

**Distributive Justice, Liberal Freedom and Equal Liberty: An Assessment of Self-ownership  
and Nozick's Libertarianism**

by  
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## ABSTRACT

For contemporary liberals, individual freedoms and property freedoms induce a considerable contradiction, and egalitarian redistribution schemes present one possible solution. I examine Nozick's argument against egalitarian distribution schemes, and the foundation he provides for his argument – self-ownership. I argue that Nozick's appeal to self-ownership and the freedom self-ownership yields is inadequate. Nozick's thesis of self-ownership is not a necessary condition for equal liberty, because his idea of liberal equal freedom is artificially narrow. Nozick's argument against egalitarian distribution breaks down as a result, so I conclude with the claim that all contemporary liberal theories must be consistent with equal liberty.

I discuss the theoretical consequences of this conclusion. At least three significant egalitarian alternatives deserve consideration. Since the only alternative which is both liberal and consistent with a broad notion of freedom is radical egalitarianism, I argue that radical egalitarianism is the alternative contemporary liberals should endorse.

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## LIBERALISM, FREEDOM, AND NOZICK'S LIBERTARIANISM

1.

Contemporary liberalism is distinguished from other political movements by two prominent features: a commitment to individual freedom, conceived as entailing personal freedom and basic civil liberties, and a particular but restricted idea of property freedom, securing protection for individual ownership over property.<sup>1</sup> These features are primary foundations of contemporary liberalism, and every liberal theory makes them prominent in one way or another.

This is an essay about distributive justice, which is a topic I consider critical for contemporary political philosophy generally, and in particular, for contemporary liberalism. The problem I would like to explore is this: given the pair of distinguishing features introduced above, it appears that liberal theory embodies a considerable contradiction. For if liberal individual freedoms even in some cases come into conflict with the particular but restricted idea of property freedom from which contemporary liberalism has developed, either restrictions on the notion of private property must be strengthened, or the liberal commitment to individual freedom must be weakened. In either case, if it is true that liberal theory embodies this kind of contradiction, contemporary liberals need to reconsider their values and review their commitments.

Whatever the precise historical antecedents of the notions of liberal individual freedom and property freedom, they are each the product of a prominent division of political thought

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<sup>1</sup>C.B. Macpherson, Property: Mainstream and Critical Positions (Toronto: University of Toronto, 1992) 199.

which begins with John Locke.<sup>2</sup> One of the key themes running through Locke's political writings was the idea that, as well as an unlimited natural *right* to self-preservation, a natural *duty* of preservation must be respected, and this duty leads individuals and communities into political association.<sup>3</sup> Locke thought that individuals, and so, by generalization, the state, were obliged by the 'Law of Nature' to "...*preserve the rest of Mankind*, and [the state] may not unless it be to do justice to an Offender, take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another."<sup>4</sup> One central element of liberal individual freedom is conveyed in this directive, a recent formulation of which is the liberal principle, introduced above, that individuals should enjoy and be able to exercise freedom conceived as personal freedom, including basic freedoms like civil liberties and personal freedom. But Locke was also committed, perhaps more forcefully, to the idea that "[individuals] have a natural right to property, a right prior to or independent of the existence of civil society and government."<sup>5</sup> Again from the Second Treatise: "The great and *chief end* therefore, of [individuals'] uniting into

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<sup>2</sup>This claim about the influence of Locke on contemporary liberalism is validated in John Gray, Liberalism (Minneapolis: University of Minnesota Press, 1995) 13-14., and Norman Barry, On Classical Liberalism and Libertarianism (London: Macmillan Press, 1986) 102.

<sup>3</sup>I. Hampsher-Monk, A History of Modern Political Thought (Oxford: Blackwell, 1995) 82.

<sup>4</sup>John Locke, Two Treatises of Government, ed. Peter Laslett (Cambridge: Cambridge University, 1965) 271.

<sup>5</sup>Macpherson, The Political Theory of Possessive Individualism 198. Various questions about the extent to which rights to property figure into Locke's conclusions arise in the context of Macpherson's analysis, but I will assume, to avoid extraneous difficulties, that property was at least *one of* Locke's primary concerns. Although we may not be licenced to characterize Locke along these lines, the idea that individual property is one of the liberal ideas bequeathed by Locke is hardly questioned. Peter Laslett defends this claim as well.

Commonwealths, and putting themselves under governments, is the *Preservation of their Property*.”<sup>6</sup> These rights, according to Locke, the right to life and liberty, as well as the right to accumulate property, were generated by the Law of Nature, and therefore they were rights no government could legitimately defy.

This is an important historical turn, for two reasons. First, no guidance is provided, nor, one might presume, *could* such guidance be provided, for cases where self preservation conflicts with property freedom. Candidate cases are not difficult to imagine: in Locke’s society, the freedom of the propertied class, in this case particularly but not exclusively property freedom, was much greater in magnitude than the freedom of the underclass, and the difference in magnitude was a direct result of differences in property ownership among classes. Members of the propertied class in Locke’s England were free to travel extensively, and educate themselves at institutions designated specifically for the wealthy, but the underclasses, generally speaking, were only free to work for basic means of subsistence. Locke’s response to this dilemma, expressed in an explicit proviso, was that acquisition of property is only illegitimate if it does not leave “enough and as good” of any resource for others to use. So both propertied and impoverished individuals could legitimately appropriate and accumulate property as long as the appropriation did not adversely affect others in the relevant sense, even if some individuals could not appropriate any property, and despite the fact that some individuals might be able to legitimately acquire a *disproportionate share* of external resources.

This response did not, of course, obviate the social stratification provoked by sharp

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<sup>6</sup>Locke, Two Treatises of Government 350.



differentials in property ownership. And more importantly, the proviso fails to resolve the dilemma introduced by unchecked property freedom, because as long as freedom is reckoned in terms of basic civil liberties and personal freedoms on one hand, and unrestricted property freedom on the other, individuals with extensive holdings will be better equipped to exercise meaningful freedoms than other individuals with inadequate holdings. The second reason this is an important point is that we see in Locke's position a tight relation, but not a necessary relation, between freedom and private property. It mirrors the connection between freedom and property in contemporary liberal thought, and this is the connection that requires analysis if liberals intend to remain true to their cardinal principles. This is the relationship, and the potentially considerable contradiction, between freedom and property in both early modern and contemporary liberal thought.

Some contemporary liberals argue that, to provide adequate all-purpose means for enjoyment and deployment of the substantial liberal individual freedoms, some redistributive function of the state is essential. These theorists think that "...a free economy is too damaging to those, who, by nature or circumstance, are ill placed to achieve a minimally proper standard of life within it, so they favour, within limits, taxing the better off for the sake of the worse off, although they believe that such taxation reduces liberty."<sup>7</sup> On this variety of liberal egalitarianism, the state should transfer ownership of various privately owned resources from the citizens who own the resources to other citizens because failure to do so offends against equal

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<sup>7</sup>G.A. Cohen, "Illusions about Private Property and Freedom." Issues in Marxist Philosophy, eds. John Meeham and David Hillel-Ruben (New Jersey: Harvester P., 1981) 225.

freedom or other prominent values.<sup>8</sup> The transfer need not be voluntary: in many foreseeable cases, it would be involuntary. Unless sufficient numbers of people consent to egalitarian measures, the measures would need to be enforced by the coercive apparatus of the state. Since sufficient numbers, in the contemporary regime of liberal individual freedom and property freedom, are unlikely to deliver consent, by any large measure, egalitarian redistribution would *likely* require the coercive power of the state.

An early example of this sort of egalitarian sentiment reveals an interesting connection with Locke's scheme of individual freedom and property freedom. Locke thought that traditionally common land should be privately enclosed, so that individuals could develop the land to its productive potential, and thereby increase the general potential of humankind. This disposition, and the system of property rights which follows naturally from it, became a founding principle of the United States, and a principal foundation for the Constitution of the new American Republic.<sup>9</sup>

According to Thomas Paine, in light of the fact that not enough land was available to satisfy the needs of all citizens, the state was obliged to impose a general tax in order to assure

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<sup>8</sup>E. Loevinsohn, "Liberty and the Redistribution of Property," Philosophy and Public Affairs 6 (1977): 226-239. For a collection of rationales for egalitarian measures, including those instanced here, as well as an argument against Nozick's position on them, see T. Scanlon, "Nozick on Rights, Liberty and Property," Philosophy and Public Affairs 6 (1976): 3-25.

