough 1957: 118). To say that Gauthier ignores our duty to protect the vulnerable is not to give an argument against his theory, for the existence of such duties is the very issue in question. But, precisely because it abandons the idea that people have inherent moral status, the mutual advantage approach is not an alternative account of justice, but rather an alternative to justice. While mutual advantage may generate just outcomes under conditions of natural and technological equality, it licenses exploitation wherever 'personal differences are sufficiently great', and there are no grounds within the theory to prefer justice to exploitation. If people act justly, it is not because they see justice as a value, but only because they lack 'power irresistible' and so must settle for justice. From the point of view of everyday morality, therefore, mutual advantage contractarianism may provide a useful analysis of rational self-interest or of *realpolitik*, 'but why we should regard it as a method of moral justification remains utterly mysterious' (Sumner 1987: 158; cf. Barry 1989: 284). As Rawls says, 'to each according to his threat advantage' simply does not count as a conception of justice (Rawls 1971: 134).

None of this will perturb the mutual advantage theorist. If one rejects the idea that people or actions have inherent moral status, then moral constraints must be artificial, not natural, resting on mutually advantageous conventions. And if mutually advantageous conventions conflict with everyday morality, then 'so much the

worse for morality' (Morris 1988: 120). Mutual advantage may be the best we can hope for in a world without natural duties or objective moral values.

The mutual advantage approach will be attractive to those who share its scepticism about moral claims. Most political philosophy in the Western tradition, however, shares the opposite view that there are obligation-generating rights and wrongs which all persons have a duty to respect. And, in my view, this is a legitimate assumption. It is true that our claims about natural duties are not observable or testable, but different kinds of objectivity apply to different areas of knowledge, and there is no reason to expect or desire that moral duties have the same kind of objectivity as the physical sciences. As Nagel says, 'if any values are objective, they are objective *values*, not objective anything else' (Nagel 1980: 98).⁷

This is a difficult question, and some people will remain sceptical about the existence of moral duties. If so, then mutual advantage may be all we have with which to construct social rules. But none of this helps the libertarian, for mutually advantageous conventions may often be non-libertarian. Some people will have the ability to coerce others, violating their self-ownership, and some people will have the ability to take others' property, violating their property-ownership. Mutual advantage, therefore, provides only a very limited defence of property-rights, and what little defence it does provide is not a recognizably moral defence. Most libertarians would prefer to defend their commitment to property-rights in the language of justice, not power. Nozick's appeal to equality did not work, but we have yet to examine the appeal to freedom.

4. LIBERTARIANISM AS LIBERTY

Some people argue that libertarianism is not a theory of equality or mutual advantage. Rather, as the name suggests, it is a theory of liberty. On this view, equality and liberty are rivals for our moral allegiance, and what defines libertarianism is precisely its avowal of liberty as a foundational moral premiss, and its refusal to compromise liberty with equality (unlike the welfare-state liberal).

This is not a plausible interpretation of Nozick's theory. Nozick does say that we are free, morally speaking, to use our powers as we wish. But this self-ownership is not derived from any principle of

liberty. He does not say that freedom comes first, and that, in order to be free, we need self-ownership. He gives us no purchase on the idea of freedom as something prior to self-ownership from which we might derive self-ownership. His view, rather, is that the scope and nature of the freedom we ought to enjoy are a function of our self-ownership.

Other libertarians, however, say that libertarianism is based on a principle of liberty. What does it mean for a theory to be based on a principle of liberty, and how does such a principle serve to defend capitalism? One obvious answer is this:

1. an unrestricted market involves more freedom;
2. freedom is the fundamental value;
3. therefore, the free market is morally required.

But this view, while very common, is a serious confusion. I will argue that both (1) and (2), as standardly presented, are misleading, and that any attempt to defend capitalism by appeal to a principle of liberty will encounter similar problems.

(a) *The value of liberty*

(i) *The role of liberty in egalitarian theories*

Let us start with premiss (2), concerning the value of liberty. Before examining the claim that liberty is a fundamental value, it is important to clarify the role of liberty in the theories we have examined so far. I have argued that utilitarianism, liberalism, and Nozick's libertarianism are all egalitarian theories. While liberty is not a fundamental value in these theories, that does not mean that they are unconcerned with liberty. On the contrary, the protection of certain liberties was of great importance in each theory. This is obvious in the case of Nozick, who emphasizes the formal liberties of self-ownership, and Rawls, who assigns lexical priority to the basic civil and political liberties. But it is also true of most utilitarians, like Mill, who felt that utility was maximized by according people the freedom to choose their own way of life.

In deciding which liberties should be protected, egalitarian theorists situate these liberties within an account of equal concern for people's interests. They ask whether a particular liberty promotes people's interests, and state that, if so, then it should be promoted because people's interests should be promoted. For

example, if each person has an important interest in the freedom to choose their marital partner, then denying someone that liberty denies her the respect and concern she is entitled to, denies her equal standing as a human being whose well-being is a matter of equal concern. Defending a particular liberty, therefore, involves answering the following two questions:

- (a) which liberties are important, which liberties matter, given our account of people's interests?
- (b) what distribution of important liberties gives equal consideration to each person's interests?

In other words, egalitarian theorists ask how a particular liberty fits into a theory of people's interests, and then ask how a distribution of that liberty fits into a theory of equal concern for people's interests. In Rawls's case, for example, we ask what scheme of liberties would be chosen from a contracting position that represents impartial concern for people's interests. In this way, particular liberties can come to play an important role in egalitarian theories. I will call this the 'Rawlsian approach' to assessing liberties.

Mutual advantage theories assess liberty in a similar way. Like Rawls, they ask which particular liberties promote people's interests, and then ask what distribution of these liberties follows from a proper weighing of people's interests. The only difference is that in mutual advantage theories people's interests are weighed according to their bargaining power, not according to impartial concern. In Gauthier's case, for example, we ask what scheme of liberties would be agreed to by contractors negotiating for mutual advantage on the basis of their interests.

As we have seen, many libertarians defend their preferred liberties (e.g. the freedom to exercise one's talents in the market) in one of these two ways. Indeed, some of the libertarians who say that their theory is 'liberty-based' also defend their preferred liberties in terms of consideration for people's interests, weighed according to the criteria of equality or mutual advantage. They call that a liberty-based argument, to emphasize their belief that our essential interest is an interest in certain kinds of liberty, but this new label does not affect the underlying argument. And, regardless of the label, assessing liberties in terms of either equality or mutual advantage will not yield libertarianism, for reasons I have discussed.