<sup>9</sup>Although it is not perfectly clear how deep the connections between the American Constitution and Locke's system run, it is safe to say that Thomas Jefferson conceived of himself as a Lockean, and the chronology, actual wording, and theoretical underpinnings of Locke's Second Treatise, when compared with the American Declaration of Independence, indicate an extremely close connection. For discussion see P. Laslett, introduction, Two Treatises of Government 14-15.

social security, otherwise called a “minimally proper standard of life.” Paine thought that the Lockean system of property acquisition generated inequalities in resource distribution, and these inequalities, over time, induced class disparities in social structure which taxation policies did little to abate. The solution, argued Paine, was to collect a “ground-rent” from “every proprietor of cultivated land,” and with the collected rent establish a National fund to protect the interests of individuals not able to protect their own interests.<sup>10</sup> *This* was the way to increase the potential of mankind: since not enough land was available, and some individuals would as a result of the shortage in suitable land face a condition of unequal freedom and unequal property, while others, as a function of the same property distribution scheme, lived under conditions of relatively extreme *abundance*, some redistribution of wealth from the advantaged land owners to the disadvantaged unpropertied class was required, if the system was to maintain stability and prosperity. This redistribution would, of course, require taxation, in one form or another, and because of the prevailing sentiment in the American Republic, redistribution would require engagement of the coercive apparatus of the state.

But because engagement of the coercive apparatus of the state is illegitimate unless specific requirements are satisfied, the argument for egalitarian redistribution must establish that such redistribution is morally permissible. The rationale in this instance is that, because private holdings often enable other, more primary, liberal freedoms, coercive redistribution is justified

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<sup>10</sup>Paine’s claim that taxation policies were not absolutely effective in reducing class disparities and inequalities in wealth is substantiated in Thomas Paine, “Rights of Man (1792).” Rights of Man, Common Sense and Other Political Writings, ed. Mark Philp (New York: Oxford UP, 1995) 277-279. For the claim that a ‘land-rent’ system of taxation should be instantiated, see Paine, “Agrarian Justice.” Rights of Man, Common Sense and Other Political Writings 417-418.

on grounds of equal distribution of social goods like individual freedom: liberal freedoms degenerate, for at least some class of people in the modern nation state, unless they apply to all individuals, and unless measures are taken to ensure positive protection of freedoms. Lack of property can be an impediment to using important liberal freedoms, and extreme poverty absolutely incapacitates individuals from using some important freedoms. The important liberal freedoms must not only be equal, they must have equal value for all, in the sense that all individuals should be able to use them. So the goal of egalitarian redistribution, or at any rate *a* goal, is to ensure some measure of equality.<sup>11</sup> One possible goal of egalitarian redistribution is to ensure, in light of the fact that private ownership enables enjoyment of other individual rights, that *all* individuals are supplied appropriate freedom.

### 1.1 Libertarianism

Some contemporary liberals recognize the significance of both liberal individual freedom and property freedom, but argue that egalitarian redistribution measures are illegitimate because individual freedom is the prominent political value, and redistribution of privately held resources offends individual freedom. Individual freedom should be always maximized, the libertarian argument goes, and restrictions on individual freedom should be considered legitimate only where they satisfy special conditions, for example, the condition that a state be protected from external transgression. Because libertarian arguments are predicated on the liberal idea of individual freedom, they challenge the egalitarian idea that the state should redistribute privately

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<sup>11</sup>Amy Gutmann, Liberal Equality (Cambridge: Cambridge UP, 1980) 2.

held resources in order to secure other liberal values.

According to most libertarians, human beings are by nature rights-bearing creatures, so that if a state can be justified at all, by contract or mutual advantage or whatever, the only kind of state that can be justified is the kind that respects the rights of individual human beings.<sup>12</sup> The only state that can be justified is a 'minimal' one: that state which maximizes the freedom of individual agents by specifying an expansive register of individual rights, securing a broad range of valuable individual freedoms. The important detail here is the way libertarians value maximal freedom, including: freedom to decide upon and pursue our life projects, and as well, freedom to develop and preserve ourselves according to individual preferences. Since this individual freedom is a principal foundation of contemporary liberalism, libertarianism, as a liberal theory that purports to maximize freedom, presents a significant challenge to egalitarian liberals.

But far from advocating only maximal right-respecting freedom, libertarians also maintain that an important expression of individual freedom, perhaps *the* significant expression, is the freedom to accumulate and protect property. Egalitarian liberals argue that property should be redistributed from the fortunate to the poor in any state to ensure some manner of equal liberty, but libertarians argue from the value of freedom to a very pure and unrestricted form of capitalism,<sup>13</sup> where property freedom and protection of property freedom are supervening elements in the concept of justice. The idea here is that, freedom being the ultimate political

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<sup>12</sup>Barry, On Classical Liberalism and Libertarianism 135-136.

<sup>13</sup>J. Wolfe, Political Philosophy (Oxford: Oxford UP, 1996) 148-149. This claim is true, even considering the fact that capitalism "can produce, or accommodate itself to, many different types of political regime, including ferociously authoritarian ones." For discussion, see Ralph Miliband, The State in Capitalist Society (London: Camelot, 1969) 21.

value, individuals should remain unconstrained by others from doing what they have a right to do.<sup>14</sup> The details of what one has a right to do are dependent upon the particular set of libertarian principles of justice in question, but since all individuals, according to the libertarian argument, retain a natural right to hold individual property, freedom subsumes this right.

An instructive definition of libertarianism is sketched in the following by John Hospers: "If an [individual] is free from her chains, she is free to walk about. [...] If people are free from the coercive dictates of others, they can exercise their choices in countless other ways that were not available before."<sup>15</sup> So individuals are entitled to a package of rights which provide *freedom from* coercive interference of others, and individual rights should be distributed in a way that maximizes this (negative) sort of freedom.

It will be clear, from this passage especially, that much depends on how the term "freedom" is applied. Indeed, the view Hospers advocates depends on a particular conception of freedom, i.e., *freedom from*, that is only contingently connected to the normative claims he comes up with. Just as the unchained individual enjoys freedom of a greater magnitude than the individual in chains, individuals free from "the coercive dictates of others" enjoy a more extensive liberty than those constrained. Hospers presumes that the countless choices available under the libertarian arrangement of freedoms are those most appreciated, those considered most

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<sup>14</sup>This is the notion of freedom appealed to by 'Lockean' libertarians, with whom I will be chiefly concerned in this discussion. For an argument justifying the slogan and this classification of libertarians, see J. Sterba, How to Make People Just (Totowa: Rowman & Littlefield, 1988) 14.

<sup>15</sup>John Hospers, "What Libertarianism Is." Liberty for the Twenty-First Century, eds. Tibor Machan and Douglas Rasmussen (London: Rowman & Littlefield, 1995) 6.

valuable. It is easy to arrive at the conclusion that the unchained individual enjoys more appreciable freedom than the chained one, who enjoys only what freedom lies in remaining stationary: but all freedoms are not of this sort, and assuming they are misses the point of using freedom as a benchmark. If individual freedom can provide a suitable foundation for a set of principles of distributive justice, the way freedom is defined is an important initial step, and this step should be explicit.