Can the defence of libertarianism be liberty-based in a way that is genuinely different from a defence based on equality or mutual advantage? What would it mean for libertarians to defend their preferred freedoms by appealing to a principle of liberty? There are two possibilities. One principle of liberty is that freedom should be maximized in society. Libertarians who appeal to this principle defend their preferred liberties by claiming that the recognition of these particular liberties maximizes freedom in society. The second principle of liberty is that people have a right to the most extensive liberty compatible with a like liberty for all. Libertarians who appeal to this principle defend their preferred liberties by claiming that recognizing these particular liberties increases each person's overall freedom. I will argue that the first principle is absurd, and has no attraction to anyone, including libertarians; and the second principle is either a confused way of restating the egalitarian argument, or it rests on an indeterminate and unattractive conception of freedom. Moreover, even if we accept the absurd or unattractive interpretations of the principle of liberty, they still will not defend libertarianism.

(ii) Teleological liberty

The first principle of liberty says that we should aim to maximize the amount of freedom in society. If freedom is the ultimate value, why not aim to have as much of it as possible? This, of course, is the way teleological utilitarians argue for the maximization of utility, so I will call this the 'teleological' liberty principle. But, as we saw in chapter 2, this sort of theory loses touch with our most basic understanding of morality. Because teleological theories take concern for the good (e.g. freedom or utility) as fundamental, and concern for people as derivative, promoting the good becomes detached from promoting people's interests. For example, we could increase the amount of freedom in society by increasing the number of people, even if each person's freedom is unchanged. Yet no one thinks that a more populous country is, for that reason alone, more free in any morally relevant sense.

Indeed, it may be possible to promote the good by sacrificing people. For example, a teleological principle could require that we coerce people to bear and raise children and thereby increase the population. This deprives existing people of a freedom, but the

result would increase the overall amount of freedom, since the many freedoms of the new population outweigh the loss of one freedom amongst the earlier population. The principle could also justify unequally distributing liberties. If five people enslave me, there is no reason to assume that the loss of my freedom outweighs the increased freedom of the five slave-owners. They may gain more options or choices collectively from the freedom to dispose of my labour than I lose (assuming that it is possible to measure such things—see s. 4a(iii) below). No libertarian supports such policies, for they violate fundamental rights.

Whatever libertarians mean by saying their theory is liberty-based, it cannot be this. On a teleological liberty principle, the goal is not to respect people, for whom certain liberties are needed or wanted, but to respect liberty, for which certain people may or may not be useful contributors. Libertarianism, however, respects people first, and respects liberty as one component of respect for people.

So libertarians do not favour maximizing freedom in society. Yet it is a natural interpretation of the claim that freedom is the fundamental value, and it is encouraged by the libertarian's rhetorical rejection of equality. Libertarians believe in equal rights of self-ownership, but many of them do not want to defend this by appeal to any principle of equality. They try to find a liberty-based reason for equally distributing liberties. Thus some libertarians say that they favour equal liberties because they believe in freedom, and since each individual can be free, each individual should be free.⁸ But if this really were the explanation of the libertarian commitment to equal liberty, then they should increase the population, since future people too can be free. Libertarian attempts to defend equal liberty by appeal to liberty, rather than equality, pull them in the direction of a teleological principle of liberty, for it is the one principle of liberty that makes no appeal to equality. But this misdescribes their real commitments. Libertarians reject increasing the overall amount of freedom through increasing the population, and they reject it for the same reason they reject increasing the overall amount of freedom by unequally distributing liberties—namely, their theory is equality-based. As Peter Jones puts it, 'to prefer equal liberty to unequal liberty is to prefer equality to inequality, rather than freedom to unfreedom' (Jones 1982: 233). So long as libertarians are committed to equal liberty for each

person, they are adopting an equality-based theory. Their attempt to deny this by putting everything in terms of liberty not only confuses the issue, but threatens to undermine their own commitment to self-ownership.

(iii) *Neutral liberty*

The second, and more promising, candidate for a foundational principle of liberty says that each person is entitled to the most extensive liberty compatible with a like liberty for all. I will call this the 'greatest equal liberty' principle. This principle works within the general framework of an egalitarian theory, since now equal liberty cannot be sacrificed for a greater overall liberty, but it is importantly different from the Rawlsian approach (s. 4a(i) above). The Rawlsian approach assessed particular liberties by asking how they promote our interests. The greatest equal liberty approach assesses particular liberties by asking how much freedom they give us, on the assumption that we have an interest in freedom as such, in maximizing our overall freedom. Both approaches connect the value of particular liberties to an account of our interests. But the Rawlsian approach did not say that we have an interest in freedom as such, or that our interest in any particular liberty corresponds to how much freedom it contains, or that it even makes sense to compare the amount of freedom contained in different liberties. Different liberties promote different interests for many different reasons, and there is no reason to assume that the liberties which are most valuable to us are the ones with the most freedom. The greatest equal liberty approach, however, says that the value of any particular liberty just is how much freedom it contains, for our interest in particular liberties stems from our interest in freedom as such. Unlike the Rawlsian approach, judgements of the value of different liberties require, and are derived from, judgements of greater or lesser freedom.

If libertarianism appeals to this greatest equal liberty principle, then it is not a 'liberty-based' theory in the strict sense, for (unlike a teleological liberty-based theory) rights to liberty are derived from the claims of people to equal consideration. But it is liberty-based in a looser sense, for (unlike the Rawlsian approach to liberty) it derives judgements of the value of particular liberties from judgements of greater or lesser freedom. Can the libertarian defend

his preferred liberties by appeal to the greatest equal liberty principle? Before we can answer that question, we need some way of measuring freedom, so that we can determine whether the free market, for example, maximizes each individual's freedom.

In order to measure freedom, we need to define it. There are many definitions of freedom in the literature, but they can be grouped, for the moment, into two camps (further subdivisions will be considered later). The 'Lockean' camp defines freedom in terms of the exercise of our rights. Whether or not a restriction decreases our freedom depends on whether or not we had a right to do the restricted thing. For example, Lockeans say that preventing someone from stealing is not a restriction on their liberty, since they had no right to steal. This is a 'moralized' definition of liberty, since it presupposes a prior theory of rights. The 'Spencerian' camp, on the other hand, defines liberty in a non-moralized way—as the presence of options or choices, for example—without assuming that we have a right to exercise those options. Spencerians then assign rights so as to maximize each individual's freedom, compatible with a like freedom for all. Hence whether people have a right to appropriate previously unowned natural resources depends on whether that right increases or decreases each person's freedom (cf. Sterba 1988: 11–15).

If the greatest equal liberty principle is to be foundational, then the Lockean definition is excluded. If we are trying to derive rights from judgements of greater or lesser liberty, our definition of liberty cannot presuppose some principle of rights. Libertarians who appeal to the greatest equal liberty principle believe that whether we have a right to appropriate unowned resources, for example, depends on whether that right increases each person's freedom. But on a Lockean definition of freedom, we first need to know whether people have a right to appropriate unowned resources in order to know whether a restriction on appropriation is a restriction on their freedom. So the libertarian defence of capitalism, if it is to be liberty-based, must use a Spencerian definition of freedom. (The Spencerian definition is preferable anyway, for the Lockean definition is at odds with our everyday usage of 'freedom'. In everyday conversation, we say that a prisoner is deprived of her freedom, even if her incarceration is legitimate.)

Within the Spencerian camp, there are two main proposals for a non-moralized definition of liberty. One is a 'neutral' definition, the

other 'purposive'. Each definition purports to provide a criterion for determining whether a particular liberty increases someone's overall freedom, as is required by the principle of greatest equal liberty. I will argue that using the first definition is unattractive, and yields indeterminate results, while the second is simply a confused way of restating the Rawlsian approach to assessing liberties.

On the 'neutral' view, we are free in so far as no one prevents us from acting on our desires. This is a non-moralized definition since it does not presuppose that we have a right to act on these desires. Using this definition we may be able to make comparative judgements about the quantity of one's freedom. One can be more or less free, on this definition, since one can be free to act on some but not other desires. If we can make such quantitative judgements about the amount of freedom provided by different rights, then we can determine which rights are most valuable. If the principle of greatest equal liberty employs this definition of freedom, then each person is entitled to the greatest amount of neutral freedom compatible with a like freedom for all.

But does this in fact provide a standard for assessing the value of different liberties? There are two main problems. Firstly, our intuitive judgements about the value of different liberties are not in fact based on quantitative judgements of neutral freedom. Hence such judgements lead to counter-intuitive results. Secondly, the required quantitative judgements of neutral freedom may be impossible to make.

Do quantitative judgements of neutral freedom underlie our everyday assessment of the value of different liberties? Compare the inhabitants of London with citizens of an underdeveloped Communist country like Albania. We normally think of the average Londoner as better off in terms of freedom. After all, she has the right to vote, and practise her religion, as well as other civil and democratic liberties. The Albanian lacks these. On the other hand, Albania does not have many traffic lights, and those people who own cars face few if any legal restrictions on where or how they drive. The fact that Albania has fewer traffic restrictions does not change our sense that Albanians are worse off, in terms of freedom. But can we explain that fact by appealing to a quantitative judgement of neutral freedom?

If freedom can be neutrally quantified, so that we can measure the number of times each day that traffic lights legally prevent

Londoners from acting in a certain way, there is no reason to say that these will outnumber the times that Albanians are legally prevented from practising religion in public. As Charles Taylor (from whom I have taken the example) puts it, 'only a minority of Londoners practise some religion in public places, but all have to negotiate their way through traffic. Those who do practise a religion generally do so on one day of the week, while they are held up at traffic lights every day. In sheer quantitative terms, the number of acts restricted by traffic lights must be greater than that restricted by a ban on public religious practice' (Taylor 1985: 219).

Why do we not accept Taylor's 'diabolical defence' of Albanian freedom—why do we think that the Londoner is better off in terms of freedom? Because restrictions on civil and political liberty are more important than restrictions on traffic mobility. They are more important, not because they involve *more freedom*, neutrally defined, but because they involve *more important freedoms*. They are more important because, for example, they allow us to have greater control over the central projects in our lives, and so give us a greater degree of self-determination, in a way that traffic freedoms do not, whether or not they involve a smaller quantity of neutral freedom.

The neutral view of liberty says that each neutral freedom is as important as any other. But when we think about the value of different liberties in relation to people's interests, we see that some liberties are more important than others, and indeed some liberties are without any real value—e.g. the freedom to libel others (Hart 1975: 245). Our theory must be able to explain the distinctions we make amongst different kinds of liberty.

The problems for neutral freedom go still deeper. The required judgements of greater or lesser freedom may be impossible to make, for there is no scale on which to measure quantities of neutral freedom. I said earlier that if we could count the number of free acts restricted by traffic laws and political censorship, traffic laws would probably restrict more free acts. But the idea of a 'free act' is an elusive one. How many free acts are involved in the simple waving of a hand? If a country outlaws such waving, how many acts has it forbidden? How do we compare that to a restriction on religious ceremonies? In each case, we could, with equally much or little justification, say that the laws have outlawed one act (waving a hand, celebrating religious belief), or that they have outlawed an

infinite number of acts, which could have been performed an infinite number of times. But the principle of greatest equal liberty requires the ability to discriminate between these two cases. We need to be able to say, for example, that denying religious ceremonies takes away five units of free acts, whereas denying waving of one's hand takes away three. But how we could go about making such judgements is quite mysterious. As O'Neill puts it, 'We can, if we want to, take any liberty—e.g. the liberty to seek public office or the liberty to form a family—and divide it up into however many component liberties we find useful to distinguish—or for that matter into more than we find it useful to distinguish' (O'Neill 1980: 50). There is no non-arbitrary way of dividing up the world into actions and possible actions which would allow us to say that more neutral freedom is involved in denying free traffic movement than in denying free speech. (The one exception involves comparing two essentially identical sets of rights, where the second set contains all the neutral freedoms in the first set, plus at least one more free act—see Arneson 1985: 442–5.)

Traffic laws and political oppression both restrict free acts. But any attempt to weigh the two on a single scale of neutral freedom, based on some individuation and measurement of free acts, is implausible. There may be such a scale, but those libertarians who endorse a neutral version of the greatest equal liberty principle have not made many strenuous attempts to develop such a scale (for one attempt, see Steiner 1983). It is interesting that people who say that quantitative judgements of neutral freedom are not only possible but fundamental have not actually tried to show how one can measure the amount of neutral freedom in religious liberties as opposed to traffic liberties.

How then do libertarians who endorse the neutral version of the greatest equal liberty principle reach any determinate conclusions? As I will show in section 4*b* below, they often defend their preferred liberties by simply ignoring the loss of neutral freedom involved in libertarian policies, or by invoking *ad hoc* criteria for preferring one set of liberties to another.

(iv) *Purposive liberty*

Our most valued liberties (the ones that make us attracted to a principle of greatest equal liberty) do not seem to involve the

greatest neutral freedom. The obvious move, for advocates of the greatest equal liberty principle, is to adopt a 'purposive' definition of liberty. On such a definition, the amount of freedom contained in a particular liberty depends on how important that liberty is to us, given our interests and purposes. As Taylor puts it, 'Freedom is important to us because we are purposive beings. But then there must be distinctions in the significance of different kinds of freedom based on the distinction in the significance of different purposes' (Taylor 1985: 219). For example, religious liberty gives us more freedom than traffic liberty because it serves more important interests, even if it does not contain quantitatively more neutral freedom.

A purposive definition of freedom requires some standard for assessing the importance of a liberty, in order to measure the amount of freedom it contains. There are two basic standards—a 'subjective' standard says the value of a particular liberty depends on how much an individual desires it; an 'objective' standard says that certain liberties are important whether or not a particular person desires them. The latter is often thought to be preferable because it avoids the potential problem of the 'contented slave' who does not desire legal rights, and hence, on a subjective standard, does not lack any important freedoms.