Consider the following example. Two artificial communities, one comprised almost solely and exclusively of students, the other of stonemasons, enjoy liberties, secured by mandated individual freedoms, to act in certain predetermined ways. Freedom to study in peace and quiet during special phases of the year, for example, might be held valuable among the community of students, and so might freedom to select from a broad range of educational institutions for methodical study. Freedom to participate voluntarily in the labour force might be held valuable in the stonemason community, and so might freedom to select projects on the basis of self-fulfillment, rather than economic exigency or other considerations. In both cases a central authority would need to arrange rules in order to coordinate interactions between agents: individuals or groups might not be allowed to transgress the rights of others to study in peace or participate voluntarily in the labour force, respectively. And these rules would, of normative necessity, be fashioned from the notion of freedom which best secures the right of individuals to participate in or otherwise enjoy pedagogy or stone masonry. Now, of course, only an artificially restricted notion of freedom is at work in this example, and the example arbitrarily specifies a highly circumscribed and atypical community, but the point of the exercise is to show that a particular but appropriate understanding of the concept of freedom will adjust to conform with

the kinds of freedom considered valuable.

The actual liberties to which individuals are entitled in any political community are produced by principles generated by an appropriate concept of freedom. In our restricted example, the particular freedoms described ensure that community members enjoy the freedom to participate in specified activities. But, speaking generally, it is important to recognize that the content of the concept of freedom determines the kinds of liberties extracted from that concept. If principles of distributive justice were produced by a concept of freedom accepted in one but not both of the communities above, the principles would provide either an impractical or a worthless package of liberties. That is to say, if the concept of freedom acceptable to stone masons was introduced into the student community, liberties generated by the corresponding principles of distributive justice would not be considered valuable in the restricted student community. And if the two communities were small segments of a larger community comprised of students, stone masons and other groups, neither circumscribed concept of freedom would be acceptable: a more general definition of freedom would be necessary in order to provide the appropriate package of liberties.

It is not enough to say that freedom is a valuable social good, or that freedom is the fundamental liberal value, and proceed to determination of principles of distributive justice with only these or similar tautological slogans in hand. The concept of freedom, in liberal theory, at any rate, is the foundation from which principles of distributive justice are constructed. What is required is an appropriate definition of freedom, and, moreover, a definition which is suited for the kind of role the concept of freedom is intended to play. In the following two sections I will defend the claim that liberal freedom can be acceptably defined, and provide three candidate



definitions. I will argue that once the liberal conception of freedom is suitably sharpened, a strong liberal argument against egalitarian distribution emerges. Rather than showing at this point that the principles of distributive justice advocated by any particular libertarian are unjust, I intend to show here that the concept most often used to substantiate the theories is misused. As soon as the concept is sharpened, much libertarian theorizing is thereby rendered unattractive, and one variety of libertarian argument is rendered more challenging to liberal egalitarianism, and therefore, if my conclusions are accurate, to contemporary liberal theory generally.

## 1.2 Three Definitions of Liberal Freedom

I will first consider a 'social/political' definition of freedom.<sup>16</sup> Here the idea is that people should be free of all external limitations imposed by others, or, more specifically, free of all limitations imposed by the state. Those who interpret freedom according to a social/political definition espouse "a wholehearted political sense of freedom, opposed to any social or legal constraints on individual freedom." According to Anthony Flew:

Freedom in this political understanding simply is the absence of coercion or constraint by other people: whether these human obstacles are such as make it physically impossible to follow some course; or whether they consist in sanctions applied to those who take it.<sup>17</sup>

I argued in 1.1 that libertarians sought to maximize freedom. Under this definition, individuals

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<sup>16</sup>Cohen, "Illusions about Private Property and Freedom," 226. Examples of other theorists who adopt such a definition are: Murry Rothbard, Tibor Machan, and Anthony Flew.

<sup>17</sup>For the foregoing quotations, see Flew, "The Philosophy of Freedom," In Defence of Freedom, ed. K.W. Watkins (London: Cassell, 1978) 156., and Flew, A Dictionary of Philosophy (London: Macmillan, 1979) 188.

enjoy freedom from all external restrictions, save those imposed by the natural environment and physical laws. When John Hospers presents the constitutive core of libertarianism in as unrefined a principle as the following: "Every man has a right to be free,"<sup>18</sup> he is relying on something close to a social/political definition of freedom.

But this definition, even if it properly emphasizes the libertarian emphasis on freedom as the dominant political value, it does not provide the kind of content we might expect from an appropriate definition of the liberal conception of individual freedom. Liberalism is about *fairly distributing and protecting* individual freedom, so the idea that freedom is always and only to be maximized is quite misleading: individuals cannot be *perfectly* free, in any reasonable sense, especially where property is involved. Defending freedom of this social/political variety requires restricting freedom – one person's freedom is another's unfreedom. The non-smoker's freedom to breathe fresh air in public spaces is easily substituted for the smoker's freedom to smoke without interference. Freedom from legal coercion, in this general sense, cannot be complete.

The content of the social/political definition of freedom provides no suitable metric for adjudication. If we need to decide which individual freedoms will be protected and which will be restricted, a non-circular understanding of the value of particular freedoms is required. On the social/political definition of freedom, only the value of individual freedom *as such* is defended: adjudication principles which would generate restrictions on some freedoms and protect other freedoms are markedly absent. Some idea of what freedom should entail is required if we want to be able to argue that non-smokers should be free to breathe safe air, or smokers should be able to

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<sup>18</sup>Hospers, Libertarianism: A Political Philosophy for Tomorrow 50.

enjoy cigarettes, depending on which conclusion is best supported. Or, in the case of a state where there exist wide differentials in resource holdings, the state can either prevent poor people from taking food away from the wealthy, or it can tax the wealthy to fund soup kitchens. For those satisfied with this social/political definition, in cases where the state must intervene and protect or satisfy the interests of one individual or group over another individual or group, the question of which freedoms should be curbed and which should be protected is left unanswered. Under this understanding of freedom, pure opposition to state intervention would oppose both. Either way, state intervention is somehow involved, and either way, constraints on the social/political sense of freedom are necessarily involved. While it seems patently true that certain freedoms, for example political liberties like the right to participate in government, can be maximized, in the sense that they can be applied absolutely equally for all persons, other freedoms cannot be maximized at all, because maximizing the freedom of one is equivalent to restricting the liberty of another.<sup>19</sup>

Furthermore, since the only principle available to those advocating a social/political definition of freedom is that individual freedom should be *maximized*, it is easy to imagine cases where maximal freedom would lead to minimal freedom among some group of individuals. Again returning to the case above, in the community comprised of both students and stone masons, if the only adjudication principle available was the principle that individual freedom should be maximized, since some individuals might have the luck or skill or material resources to command their freedom to a degree much greater in magnitude than most others, the principle

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<sup>19</sup>H.L.A. Hart, "Rawls on Liberty and its Priority." Reading Rawls, ed. Norman Daniels (New York: Basic, 1975) 234-236.

allows that all others' freedom be restricted so that the freedom of some (quite possibly small group) be maximized. If freedom must be restricted in one way or another, and the only criterion available is that freedom should be maximized, the freedom of particular groups could be maximized at the expense of the rest of the community. Especially in a community where some individuals command economic or other power over community members, the demand for maximal freedom as the sole principle of distributive justice is tantamount to a *demand* for unequal and illiberal distributions of resources and power.

Another candidate is an 'economic' conception of freedom.<sup>20</sup> In this case the boundaries are slightly unclear, because economic freedom is connected with the social/political conception presented above. An appropriate definition of economic freedom might even be unavailable, because the precise content of the phrase will depend entirely on the details of the economic distribution system in which it finds a place. But this definition is distinguishable, and indeed needs to be distinguished, because it is the preeminent case of freedom for many libertarians,<sup>21</sup> and because it is the case of freedom most easily adapted as a theoretical foundation for free-market capitalism. It is important to show that economic freedom is not a sufficient definition of liberal freedom, even if it is, as many think, an important element in a liberal system of individual freedom, or, as it might be, the inevitable result of any general system of liberal individual freedom.

On the economic definition of freedom, individuals should be provided freedom to buy

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<sup>20</sup>Cohen, "Illusions about Private Property and Freedom." 229.