On either view, we assess someone's freedom by determining how valuable (subjectively or objectively) her specific liberties are. Those liberties that are more highly valued contain, for that reason, more purposive freedom. On the purposive version of the greatest equal liberty principle, therefore, each person is entitled to the greatest possible amount of purposive liberty compatible with a like liberty for all. Like the Rawlsian approach to assessing liberties, this allows for qualitative judgements of the value of particular liberties, but it differs from the Rawlsian approach in supposing that these liberties must be assessed in terms of a single scale of freedom.

This is more attractive than the neutral version, for it corresponds with our everyday view that some neutral freedoms are more valuable than others. The problem, however, is that the whole language of greater and lesser freedom is no longer doing any work in the argument. The purposive version of the greatest equal liberty principle is in fact just a confused way of restating the Rawlsian approach. It seems to differ in saying that the reason we are entitled

to important liberties is that we are entitled to the greatest amount of equal liberty, a step that is absent in the Rawlsian approach. But that step does no work in the argument, and indeed simply confuses the real issues.

The principle of greatest equal liberty provides the following argument for protecting a particular liberty:

1. Each person's interests matter and matter equally.
2. People have an interest in the greatest amount of freedom.
3. Therefore, people should have the greatest amount of freedom, consistent with the equal freedom of others.
4. The liberty to x is important, given our interests.
5. Therefore, the liberty to x increases our freedom.
6. Therefore, each person ought (*ceteris paribus*) to have the right to x , consistent with everyone else's right to x .

Contrast that with the Rawlsian argument:

1. Each person's interests matter and matter equally.
4. The liberty to x is important, given our interests.
6. Therefore, each person ought (*ceteris paribus*) to have the right to x , consistent with everyone else's right to x .

The first argument is a needlessly complex way of stating the second argument. The step from (4) to (5) adds nothing (and, as a result, steps (2) and (3) also add nothing). Libertarians, on this view, say that because a particular liberty is important, therefore it increases our freedom, and we should have as much freedom as possible. But, in fact, the argument for the liberty is completed with the assessment of its importance.

Consider Loevinsohn's theory of measuring freedom, which uses a subjective standard for measuring purposive freedom. He says that 'when force or the threat of penalties is used to prevent someone from pursuing some possible course of action, the degree to which his liberty is thereby curtailed depends . . . on how important the course of action in question is to him' (Loevinsohn 1977: 232; cf. Arneson 1985: 428). Hence the more I desire a liberty, the more freedom it provides me. If I desire religious liberty more than traffic liberty, because it promotes important spiritual interests, then it gives me more freedom than traffic liberty. But Loevinsohn does not explain what is gained by shifting from the language of 'a more desired liberty' to 'more freedom'. This redescription (the move from (4) to (5) in the above argument) adds

nothing, and so the principle of greatest equal liberty ((2) and (3) above) is doing no work. I do not mean that it is impossible to redescribe more desired liberties as more extensive freedom—we can use words however we like. But the fact that we can redescribe them in this way does not mean that we have said anything of moral significance, or that we have found a distinctly liberty-based way of assessing the value of particular liberties.

The greatest equal liberty premiss is not only unnecessary, it is confusing, for a number of reasons. For one thing, it falsely suggests that we have just one interest in liberty. Saying that we evaluate different liberties in terms of how much purposive freedom they provide suggests that these different liberties are important to us for the same reason, that they all promote the same interest. But in fact different liberties promote different interests in different ways. Religious liberties are important for self-determination—i.e. for acting on my deepest values and beliefs. Democratic liberties serve a more symbolic interest—denying me the vote is an assault on my dignity, but may have no effect on my ability to pursue my goals. Some economic liberties have a purely instrumental value—I may desire free trade between countries because it reduces the price of consumer goods, but I would support restrictions on international trade if doing so lowered prices. I do not desire these different liberties for the same reason, and the strength of my desire is not based on the extent to which they promote a single interest.⁹ Again, it is possible to redescribe these different interests as an interest in a more extensive purposive freedom. One can say that desiring a particular liberty (for whatever reason) just is desiring to have more extensive freedom. But it is needlessly confusing.

Moreover, talking about our interest in more extensive freedom, as opposed to our different interests in different liberties, obscures the relationship between freedom and other values. Whatever interest we have in a particular liberty—be it intrinsic or instrumental, symbolic or substantive—it is likely that we have the same interest in other things. For example, if the freedom to vote is important for its effect on our dignity, then anything else that promotes our dignity is also important (e.g. meeting basic needs, or preventing libel), and it is important for the very same reason. The defender of purposive freedom says that our concern is with important liberties, not just any old neutral liberty. But if we look at what makes liberties important to us, then freedom no longer

systematically competes with other values like dignity, or material security, or autonomy, for these often are the very values which make particular liberties important. Describing more important liberties as more extensive freedom, however, invites this false contrast, for it pretends that the importance of particular liberties stems from the amount of freedom they contain.

So neither version of the greatest equal liberty principle offers a viable alternative to the Rawlsian approach to assessing liberties. It is worth noting that Rawls himself once endorsed a right to the most extensive equal liberty, and it was only in the final version of his theory that he adopted what I have called the Rawlsian approach. He now defends a principle of equal rights to 'basic liberties', while disavowing any claims about the possibility, or significance, of measurements of overall freedom (Rawls 1982a: 5–6; Hart 1975: 233–9). He recognized that in determining which are the basic liberties, we do not ask which liberties maximize our possession of a single commodity called 'freedom'. Of course, the claim that people are maximally free is often 'merely elliptical for the claim that they are free in every important respect, or in most important respects' (MacCallum 1967: 329). But as Rawls recognized, once we say this, then the principle of greatest equal liberty does no work. For the reason it is important to be free in a particular respect is not the amount of freedom it provides, but the importance of the various interests it serves. As Dworkin puts it,

If we have a right to basic liberties not because they are cases in which the commodity of liberty is somehow especially at stake, but because an assault on basic liberties injures us or demeans us in some way that goes beyond its impact on liberty, then what we have a right to is not liberty at all, but to the values or interests or standing that this particular constraint defeats. (Dworkin 1977: 271)

In making liberty-claims, therefore, we are entitled, not to the greatest equal amount of this single commodity of freedom, but to equal consideration for the interests that make particular liberties important.

(b) *Freedom and capitalism*

Many libertarians defend property-rights on the basis of a principle of liberty. I have considered three possible definitions of liberty that

could be used in this defence. Lockean definitions will not work, because they presuppose a theory of rights. The neutral definition will not work, because quantitative measurements of neutral freedom lead to indeterminate or implausible results. And the purposive definition simply obscures the real basis of our assessment of the value of liberties. If those claims are correct, we are left with a puzzle. Why have so many people thought a principle of liberty helps defend capitalism? I will try to show that standard libertarian arguments rely on inconsistent definitions of freedom.

Libertarians often equate capitalism with the absence of restrictions on freedom. Anthony Flew, for example, defines libertarianism as 'opposed to any social and legal constraints on individual freedom' (Flew 1979: 188; cf. Rothbard 1982: v). He contrasts this with liberal egalitarians and socialists who favour government restrictions on the free market. Flew thus identifies capitalism with the absence of restrictions on freedom. Many of those who favour constraining the market agree that they are thereby restricting liberty. Their endorsement of welfare-state capitalism is said to be a compromise between freedom and equality, where freedom is understood as the free market, and equality as welfare-state restrictions on the market. This equation of capitalism and freedom is part of the everyday picture of the political landscape.

Does the free market involve more freedom? It depends on how we define freedom. Flew seems to be assuming a neutral definition of freedom. By eliminating welfare-state redistribution, the free market eliminates some legal constraints on the disposal of one's resources, and thereby creates some neutral freedoms. For example, if government funds a welfare programme by an 80-per-cent tax on inheritance and capital gains, then it prevents people from giving their property to others. Flew does not tell us how much neutral freedom would be gained by removing this tax, but it clearly would allow someone to act in a way they otherwise could not. This expansion of neutral freedom is the most obvious sense in which capitalism increases freedom, but many of these neutral freedoms will also be valuable purposive freedoms, for there are important reasons why people might give their property to others. So capitalism does provide certain neutral and purposive freedoms unavailable under the welfare state.

But we need to be more specific about this increased liberty. Every claim about freedom, to be meaningful, must have a triadic

structure—it must be of the form 'x is free from y to do z', where x specifies the agent, y specifies the preventing conditions, and z specifies the action. Every freedom claim must have these three elements: it must specify who is free to do what from what obstacle (MacCallum 1967: 314). Flew has told us the last two elements—his claim concerns the freedom to dispose of property without legal constraint. But he has not told us the first—i.e. who has this freedom? As soon as we ask that question, Flew's equation of capitalism with freedom is undermined. For it is the owners of the resource who are made free to dispose of it, while non-owners are deprived of that freedom. Suppose that a large estate you would have inherited (in the absence of an inheritance tax) now becomes a public park, or a low-income housing project (as a result of the tax). The inheritance tax does not *eliminate* the freedom to use the property, rather it *redistributes* that freedom. If you inherit the estate, then you are free to dispose of it as you see fit, but if I use your backyard for my picnic or garden without your permission, then I am breaking the law, and the government will intervene and coercively deprive me of the freedom to continue. On the other hand, my freedom to use and enjoy the property is increased when the welfare state taxes your inheritance to provide me with affordable housing, or a public park. So the free market legally restrains my freedom, while the welfare state increases it. Again, this is most obvious on a neutral definition of freedom, but many of the neutral freedoms I gain from the inheritance tax are also important purposive ones.

That property-rights increase some people's freedom by restricting others' is obvious when we think of the origin of private property. When Amy unilaterally appropriated land that had previously been held in common, Ben was legally deprived of his freedom to use the land. Since private ownership by one person presupposes non-ownership by others, the 'free market' restricts as well as creates liberties, just as welfare-state redistribution both creates and restricts liberties. Hence, as Cohen puts it, 'the sentence "free enterprise constitutes economic liberty" is demonstrably false' (Cohen 1979: 12; cf. Gibbard 1985: 25; Goodin 1988: 312–13).

This undermines an important claim Nozick makes about the superiority of his theory of justice to liberal redistributive theories. He says that Rawls's theory cannot be 'continuously realized without continuous interference with people's lives' (Nozick 1974: 163).

This is because people, left to their own devices, will engage in free exchanges that violate the difference principle, so that preserving the difference principle requires continually intervening in people's exchanges. Nozick claims that his theory avoids continuous interference in people's lives, for it does not require that people's free exchanges conform to a particular pattern, and hence does not require intervening in those exchanges.¹⁰ Unfortunately, the system of exchanges which Nozick protects itself requires continuous interference in people's lives. Left to their own devices, people would freely use the resources around them, and it is only continuous state intervention that prevents them from violating Nozick's principles of justice.

Since property-rights constitute legal restrictions on individual freedom, and since libertarians (according to Flew's definition) claim to be against any such restrictions, one might expect them to demand the abolition of property-rights. But they do not. One might expect them to claim that allowing property-rights creates a larger quantity of freedom than is lost. And indeed some libertarians do make that claim. But it is unclear how we can assess that claim, and even if we could draw up a scale on which property-owners gain more freedom from their rights than the propertyless lose from the resulting restrictions, this maximizing overall liberty claim would not defend libertarianism. It leads to a teleological liberty-based theory that subordinates individual self-ownership to the sum of overall liberty. What libertarians need is the claim that unrestricted property-rights pass the greatest equal liberty test. But then the supposed fact that property-owners gain more liberty than the propertyless lose not only fails to defend libertarianism, it refutes it. What then is the connection between the free market and freedom? Flew's definition implies that the free market does not create any unfreedom, and hence there is no need to weigh the gains against the losses.

How can the free market be seen as an unmitigated increase in freedom? On a non-moralized definition of freedom, private property inherently creates both freedom and non-freedom. If libertarians deny that the free market creates any unfreedom, they must be using a 'Lockean' moralized definition of liberty, one which defines freedom in terms of the exercise of one's rights. My freedom is lessened only when someone prevents me from doing something I have a right to do. If someone has a right to private

property, then protecting her property against trespass does not diminish my freedom in any way. Since I had no right to trespass on her property, my freedom is not diminished by the enforcement of property-rights. But once libertarians adopt this moralized definition, the claim that free market increases people's freedom requires a prior argument for the existence of property-rights, an argument which cannot be liberty-based.

To defend the claim that the free market increases freedom, morally defined, libertarians must show that people have a right to property. If people have that right, then respecting the free market increases freedom, and preventing others from using one's property would not count as diminishing their freedom (since no one has a right to trespass). Hence the free market increases freedom, morally defined. But this is not an argument from liberty to property-rights. On the contrary, the liberty claim presupposes the existence of property-rights—property-rights only increase freedom if we have some prior and independent reason to view such rights as morally legitimate.