<sup>21</sup>Libertarians whose arguments are most clearly established on an economic conception of freedom are: F.A Hayek and Milton Freidman.

and sell what they legally and legitimately own.<sup>22</sup> This definition develops and refines the one presented above, but with the additional qualification that a theory of property freedom should be included in the definition of freedom and granted privileged position. The content of an economic definition depends in large measure on what it means to legally own some resource. According to one account of such a system: "A system of property rights is a set of rules defining the conditions under which a person owns an object and specifying the extent and character of the rights of owners."<sup>23</sup>

Hospers had this idea of freedom in mind as well, as we saw briefly above. In this case paraphrasing H.L.A. Hart, Hospers thinks that: "Any individual [...] (1) has the right of forbearance on the part of all others from the use of coercion or restraint against her, and (2) is at liberty to do any action which is not one coercing or restraining other persons." But appeal to these principles, by Hospers' lights, is mediated by two provisos: that neither coercion nor restraint include competition, and that violation of one's rights includes interference in her property.<sup>24</sup> These provisos accommodate the fact that Hospers defines freedom, at least partially, in terms of economic freedom. What would count as a violation of one's property freedom depends on what would count as a legitimate use or transfer of one's property under any regime of property rights and freedom, and the proviso licencing competition is merely a byproduct of the fact that competition and capitalist exchange naturally go hand in hand, and libertarian

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<sup>22</sup>Cohen, "Illusions about Private Property and Freedom." 229.

<sup>23</sup> Scanlon, "Nozick on Rights, Liberty and Property." 21.

<sup>24</sup>Hospers, Libertarianism: A Political Philosophy for Tomorrow 51-52.

arguments from economic freedom often assume a strong but contingent connection between capitalist exchange and freedom.

F.A. Hayek provides an even more pronounced appeal to this notion of freedom.<sup>25</sup> For Hayek, the free market is a “spontaneous order,” or a self-organizing system, like a biological organism. The free market has “functional virtue,” in that it is naturally or spontaneously evolved, and because it is not prearranged or artificial in this sense, it does not necessarily presuppose any particular political values. The free market, according to Hayek, has triumphed in the evolutionary struggle between other closed or coordinated social arrangements, so the free market is the social arrangement we should seek to protect. Since the free market is the only social distribution mechanism which respects this urge, and since the other virtues of the market prompt us to accept it as an appropriate social order, individual freedom should be conceived so that freedom in the market is maximized, and artificial interference in the market is eliminated, save the cases where interference is absolutely required for the market’s survival. This is how Hayek’s market-based appeal to economic freedom gets off the ground, and although he is willing to endorse some interference in the purely spontaneous function of the free market,<sup>26</sup> this is where Hayek’s libertarian arguments against egalitarian redistribution find their strength.

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<sup>25</sup>See F.A. Hayek, Law, Legislation and Liberty (London: Routledge, 1982).. and Hayek, The Fatal Conceit, The Errors of Socialism (London: Routledge Press, 1988). For a clear account of Hayek’s position, see Alan Haworth, Anti-Libertarianism (London: Routledge, 1994) 116-118.

<sup>26</sup>See Haworth, Anti-Libertarianism 119-121. Although Hayek can be forced to admit some artificial planning of the market, and therefore situate him on a graduated slope with egalitarians, it is clear that Hayek only endorses intervention where the integrity of the market, or the market’s “spontaneous order”, is threatened.

Hayek's descriptive/prescriptive confusions aside, there are, of course, several reasons to consider this definition of freedom insufficient.<sup>27</sup> First, it depends, of course, on the content of the legal regulations which determine what is properly owned, and the rights to which property owners are entitled. This was why the economic definition was difficult to distinguish from the social/political definition: what it means to be free to buy and sell legitimate holdings depends, in large measure, on what rights are provided to property owners by a system built from some social/political conception of freedom.

Second, as a result of the connection here developed between freedom and capitalist exchange, one variety of freedom is emphasized at the expense of all others. It might be just as reasonable to say that freedom to study political philosophy, or freedom to fish in cold and quiet mountain streams, or freedom to participate in or otherwise enjoy projects which provide for the less fortunate, are the transcendent expressions of liberal individual freedom, and therefore, should, as a result, be the expressions most closely guarded. Since questions about the value of any senses of freedom expressed here can only be answered with reference to individual cases, for example, with reference to how one group or another are satisfied by that freedom, the concept of freedom appealed to is insufficient unless it is acceptable in general. In the present

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<sup>27</sup>I will be concerned here with one line of criticism of the economic definition of freedom, although another line, possibly the most destructive criticism, is the kind advanced by J.K. Galbraith. According to Galbraith, this economic definition of freedom is a single part of a more significant social impulse which determines the contours of political decision making and determines the positions of traditionally unpropertied members of the community as a "functional underclass." This criticism is practical in nature, and even though it is directed at the economic definition of freedom, it is much too general to present in the context of this argument. See especially Galbraith, The Culture of Contentment (Boston: Houghton Mifflin, 1992) 13-42, 144.

case, economic freedom is no more appealing to all members of a contemporary liberal state than freedom to study at University, or freedom to design aesthetic stone masonry would be, in a community comprised of students or stone masons. Only if the freedom appealed to is valuable in all cases, or, at any rate, in a general sense, can it be the foundation for the restricted definition of freedom established here. There is no obvious reason why this freedom should be privileged over all others, and in many cases it makes no sense to privilege it. Of course, if certain other liberal freedoms, freedom conceived as self-preservation in particular, can't be exercised, economic freedom is of no value at all.

Finally, the important question here is whether or not a concept of freedom can provide the content required to fashion principles of distributive justice. Here the economic definition of freedom is a miserable failure, because it describes, (loosely describes), only a severely restricted domain of the general province of possible expressions of individual freedom. Since there is more to any liberal nation-state than its mode of exchange, we are not obliged to accept such a circumscribed definition. There is no reason to suppose that the economic definition provides more than a circular account of freedom, applicable only in a liberal state with unrestricted capitalism as the mode of economic distribution.

The third candidate for a secure liberal conception of freedom is a 'moralized' definition. Here the details of the definition are simple: I should be free in all respects except those where another person can interfere with my freedom *legitimately* or *justifiably*.<sup>28</sup> Now, at first pass, this definition of freedom appears circular, for the key question was about what is and what is not

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<sup>28</sup>Cohen. "Illusions about Private Property and Freedom." 228.



legitimate or justifiable. Since we are interested in the status of particular actions and the freedoms which protect them, legitimacy and justifiability can be conceived in different ways. But the important issue here is the capacity of the liberal definition of freedom to produce appropriate principles which guide normative determinations at other levels of abstraction – since a moralized account of freedom is distinct from other, likely tainted, legal and political particularities (for example, economic or social/political freedom), the moralized account is the only account of freedom which can give content to the foundational notion of liberal freedom, as well as allow for, or even expedite, the possibility of constraints imposed by other foundational values.

The definition is, of course, broad, and permits a wide range of possible principles and collections of principles. But this is the first *attractive* feature of this definition of freedom, because it ensures that the character of the liberal concept of freedom is not restricted explicitly by the way the concept is defined. Other libertarian theories, including those spelled out above, deliver moral or normative conclusions, so it might be easy to argue that all libertarian theories appeal to this notion of freedom, albeit through an intermediary concept which at once obscures the precise notion of freedom and develops or refines one aspect for closer attention. But it is important to distinguish those above from moralized definitions of freedom. Recall that Hospers' idea of freedom was bound by the social/political constraints imposed on individual members of society, and later, he was concerned to connect his social/political notion of freedom with those economic aspects which secure a free market in goods and services. *These* were the objectives of Hospers' appeal to freedom, and Hayek, whose appeal to freedom seemed instrumentally connected to his defense of the market, used economic freedom as the foundation from which

other individual rights could be derived and defended: as a byproduct of a free market. The important point here is that individual freedom, on a moralized definition, does not depend on one or another predetermined conceptions of freedom, and instead, rests on grounds of justice alone. A moralized definition of freedom leaves open the possibility that even if freedom turns out to be the prominent value of contemporary liberalism, other prominent values might be respected, so the concept of freedom cannot be successfully defended unless other liberal values are authorized into consideration.

It is easy to argue, with only the resources of liberal theory, that the economic and social/political definitions of freedom are insufficient. We saw above that a definition of freedom based on a preferred mode of economic exchange, *viz.* economic freedom under capitalism, would not withstand scrutiny because other liberties could be more valuable or equally valuable. But an argument built from the moralized definition of freedom is more difficult to assail, because the liberal account of freedom is based on more than only an appeal to freedom of one variety or another. An appeal to freedom conceived as moralized freedom is difficult to assail because the precise details of the liberties to be secured are not supposed prior to balancing other important considerations.

If libertarians appeal to moralized, rather than problematic delimited conceptions of freedom, their arguments become even more challenging for egalitarian liberals. When this moralized account is coordinated with a "moral endorsement of private property," and fashioned into principles of distributive justice, "one reaches the conclusion that the protection of private

property cannot restrict anyone's freedom."<sup>29</sup> This is both an interesting and theoretically challenging result, because it sets one class of libertarian arguments apart from others. For if both individual freedom and property freedom, based on some metric of principled regulation, are legitimately and justifiably established, and both domains of freedom produce a libertarian state, then some libertarian arguments are more challenging than others, and, more importantly, egalitarian liberals need to pay particularly close attention to these arguments.

### 1.3 Nozick and Libertarianism

Robert Nozick's libertarianism is a straightforward appeal to a moralized account of freedom.<sup>30</sup> According to Nozick, we should be free in all respects from external limitations except those imposed legitimately or justifiably, and the only restrictions on anyone's freedom which are legitimate or justifiable are those entailed by other individuals' self-ownership. Now, of course, the details of the thesis of self-ownership have yet to be specified, and, to be sure, there are a number of complaints against the way the thesis is implemented. But the important claim here is that Nozick's appeal to freedom is an appeal to a moralized understanding of freedom, and the conclusions he reaches, roughly speaking, are the same conclusions reached by Hospers and Hayek, from different definitions of freedom. As a result of the distinction between libertarians

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<sup>29</sup>Cohen. "Illusions about Private Property and Freedom." 228.

<sup>30</sup>In this case and hereafter I refer to the position conveyed in Robert Nozick, Anarchy, State and Utopia (New York: Basic, 1974). The assertion that Nozick appeals to a moralized definition of freedom is confirmed in Cohen, "Illusions about Private Property and Freedom." 228. Further evidence of Nozick's appeal to moralized; Nozick, Anarchy, State and Utopia 28-29.. and Barry, Classical Liberalism and Libertarianism 2.

like Nozick and libertarians like Hospers and Hayek, Nozick's appeal to freedom can be balanced in a way that others' cannot. The principles of distributive justice established in Nozick's definition of freedom might appeal to other foundational values, and, as a result, might provide a suitably liberal theory of distributive justice so that the edge of the dilemma between property freedom and individual freedom is avoided.

There are other reasons to think that Nozick presents a significant challenge to egalitarianism. First, he secures political principles like individual freedom exclusively with individual rights. The method here is to delimit the legitimate functions of the state by specifying "side constraints," which regulate individual actions in specified ways, and to specify the character of individual rights – in this case primary and inviolable. Side constraints are a particular expression of the general liberal appeal to the concept of individual freedom. Nozick argues: "Political philosophy is concerned only with certain ways that persons may not use others: primarily, physically aggressing against them. A specific side constraint upon action towards others expresses the fact that others may not be used in the specific ways the side constraint excludes."<sup>31</sup> One clear case where a side constraint would be warranted, then, is physical aggression: since it violates my rights when another person indiscriminately physically harms me, the state should regulate or preclude such harm by means of a side constraint against it. Furthermore, all functions of the state, according to Nozick, should exhibit this logical form.

Second, Nozick's arguments are concentrated on precisely the sort of egalitarian

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<sup>31</sup>Nozick, Anarchy, State and Utopia 33.

redistribution schemes introduced in section 1.1.<sup>32</sup> Generally speaking, libertarians are concerned to show that egalitarian measures engaged to redistribute wealth from the fortunate to the unfortunate, whatever their underlying rationales, offend the liberal notions of individual freedom and property freedom, and so, as with other illegitimate exercises of political power, egalitarian policies should be prohibited in any just state the same way that torture and slavery should be prohibited. Nozick is an absolutely clear case of this species of challenge to egalitarian policies, and he makes a point of developing the slavery analogy, declaring that redistribution policies in effect force individuals to work against their will, a form of coercion prohibited in various other considered cases.<sup>33</sup> Nozick is the preeminent libertarian philosopher in contemporary political theory, and because he addresses head-on the legitimacy of state regulated egalitarian redistributive schemes,<sup>34</sup> his position is the clearest candidate for the kind of analysis I will pursue.

Third, Nozick builds his argument against egalitarian redistribution from the foundation of a traditional liberal notion of property freedom. This is an important point, and it is the point with which this chapter began: the second feature of contemporary liberalism was the particular but restricted idea of the character of property ownership. Nozick appeals to the notion of property freedoms first made prominent by Locke, and Locke's absolute and elementary idea of property freedom derived from natural rights<sup>35</sup> is the basis for Nozick's appeal to self-ownership.

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<sup>32</sup>Barry, Classical Liberalism and Libertarianism 2.

<sup>33</sup>Nozick, Anarchy, State and Utopia 160-164.

<sup>34</sup>Barry, On Classical Liberalism and Libertarianism 132.

<sup>35</sup>Jean Hampton, Political Philosophy (Oxford: Westview, 1995) 146.

Once we accept a moralized definition of freedom, as we surely should if we want to maintain the integrity of the liberal notion of individual freedom, we need grounds in order to determine which freedoms deserve to be privileged. We could privilege, for example, self-preservation or self-development, derived from the notion of liberal personal freedoms, as described above. Or we could privilege property freedom, because property freedom is surely an important instrument for the realization of other important goods in a liberal nation-state.

Nozick privileges both civil liberties and personal freedoms *as* property freedom, by construing them in terms of self-ownership. In the realm of possible restrictions on my individual freedom, many restrictions will impinge on my self-ownership. Some of these cases will be cases where my self-development or my self-preservation is challenged, and in these cases, Nozick would argue, my freedom has been breached unjustifiably or illegitimately. Physical violence, for example, is a clear case of external interference which no liberal theory should admit without some mediating criterion. In this case, because I own myself, restrictions on my freedom are illegitimate: breaching my self-ownership is illegitimate.

I argued above that if individual freedom even in some cases comes into conflict with the particular but restricted idea of ownership rights from which contemporary liberalism has developed, either restrictions on the notion of private property must be strengthened, or the liberal commitment to individual freedom must be reconsidered. Nozick's project is to connect self-development and self-preservation with property freedom via self-ownership, and thereby circumvent the dilemma introduced in this chapter.

The dilemma unfolded something like the following. Individuals in liberal nation-states should enjoy a broad range of individual freedoms, and these freedoms should entitle individuals

to make unconstrained choices about their self-preservation and self-development, and they should be secure in their civil liberties and property freedoms. But since these freedoms, property freedom in particular, tend to induce or at least admit inequalities in resource distribution, contemporary liberals need to be concerned that the rights presumably provided on an equal basis to all individuals can be effectively exercised by all individuals. Liberals need to ensure that differentials in property ownership do not aggravate the capacities of some individuals to exercise their individual freedom. Egalitarian redistribution schemes provide one possible solution, because in the context of these schemes individually owned property can be legitimately redistributed to other members of the community. So egalitarian redistribution schemes provide one way to limit property freedoms in the interests of other important liberal freedoms. Nozick suggests another response: that the only illegitimate aggravation of others' liberal freedoms are those restrictions on freedom which transgress self-ownership. In the next chapter I will introduce Nozick's theory of distributive justice, and evaluate arguments which attempt to validate the claim that the principles are both liberal and *just*.

## FREEDOM, SELF-OWNERSHIP AND EQUALITY

2.