The claim that the free market increases freedom, therefore, relies on inconsistent definitions of freedom. Libertarians take it as obvious that intervention in private property diminishes freedom. That is true on a Spencerian definition of liberty, and indeed it is the loss of freedom in the non-moralized sense that they point to in defending the claim that capitalism increases freedom. But on a Spencerian definition, it is equally obvious that enforcing property-rights diminishes freedom. To show that the free market increases freedom, the libertarian would have to provide measurements showing that the liberties gained from ownership outweigh the restrictions on liberty created by non-ownership. (This would have to be true for each individual on the greatest equal liberty principle, whereas the teleological principle only requires this to be true for society overall.) But libertarians do not make those measurements. Instead, they argue that property-rights do not create any unfreedom at all, measured by a moralized Lockean definition. This undermines the force of the objection that property-rights diminish freedom, since that objection relied on a non-moralized definition of liberty. However, it also undermines the force of the initial argument libertarians gave to show that property-rights increase freedom, for that too relied on a non-moralized definition. On a moralized definition, it is no longer obvious that unrestricted

property rights increase freedom, because it is not obvious that anyone should have unrestricted rights over their property. Indeed, as we have seen, that is a counter-intuitive and implausible claim.

Can any definition of liberty, used consistently, support the claim that libertarianism provides greater equal freedom than a liberal redistributive regime? What if libertarians stick consistently to the neutral definition of liberty, and claim that the free market increases one's overall amount of neutral freedom? Firstly, one must show that the gains in neutral liberty from allowing private property outweigh the losses. Libertarians have not given us any reason to believe that this is true, or that it is possible to carry out the required measurements. Moreover, even if it did increase one's neutral freedom, we would still want to know how important these neutral freedoms are. If our attachment to the free market is only as strong as our attachment to the freedom to libel others, or to run through red lights, then we would not have a very strong defence of capitalism.

What if libertarians adopt the purposive definition, and claim that the free market provides us with the most important liberties? Whether or not unrestricted property-rights promote one's most important purposes depends on whether or not one actually has property. Being free to bequeath property can promote one's most important purposes, but only if one has property to bequeath. So whatever the relationship between property and purposive freedom, the aim of providing the greatest equal freedom suggests an equal distribution of property, not unrestricted capitalism. Nozick denies this, by saying that formal rights of self-ownership are the most important liberties even to those who lack property. But, we have seen, the notion of dignity and agency that Nozick relies on, based on the idea of acting on one's conception of oneself, requires rights over resources as well as one's person. Having independent access to resources is important for our purposes, and hence our purposive freedom, but that argues for liberal equality not libertarianism.

What if libertarians stick to the Lockean definition of liberty, and claim that the free market provides the freedom we have a right to? On a moralized definition, we can only say that respecting a certain liberty increases our freedom if we already know that we have a right to that liberty. And libertarians have given us no plausible argument that we have a right to unrestricted property-ownership. Such a right will not come out of a plausible theory of equality

(because it allows undeserved inequalities to have too much influence), nor will it come out of a plausible theory of mutual advantage (because it allows undeserved inequalities to have too little influence). It is difficult to see how any other argument can avoid these seemingly insurmountable objections. But even if we come up with a plausible conception of equality or mutual advantage which includes capitalist property-rights, it is hopelessly confusing then to say that it is an argument about freedom.

None of the three definitions of liberty supports the view that libertarianism increases freedom. Moreover, the failure of these three approaches suggests that the very idea of a liberty-based theory is confused. Our commitment to certain liberties does not derive from any general right to liberty, but from their role in the best theory of equality (or mutual advantage). The question is which specific liberties are most valuable to people, given their essential interests, and which distribution of those liberties is legitimate, given the demands of equality or mutual advantage? The idea of freedom as such, and lesser or greater amounts of it, does no work in political argument.

Scott Gordon objects to this elimination of 'freedom' as a category of political evaluation, and its replacement with the evaluation of specific freedoms: 'If one is driven . . . to greater and greater degrees of specification, freedom as a philosophical and political problem would disappear, obscured altogether by the innumerable specific "freedoms"' (Gordon 1980: 134). But, of course, this is just the point. There is no philosophical and political problem of freedom as such, only the real problem of assessing specific freedoms. Whenever someone says that we should have more freedom, we must ask who ought to be more free to do what from what obstacle? Contrary to Gordon, it is not the specification of these things, but the failure to specify them, that obscures the real issues.¹¹ Whenever someone tries to defend the free market, or anything else, on the grounds of freedom, we must demand that they specify which people are free to do which sorts of acts—and then ask why those people have a legitimate claim to those liberties—i.e. which interests are promoted by these liberties, and which account of equality or mutual advantage tells us that we ought to attend to those interests in that way. We cannot pre-empt these specific disputes by appealing to any principle or category of freedom as such.

5. THE POLITICS OF LIBERTARIANISM

Libertarianism shares with liberal equality a commitment to the principle of respect for people's choices, but rejects the principle of rectifying unequal circumstances. Taken to the extreme, this is not only intuitively unacceptable, but self-defeating as well, for the failure to rectify disadvantageous circumstances can undermine the very values (e.g. self-determination) that the principle of respect for choices is intended to promote. The libertarian denial that undeserved differences in circumstances give rise to moral claims suggests an almost incomprehensible failure to recognize the profound consequences of such differences.

In practice, however, libertarianism may have a slightly different complexion. Libertarianism gains much of its popularity from a kind of 'slippery-slope' argument which draws attention to the ever-increasing costs of trying to meet the principle of equalizing circumstances. Like Rawls, the libertarian sees the popular conception of equality of opportunity as unstable. If we think social disadvantages should be rectified, then there is no reason not to rectify natural disadvantages. But, libertarians say, while unequal circumstances in principle give rise to legitimate claims, the attempt to implement that principle inevitably leads in practice down a slippery slope to oppressive social intervention, centralized planning, and even human engineering. It leads down the road to serfdom, where the principle of respect for choices gets swallowed up by the requirement to equalize circumstances.

Why might this be? Liberals hope to balance the twin demands of respecting choices and rectifying circumstances. In some cases, this seems unproblematic. The attempt to equalize educational facilities—e.g. to ensure that schools in black neighbourhoods are as good as white schools—does not impinge in an oppressive way on individual choice. Removing well-entrenched inequalities between different social groups requires little intervention in, or even attention to, discrete individual choices. The inequalities are so systematic that no one could suppose that they are traceable to different choices of individuals. But the principle of equalizing circumstances applies to disparities not only between social groups, but also between individuals, and it is less obvious whether those differences are due to choices or circumstances. Consider the problem of effort. In defending the principle of ambition-sensitiv-

ity, I used the example of the gardener and the tennis-player, who legitimately come to have differential income due to differential effort. It was important for the success of that example that the two people are similarly situated—i.e. there are no inequalities in skill or education which could prejudice one person's ability to make the relevant effort. But in the real world there is always some difference in people's background which could be said to be the cause of their different choices.