In chapter one we started with the idea that freedom was a prominent liberal value, and found that the nature and extent of liberal freedom were both largely unspecified and crucial to understanding any liberal theory, especially those theories which make freedom *the* prominent value. We saw that Nozick's libertarianism was a key theoretical position for contemporary liberals to consider for three reasons. Nozick's position is distinctly liberal, I argued in 1.3, because he is concerned with both individual freedom and property freedom, and these freedoms were salient features of contemporary liberalism. Nozick argues "Individuals have rights, and there are things no person or group may do to them without violating their rights."<sup>36</sup> So contemporary liberals should attend to Nozick's arguments because they are consistent with the underlying features of liberal theory.

Also in section 1.3, we found that Nozick's libertarianism is primarily a liberal defence against egalitarian liberal redistribution policies: "Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified: that any more extensive state violates persons' rights..."<sup>37</sup> According to Nozick, all state function beyond these basic roles is illegitimate. Egalitarian liberals should not ignore these arguments: they are distinctly liberal, and they are aimed straight at egalitarian principles, themselves founded on liberal values.

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<sup>36</sup>Nozick, Anarchy, State and Utopia ix.

<sup>37</sup>Nozick, Anarchy, State and Utopia ix.



Nozick's libertarianism is also significant because his arguments are predicated on a moralized conception of freedom, and this conception admits, and even demands, discussion of moral grounds for legitimate or justifiable interference in individual freedom. So I argued in 1.2 and 1.3 that Nozick's account of legitimate or justifiable interference in the lives of individual citizens, if it can be maintained in the face of other prominent values, provides the strongest possible libertarian argument against egalitarian redistribution schemes.

Recall the claims in section one about liberal individual freedom and private property. To understand how these ideas are situated in libertarian thought, and in particular, how they are connected, we need an account of what makes any particular holding legitimate, because private property, and the freedom to use and protect it, depends on the character of legitimate private holdings. In this sense, it is clear that just as the preceding chapter was about *freedom*, as well as the theoretical constraints imposed by the appropriate use of that term, this chapter will be about *justice*, and more specifically, about the way Nozick gives pride of place and priority of consideration to property freedoms over other personal freedoms. For these reasons, the following free-standing account of legitimate resource distribution will provide a suitable point of departure.

## **2.1 The Entitlement Theory**

Nozick's preliminary claim that individual rights are primary and inviolable is first fashioned into a comprehensive theory of justice in his entitlement theory of resource distribution. The idea here is that the definitive factor in deciding the justice in any person's holdings should be not the

needs or merit of that person, but facts about how the person came to hold the property.<sup>38</sup> Nozick argues that, if the world were wholly just, a modest register of entitlement principles would “exhaustively cover the subject of justice in holdings.”<sup>39</sup> A state is warranted in breaching maximal private ownership of individual property only where any of the following principles have been violated:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else who is entitled to that holding, is entitled to that holding.
3. A person who acquires a holding in accordance with the principle of rectification of holdings is entitled to that holding
4. No one is entitled to a holding except by (repeated) applications of 1 and 2.<sup>40</sup>

The details of this list are conspicuously absent, as Nozick is satisfied with a ‘roughed-in’ outline of the theory.<sup>41</sup> But I will reconstruct the entitlement theory here, on a good faith understanding, and show that, at very least, it is cogent enough to provide a basis for analysis of the rest of Nozick’s position.

The principle of justice in acquisition specifies the circumstances under which individuals

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<sup>38</sup>J. Wolff, Robert Nozick: Property, Justice and the Minimal State. (Cambridge: Basil Blackwell, 1991) 9.

<sup>39</sup>Nozick, Anarchy, State and Utopia 151.

<sup>40</sup>This list is catalogued in Nozick, Anarchy, State and Utopia 151, and restated with an additional principle in Lawrence Davis, “Nozick’s Entitlement Theory,” Reading Nozick: Essays on Anarchy, State and Utopia, ed. Jeffery Paul (New Jersey: Rowman & Littlefield, 1981) 345.

<sup>41</sup>Wolff, Robert Nozick: Property, Justice and the Minimal State 78, and Nozick, Anarchy, State and Utopia 153.

can appropriate unowned things from a state of nature.<sup>42</sup> Locke provided a series of arguments which served the same purpose, but for Nozick, these arguments fail to properly underwrite the principle of justice in acquisition. Nozick leaves the details of the principle of justice in acquisition for later in his argument, and I will follow him in this regard. We can be satisfied, temporarily, with the idea that if a thing can, at least in principle, be destroyed, or passed into the title of another individual, it can be subjected to the ownership relation.<sup>43</sup> In other words, if I, for example, legitimately appropriate some piece of undeveloped land, and thereby claim the land to be my own, then I have good title, on Nozick's proposal, or what we may call a *substantial right* to the holding: so the holding has been acquired by just means.

The principle of justice in transfer stipulates the way holdings can be passed to others (the way that, for example, any holding can be given, sold, stolen, etc.), and it establishes which of these transactions maintains good title to the holding. Developing the example introduced above, I might choose to sell, or transfer in the form of a gift, the undeveloped land I claimed as my own. Because my title is, by Nozick's lights, almost unrestricted, I might furthermore choose to develop the land, through any of the various means imaginable, and sell or give away the yield of my developed land. As long as my title to the land is legitimate, transfer of good title is legitimate as well.

The core of Nozick's principle of justice in transfer is that a transfer is just only if it was

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<sup>42</sup>Davis, "Nozick's Entitlement Theory," 345.

<sup>43</sup>Jan Narveson, The Libertarian Idea (Philadelphia: Temple University Press, 1988) 80.

voluntary.<sup>44</sup> I can legitimately enter into contracts with others, to sell or pass (good) title to the land, because parties to either specified transaction consent to the transaction. The parties involved in any just transaction, then, necessarily assent to the transaction – deception, fraud and theft, are, rightly, excluded. If my land, or the produce of my land, was seized through theft, or taken in a fraudulent transaction, the transaction was not consensual, therefore involuntary, and therefore inconsistent with entitlement theory principles. Coercion, external interference in the rights of individuals, is *only* but always justified in cases where entitlement principles have been violated.

Justice in transfer is not only the hinge of Nozick's entitlement theory, it is the point of connection between libertarianism and free-market capitalist exchange. It is easy to see how, in this running example, even the aspects of the entitlement theory specified so far would result in an open market for the distribution of goods and labour. Since I am free to use my land, and the produce of my land, and since many others will have the same rights over other plots of land, we might expect that trade among those who own land would be required in order to meet the needs of all members of the community. As soon as undeveloped, untitled land was in short supply, where it had once been abundant, regulations for the legitimate trade in plots of land on an open market would be required as well. Further, for those not fortunate enough to have appropriated undeveloped land, a market for labour would be necessary: those who do not have title over land of their own, since they would need to produce their own means of subsistence, would need to labour for those who do own land. Even in this unrefined and restricted example, Nozick's

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<sup>44</sup>Wolff, Robert Nozick: Property, Justice and the Minimal State 78.

entitlement theory provides a theoretical or moral foundation for a free market in resources and labour.

The principle of rectification designates the “procedure through which the effects of past injustices may be wiped out.”<sup>45</sup> If, for example, land I appropriated legitimately was seized fraudulently, in violation of the principle of justice in transfer, the principle of rectification provides a procedure through which a just distribution can be restored. Nozick’s advice in this case would be “given an unjust distribution, go back to the last just distribution.”<sup>46</sup> Clearly, while it is easy to see how an unjust transaction in the present example could be wiped out, other transactions would be difficult or impossible to rectify. If, instead of my plot of land, some individual seized a small part of the produce of my land, and consumed or destroyed that produce, I would have no direct recourse, and the details of the rectification procedure would be at best arbitrarily specified. In more complex cases injustices would be as difficult to identify as they would be to rectify. In Canada, the number and complexity of Aboriginal land claims is a cardinal, if problematic, example of this condition.<sup>47</sup> But Nozick, again in this case, is interested

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<sup>45</sup>Davis, “Nozick’s Entitlement Theory.” 345.

<sup>46</sup>Davis, “Nozick’s Entitlement Theory.” 348.