For example, differences in effort are sometimes related to differences in self-respect, which are in turn often related to environmental factors. Some children have more supportive parents or friends, or simply benefit from the contingencies of social life (e.g. not being sick for a test). These different influences will not be obvious, and any serious attempt to establish their presence will be severely invasive. Rawls says that the 'social bases of self-respect' are perhaps the most important primary good (Rawls 1971: 440), but do we want governments measuring how supportive parents are? The situation is different, of course, when it is public institutions which cause differential self-respect. The US Supreme Court struck down segregated education for blacks, even where the facilities were funded equally, because it was perceived as a badge of inferiority, damaging black children's motivation and self-respect. Conversely, some feminists argue that integrated education of boys and girls has negatively affected girls' self-respect, and that single-sex education with equal facilities would better support self-respect. These attempts to equalize the social bases of self-respect can be implemented without undue restriction on respect for individual choice. But, again, the ability to do so stems from the fact that the differences are so readily identifiable at the group level. The differences between whites and blacks, or boys and girls, are so systematic that we do not have to pry or intervene in the details of any particular individual's background or personality. But the situation is more complex when the differences are at a purely individual level.

Moreover, rather than compensate for the effect of unequal circumstances on effort, why not ensure that there are no differential influences on effort, by bringing up children identically? Liberals regard that as an unacceptable restriction on choice. But the libertarian fears it is a logical culmination of the liberal egalitarian commitment to equalizing circumstances. The liberal

wants to equalize circumstances in order more fully to respect choices, but, once we move to the level of individual differences and subjective dispositions, the former will swallow the latter.

And why not extend the principle of equalizing circumstances to human engineering, or at least to certain kinds of biological transfers? If one person is born blind and another person is born with two good eyes, why not require the transfer of one good eye to the blind man (Nozick 1974: 206; Flew 1989: 159)? Dworkin points out that there is a difference between changing things so that people are treated as equals, and changing people so that they are, as changed, equal. The principle of equalizing circumstances requires the former, for it is part of the more general requirement that we treat people as equals (Dworkin 1983: 39; Williams 1971: 133–4). That is a valid distinction, but it does not avoid all the problems, for on Dworkin's own theory, people's natural talents are part of their circumstances ('things used in pursuing the good'), not part of the person ('beliefs which define what a good life is about'). So why should eye transfers count as changing people, rather than simply changing their circumstances? Dworkin says that some features of our human embodiment can be both part of the person (in the sense of a constitutive part of our identity) and part of a person's circumstances (a resource). Again that seems sensible. But the lines will not be easy to draw. Where does blood fit in? Would we be changing people if we required healthy people to give blood to haemophiliacs? I do not think so. But what then about kidneys? Like blood, the presence of a second kidney is not an important part of our self-identity, but we are reluctant to view such transfers as a legitimate demand of justice.

Again we find a slippery-slope problem. Once we start down the road of equalizing natural endowments, where do we stop? Dworkin recognizes this slippery slope, and says that we might decide to draw an inviolable line around the body, regardless of how little any particular part of it is important to us, in order to ensure that the principle of equalizing circumstances does not violate our person. Libertarians, in practice, simply extend this strategy. If we can draw a line around the person, in order to ensure respect for individual personality, why not draw a line around her circumstances as well? In order to ensure that we do not end up with identical personalities due to identical upbringing, why not say that differential circumstances do not give rise to enforceable moral claims?

If we view libertarianism in this way, its popularity becomes more understandable. It is inhumane to deny that unequal circumstances create unfairness, and the attempts by libertarians to show that poverty is not a restriction on freedom or self-ownership just reveal how weak their defence of the free market is. But until we can find a clear and acceptable line between choices and circumstances, there will be some discomfort at making these forms of unfairness the basis of enforceable claims. Libertarianism capitalizes on that discomfort, by suggesting that we can avoid having to draw that line.

NOTES

1. It is particularly important to distinguish libertarians from 'neo-conservatives', even though both were part of the movement for free-market policies under Thatcher and Reagan, and so are sometimes lumped together under the label the 'New Right'. As we will see, libertarianism defends its commitment to the market by appeal to a broader notion of personal freedom—the right of each individual to decide freely how to employ her powers and possessions as she sees fit. Libertarians therefore support the liberalization of laws concerning homosexuality, divorce, abortion, etc., and see this as continuous with their defence of the market. Neo-conservatives, on the other hand, 'are mainly interested in restoring traditional values . . . strengthening patriotic and family feelings, pursuing a strong nationalist or anti-Communist foreign policy and reinforcing respect for authority', all of which may involve limiting 'disapproved lifestyles' (Brittan 1988: 213). The neo-conservative endorses market forces 'more because of the disciplines they impose than the freedom they provide. He or she may regard the welfare state, permissive morality, and "inadequate" military spending, or preparedness to fight, as different examples of the excessive self-indulgence that is supposed to be sapping the West.' From the libertarian point of view, therefore, neo-conservatives are the 'New Spartans', and the chauvinistic foreign policy and moralistic social policy adopted by Reagan and Thatcher stand opposite to their commitment to personal freedom (Brittan 1988: 240–2; cf. Carey 1984).
2. It is unclear whether Nozick himself would accept the claim that treating people as 'ends in themselves' is equivalent to treating them 'as equals', or whether he would accept Dworkin's egalitarian plateau. Rawls ties the idea of treating people as ends in themselves to a principle of equality (Rawls 1971: 251–7), and Kai Nielsen argues that

- Dworkin's egalitarian plateau 'is as much a part of Nozick's moral repertoire' as Rawls's (Nielsen 1985: 307). However, even if there is some distance between Nozick's 'Kantian principle' of treating people as ends in themselves and Dworkin's principle of treating people as equals, they are clearly related notions, and nothing in my subsequent arguments requires any tighter connection. All that matters, for my purposes, is that Nozick defends libertarianism by reference to some principle of respect for the moral status and intrinsic worth of each person.
3. Nozick's claim is ambiguous here. He does not tell us what the 'normal process' of appropriation is. Hence it is unclear whether 'not worsening' is merely a necessary condition for legitimate appropriation (in addition to the 'normal process'), or whether it is a sufficient condition (any process which does not worsen the conditions of others is legitimate). If it is not a sufficient condition, he does not tell us what is (Cohen 1986a: 123).
 4. Earlier libertarians recognized the insurmountable difficulties in justifying unequal appropriation of the initially unowned world, and many of them (reluctantly) accepted nationalization of the land (Steiner 1981: 561-2; Vogel 1988). Even Locke seemed to think that unequal property ownership could not arise from any right of individual appropriation. It required collective consent, in the form of an acceptance of money (Christman 1986: 163). In his survey of contemporary libertarianism, Norman Barry argues that none of the different versions of libertarianism (utilitarian, contractarian, natural rights, egoistic) have an adequate account of original title (Barry 1986: 90-3, 100-1, 127-8, 158, 178).
 5. Andrew Kernohan argues that self-ownership does tell us something about property-ownership. He argues that some of the rights entailed in self-ownership logically entail access to resources. Owning one's powers, in the fullest legal sense, entails owning the exercise of these powers, and this requires the right to exercise those powers oneself, the managerial right to decide who else may exercise them, and the income right to any benefit which flows from their exercise. None of these rights can be fulfilled without some rights over resources (Kernohan 1988: 66-7). However, this logical connection between self-ownership and property-ownership still leaves a wide range of legitimate property-regimes. Indeed, the only regime it excludes is precisely the one Nozick wishes to defend—i.e. one where some people lack any access to resources. According to Kernohan, this lack of property-ownership is a denial of their self-ownership.
 6. For futile attempts to show that mutual advantage is compatible with, and indeed requires, compulsory aid to the defenceless, see Lomasky (1987: 161-2, 204-8); Waldron (1986: 481-2); Narveson (1988:

- 269-74); Grice (1967: 149). For a discussion of their futility, see Goodin (1988: 163); Copp (1990); Gauthier (1986: 286-7).
7. Even if we can identify such norms of justice, there remains the difficult question of why we feel obliged to obey them. Why should I care about what I morally ought to do? Mutual advantage theorists argue that I only have a reason to do something if the action satisfies some desire of mine. If moral actions do not increase my desire-satisfaction, I have no reason to perform them. This theory of rationality may be true even if there are objective moral norms. Rawls's contractarianism may give a true account of justice, and yet 'be only an intellectual activity, a way of looking at . . . the world that can have no motivational effect on human action' (Hampton 1986: 32). Why should people who possess unequal power refrain from using it in their own interests? Buchanan argues that the powerful will treat others as moral equals only if they are 'artificially' made to do so 'through general adherence to internal ethical norms' (Buchanan 1975: 175-6). And indeed Rawls does invoke 'adherence to internal ethical norms'—namely a pre-existing disposition to act justly—in explaining the rationality of moral action (Rawls 1971: 487-9). In calling this 'artificial', Buchanan implies that Rawls has failed to find a 'real' motivation for acting justly. But why should not our motivation for acting justly be a moral motivation? As Kant put it, morality 'is a sufficient and original source of determination within us'. People can be motivated to act justly simply by coming to understand the moral reasons for doing so. This may seem 'artificial' to those who accept a mutual advantage view of rationality, but the acceptability of that view is precisely what is at issue. For many of us the recognition that others are fundamentally like ourselves in having needs and goals gives us a compelling reason to adopt the point of view of justice (Barry 1989: 174-5, 285-8).
 8. Left-wing theorists often make the same mistake. George Brenkert, for example, argues that Marx's commitment to freedom is not tied to any principle of equality (Brenkert 1983: 124, 158; but cf. Arneson 1981: 220-1; Geras 1989: 247-51).
 9. As these examples show, our interest in the freedom to do *x* is not simply our interest in doing *x*. I may care about the freedom to choose my own clothes, for example, even though I do not particularly care about choosing clothes. While my wardrobe is a matter of almost complete indifference, I would find any attempt by others to dictate my clothing to be an intolerable invasion of privacy. On the other hand, I may care about other freedoms, like the freedom to buy foreign goods without tariffs, only in so far they enable me to buy more goods. In yet other cases, our being free to do something, like religious worship, may be constitutive of the very value of that act. That we

freely choose to celebrate religious belief is crucial to the value of religious celebration. So our interest in the freedom to do *x* may be instrumental to, intrinsic to, or quite independent of, our interest in *x*. Hence our interest in different freedoms varies, not only with our interest in each particular act, but also with the range of instrumental, intrinsic, and symbolic interests promoted by having the freedom to do that particular act. Needless to say, it is hopelessly confusing to say that all these different interests are really a single interest in a more extensive freedom.

10. Nozick's claim here is not actually true. His theory does require that people's free exchanges preserve a particular pattern—namely, the Lockean proviso—and so it too requires continuously intervening in free exchanges to preserve a patterned distribution. This undermines Nozick's famous contrast between 'patterned theories', like Rawls's, and 'historical theories', like his own. All theories include both patterned and historical elements. Rawls, for example, allows people to come to have legitimate entitlements in virtue of their past actions and choices in conformity with the difference principle (a historical element), and Nozick requires that the pattern of distribution resulting from people's actions make no one worse off than they would have been in the state of nature (a patterned element). Nozick claims that the Lockean proviso is not a patterned requirement (Nozick 1974: 181), but if so, then nor is Rawls's difference principle (Bogart 1985: 828–32; Steiner 1977: 45–6). In any event, even if this contrast can be sustained, it is not a contrast between theories which interfere in people's lives and those which do not.
11. Gordon's subsequent discussion manifests these dangers. For example, he says that the free market increases people's freedom, but must be constrained in the name of justice. But he does not specify which people acquire which freedoms in the free market (specifying these things, he says, would obscure the problem of 'freedom as such'). As a result, he ignores the loss of freedom caused by private property, and hence creates a false conflict between justice and freedom. For a similarly confused attempt to preserve the idea of 'freedom' as a separate value, see Raphael (1970: 140–1). He notes that a redistribution of property could be seen as redistributing freedom in the name of justice, rather than as sacrificing freedom for justice. But, he says, this would eliminate freedom as a separate value, and so 'it is more sensible to acknowledge the complexity of moral objectives to be pursued by the State, and to say that justice and the common good are not identical with freedom, although they are all closely related', and hence 'the State ought *not* to intervene in social life to the utmost extent in order to serve the objectives of justice and the common good' (Raphael 1970: 140–1). In order to preserve the alleged contrast

between freedom and justice or equality, both Gordon and Raphael distort or ignore the actual freedoms and unfreedoms involved. Other discussions of what it might mean for liberty to be 'accorded priority over other political goods or values' rest on similar confusions—e.g. invoking criteria to measure freedom that appeal to these other values, thus rendering the priority claim unintelligible (e.g. Gray 1989: 140–60; Loewinsohn 1977).

reasoning is often tacit, and impossible to present systematically. As with rules of justice, we may want political leaders to employ clear public standards of justification, not because they are more objective, but because they are more democratic. See Dietz (1985) for a critique of maternal thinking for ignoring political values like democracy.

19. Other theories, like those of Rawls and Dworkin, recognize that we have obligations towards dependent others (ch. 3, s. 4*b* above). But they write as if these obligations are a matter of ensuring that a fair share of resources is allocated to children and the infirm. They do not discuss our obligation to provide care for dependants.
20. For example, Leslie Wilson says that the reason why the 'ethical self of a person requires a certain sort of autonomy' is that it enables us 'to become the sort of person who can be genuinely one-caring'. Hence an autonomous person exercises her autonomy 'trying to determine ways in which one could become a better caring individual' (Wilson 1988: 21-2). Likewise, Ruddick says that the reason why attentive love requires 'realistic self-preservation', rather than 'chronic self-denial', is that we can become better caring individuals that way (Ruddick 1984: 238). This is some distance from the traditional picture of autonomy as the free pursuit of projects that matter to one for their own sake, and which occasionally compete for time and energy with one's moral obligations.

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