<sup>47</sup>This dramatic ambiguity is most clear in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. [File. 23799]. In this difficult case, the Supreme Court of Canada considered the claims of four Aboriginal clan houses, The First Nations Summit, the Musqueam Nation, the Westbank First Nation, the B.C. Cattlemen's Association, Skeena Cellulose Inc., and Alcan Aluminum Ltd. on 58,000 square kilometres in British Columbia. A key issue was the (Aboriginal) appellants' historical use and "ownership" of one or more of the territories concerned, and the tradition of oral history used to record the historical claim. This case underlines confusions which inevitably arise when the ownership of some piece of land is not absolutely clear, and the inadequacy of a directive to the effect that one should merely “go back to the last just distribution.”

only in the general outline of a theory of justice in holdings.

The pivotal idea of the entitlement theory is this: "The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution."<sup>48</sup> The four entitlement principles enumerated above detail, in basic form, Nozick's criteria for what makes a distribution just. Except under the conditions specified, Nozick argues, the state cannot legitimately interfere with individual freedom, and, *in particular*, freedom to own and accumulate private property is protected from general restrictions.

Before Nozick's argument is developed further, three points should be emphasized. First, the entitlement theory specifies the conditions under which property ownership is justified. I argued in chapter one that a particular but restricted idea of property freedom was a constitutive feature of liberalism. While it does not yet demonstrate exactly which forms of acquisition are legitimate, and it leaves the possible forms up for grabs, the entitlement theory does furnish a programmatic message: that individuals should have freedom to own property, that this freedom can be spelled out in a list of principles which secure individual freedom, and that these principles, once specified, thoroughly detail a just theory of resource distribution. Second, Nozick's entitlement theory develops the notion of private property from a pair of assumptions about the connection between individual freedom and property freedom. One assumption is that private property is an expression of individual freedom, and this is not a difficult assumption to accept, because sovereignty over choices about the use or even destruction of private property is

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<sup>48</sup>Nozick, Anarchy, State and Utopia 151.

surely one kind of expression of freedom. The important assumption is the second one: that property freedom is an important expression, perhaps the *significant* expression of individual freedom. This isn't a *necessary* assumption, because, as we saw, egalitarian liberals draw quite different conclusions about the relative importance of property freedoms versus non-property freedoms. Finally, the entitlement theory supplies an explicitly moralized account of freedom. Nozick appeals to a Lockean interpretation of freedom, where freedom amounts to being unconstrained from doing what one has a right to do.<sup>49</sup> The entitlement theory details what is morally required given a certain distribution of property and a particular set of circumstances.

## 2.2 Outline of an Argument Against Egalitarian Redistribution

The set of principles catalogued above clearly differs from any egalitarian distribution scheme, in that they are, at least in a significant sense, *historical* principles. What makes a distribution just are facts about how it came about.<sup>50</sup> Egalitarian principles of justice, on the other hand, are patterned principles, i.e., they judge a distribution to be just only in virtue of *who has what* in the distribution, once necessary redistributive mechanisms have been implemented.<sup>51</sup> Egalitarian principles are forward-looking in the sense that they tend to converge upon one or another general ideals of social structure. For example, some egalitarians argue that justice would have been achieved where every individual enjoys the portion of social resources they *deserve*, others

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<sup>49</sup>Sterba. How to Make People Just 14.

<sup>50</sup>Nozick. Anarchy, State and Utopia 153.

<sup>51</sup>Nozick. Anarchy, State and Utopia 154.

argue justice is only achieved where individuals own what they *need*. The entitlement theory, because it is fashioned from historical principles of justice, is the only theory of distribution that respects individual freedom, Nozick argues, because it is the only theory that does not require assignment of political values as part of the mechanism of distribution. In the examples above, whatever the outcome of the resulting distribution, Nozick thinks it would be an injustice should the details of what people *need* or *deserve* play a role in the distribution of social goods and material resources.

Nozick's first argument against egalitarian distribution schemes begins by building the distinction between historical and patterned principles into the following three-step argument:

1. Principles of resource distribution are either historical or end-state (also called structural, or patterned) principles.
2. End-state principles require maintenance, and such maintenance requires interference in individual freedom.
3. Freedom is the ultimate political value, and principles of resource distribution should reflect this fact.

Therefore:

4. Historical principles of resource distribution are morally required.

The idea here is that, even if one theory of resource distribution is just, because it would bring about a state of affairs that *is* just, it is illegitimate to insist that the principles underwriting that state of affairs be implemented as principles of resource distribution, because no principles of resource distribution except historical principles can be implemented without measures in place to restrict transactions which deviate from the principles. We can imagine a number of possible candidates for end-state principles. Nozick considers: 'moral merit', net utility, and 'IQ



scores'<sup>52</sup>, all of them designed to exhibit the intended characteristics: to maintain the pattern of resource distribution, on which the justice in the principles depend, the individual freedom of participants in the distribution must be restricted.<sup>53</sup>

The argument that “liberty upsets distribution patterns” is further developed and sharpened in a thought experiment, which I will call, after Kymlicka, Nozick’s “intuitive” argument against egalitarian distribution schemes, reformulated as follows.<sup>54</sup> Decide on your preferred distribution of resources and social goods. Assume that your favoured economic distribution (call it  $D_1$ ) accords with either your intuitions about social justice or some comprehensive doctrine which might underwrite a theory of justice. Among members of the community in which your distribution is instantiated, innumerable options exist for putting to use private shares in the distribution. Now, one of the individuals in the community, call him Wayne Gretzky, is ‘greatly in demand’ by hockey teams, being a great gate attraction...

He signs the following sort of contract with a team: In each home game, twenty-five dollars from the price of each ticket of admission goes to him... The season starts, and people [voluntarily] attend his team’s games: they buy their tickets, each time dropping a separate twenty-five dollars of their admission price into [Gretzky’s] box... Let us then suppose that in one season one million individuals attend his home games, and Wayne Gretzky winds up with \$25 million dollars, a much larger sum than the average income and much more than anyone else has. Is he entitled to this

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<sup>52</sup>These and other candidates are supplied in Nozick, Anarchy, State and Utopia 153-155.

<sup>53</sup>Hal Varian argues convincingly that all theories of distributive justice can be put in end-state form Hal Varian, “Distributive Justice, Welfare Economics, and the Theory of Fairness.” Philosophy and Public Affairs 4 (1975): 223-247.

<sup>54</sup>For the original representation of this argument (instead called the Wilt Chamberlain argument), see Nozick, Anarchy, State and Utopia 160-164. For a clear analysis of the argument, see Will Kymlicka, Contemporary Political Philosophy (Oxford: Oxford University, 1995) 98.

income? Is this new distribution ( $D_2$ ) unjust? If so, why?<sup>55</sup>

The moral Nozick wants us to draw from the story is that, given *any* pattern of distribution, voluntary exchanges between individuals will upset the pattern. So we either have to admit that the original distribution was unjust (a possibility which was stipulated out of consideration, because the pattern was chosen to accord with any original theory of justice), or we have to admit that the altered pattern of distribution is just, and therefore Nozick's conclusion is appropriate – voluntary actions will upset any pattern of distribution. Put simply: "To prevent the transition to  $D_2$  in the name of maintaining a favoured pattern of distribution seems to involve preventing people from doing what they choose to do... Peoples' liberty [...] grates against the maintenance of a pattern of distribution."<sup>56</sup>

But even if the intuitive argument is appealing, and resonant with primary liberal intuitions like individual freedom, there are two reasons to find it unattractive. First, Nozick is quick to emphasize the importance of the motives of individuals participating in the transaction: in the same way that voluntariness was the hinge of the entitlement theory of resource distribution, so are the motives of the parties involved in this transaction the strength of the intuitive argument.<sup>57</sup> The parties who desire to watch Gretzky play, for a cost of 25 dollars each, are quite clearly motivated, in at least a superficial sense, to alter the distribution pattern of  $D_1$ .

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<sup>55</sup>Nozick, Anarchy, State and Utopia 161. [Appears here with minor changes]

<sup>56</sup>C. Ryan, "Property Rights and Individual Liberty," Reading Nozick: Essays on Anarchy State and Utopia 327.

<sup>57</sup>Cohen, "Robert Nozick and Wilt Chamberlain: How Patterns Preserve Liberty," Erkenntnis 11 (1977): 5-23.

But as well as the *motives* of the parties involved, we should consider the *consequences* of their actions. For even though each individual assents to the transaction, if their situations are aggravated, surely this fact should impact on the argument. We must consider that even though parties to the transaction provided explicit consent, the results might have been different, and significantly different, had all parties been properly informed about the results of either individual decisions or the net transaction.

Recall that the principle of justice in transfer seemed attractive because *a*) it reflected the appeal of individual freedom in market exchanges, and *b*) it precluded all involuntary transactions, e.g., fraud, theft and other forms of coercion. So justice in transfer was attractive because it resonated with our intuitive convictions about free choice, and the “voluntariness” of just transactions, where voluntariness is equivalent to liberal individual freedom of choice. The hinge of Nozick’s entitlement theory, as noted, is the voluntary nature of transactions.

But in  $D_2$ , the shares in the economic collective have changed, by simple supply and demand, and they might have changed considerably, as Gretzky would have in  $D_2$  a share substantially larger than all others. If voluntariness is the key to the argument, Nozick needs also to show that only *explicit* motives are worthy of consideration, especially where the material conditions of everyone involved might change considerably for the worse.<sup>58</sup> If the argument depends on incomplete knowledge among participants, it is not a good argument, because it is not consistent with liberal freedom. Those whose actions are chosen on the basis of scarce or withheld information have acted with less freedom, because freedom entails more than just blind

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<sup>58</sup>Cohen, Self-ownership, Freedom and Equality 22-23.

individual choice.

Take, for example, the principles which would underwrite a radically egalitarian distribution of resources as our  $D_1$ . Since the principles which guided construction of the distribution would have constrained the way Gretzky was remunerated, his new share might have been substantially smaller. But this would have been consistent with the theory which produced our principles of justice, even if it violated libertarian principles of unrestrained market freedom. The increase in Gretzky's share would decrease radically, in comparison to other possible imagined  $D_2$ s, but he would enjoy a net increase, in line with egalitarian principles of justice. All others involved in the transaction, though, would experience a minor decrease in their shares – but the decrease would track an egalitarian commitment to equality of material condition. We are not obliged to accept that either Gretzky or any of his fans would desire, in a well-ordered egalitarian  $D_1$ , an immoderate share in the resources of the collective, had the possible results of the transaction been sufficiently transparent. We might expect that all members, even those who might benefit most from an inegalitarian distribution, might respect  $D_1$  principles, only because they are consistent with an appropriate notion of justice.<sup>59</sup>

The way Nozick intends the argument to brace his entitlement theory is flawed as well. The thought experiment, and indeed the entitlement theory, purport to explicate the simple idea that: "Whatever arises from a just situation by just steps is itself just."<sup>60</sup> Modifying this claim, with attention to the centrality of the principle of justice in transfer, we get: "Whatever arises

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<sup>59</sup>Cohen, Self-ownership, Freedom and Equality 25-26.

<sup>60</sup>Nozick, Anarchy, State and Utopia 151.

from a just situation as a result of fully voluntary transactions on the part of all transacting agents is just.”<sup>61</sup>

Surely this idea alone is not stable enough to underwrite a theory of distributive justice. After all, the claim presented above implies that all  $D_2$ s would be consistent with justice only in virtue of the justice in  $D_1$ . This appears to beg the question: the appropriate question here might very well help us find the principles through which we could decide on a just distribution of holdings. The task of specifying principles which regulate economic distributions according to some notion of justice would not exclude transactions undertaken as part of those distributions. Transactions in the distribution would be subject to the same considerations as the original distribution itself. G.A. Cohen says about the parties in Nozick’s exercise:

their rights are violated only if the entitlement they received was of the absolute Nozickian sort, and this cannot be assumed. Whatever principles underlie  $D_1$  will generate restrictions on the use of what is distributed in accordance with them.<sup>62</sup>

The distinction between historical and patterned or end-state principles of distributive justice does not do service to the question, because the manner in which the justice in both the original distribution and the steps taken to arrive there have to be calculated, in part, at least, with respect to principles specifying more than merely who has what, or facts about how the distribution came about. The intuitive argument only establishes that freedom and equality can sometimes be shown to conflict – it does not show that they always conflict, nor does it show that they conflict in all the significant cases. Nozick insisted on a disjunctive syllogism, but the

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<sup>61</sup>Cohen, Self-ownership, Freedom and Equality 21.

<sup>62</sup>Cohen, Self-ownership, Freedom and Equality 28.

syllogism simply will not hold.

### 2.3 Self-ownership

The alternative to Nozick's intuitive argument for libertarianism is his self-ownership argument, and because of defects internal to the former, all the more pressure is placed on the latter if restraints on egalitarian distribution are to be established and defended. In section 2.4 I will demonstrate that self-ownership plays a crucial role in Nozick's libertarianism, and in section 2.5 I will argue that his appeal to self-ownership is spurious. It is first necessary, however, to clarify some of the conceptual issues that inevitably arise when the term "self-ownership" is exercised.

Of course, the claim that individuals are self-owners reflects a powerful intuitive conviction, because the contrary claim is so counterintuitive. Even though it provides only a cursory understanding, one key example substantiates the claim that something intuitive stimulates sympathy with the concept. Consider a society in which half of the population is born without eyes. It is difficult to see how...

were eye transplants easy to achieve, it would then be acceptable for the state to conscribe potential eye donors into a lottery whose losers must yield an eye to beneficiaries who would otherwise be not one-eyed but blind. The fact that they do not deserve their good eyes, that they do not need two good eyes more than blind people need one, and so forth – the fact, in a word, that they are merely lucky to have good eyes – does not convince them that their claim on their own eyes is no stronger than that of some unlucky blind person.<sup>63</sup>

The story motivates sympathy with self-ownership because there is something particularly offensive about the idea of forcing individuals to give up pieces of their bodies for the sake of other individuals' interests without explicit consent. At very least, the motivation for this sort of

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<sup>63</sup>Cohen, Self-ownership, Freedom and Equality 70.

policy would have to clear a significant threshold, to the effect that, the interests of the entire social collective being the prominent concern of all individuals, redistribution of eyes is only legitimate where the fortunately 'eyed' agents in the transaction consent without any form of coercion.

But the concept of self-ownership appears to belong to a class of composite ideas compounded from semantically dissimilar terms. "Ownership" unambiguously denotes a legal relation which grants an agent particular rights, privileges, powers or immunities over others in a social collective. But "self" is a reflexive term, usually used to denote, in a fairly opaque sense, some "particularly intimate, or essential, part of the person," as in "self-realization" and "self-respect".<sup>64</sup> At any rate, the reflexivity of the term *seems* to imply an exclusive or private character not compatible with external relations in a social collective. Wittgenstein, to draw a pointed example, detailed the semantic bankruptcy of the concept '5 o'clock on the sun', and it might appear that the concept self-ownership is similarly self-contradictory.<sup>65</sup>

Kant thought the concept was incoherent, likely for reasons something like the following. The term 'self', far from being determinate, is nearly impossible to pin down effectively. In trying to pin it down, we might consider a metaphysical self, the kind often attributed, as part of a general critical project, to Rawlsian liberalism,<sup>66</sup> where corresponding to each individual body

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<sup>64</sup>Cohen, Self-ownership, Freedom and Equality 28, 68.

<sup>65</sup>Cohen, Self-ownership, Freedom and Equality 210.

<sup>66</sup>Mistakenly attributed, in my view. For an argument that Rawls has been misunderstood on this metaphysical conception, see Kocsis "Rawls New Liberalism and the Communitarian Challenge." Michigan Journal of Political Science 28 (2000): 83-105. For Rawls' response, see John Rawls, "Justice as Fairness: Political not Metaphysical." John Rawls: Collected Papers, ed.

there is a self, and identification of the character of this self is the key to understanding what rational agents should desire in their political freedoms, generally speaking. Or we might consider the self invoked in discussions of consciousness and cognitive function. Part of being conscious, some might say, is being able to identify a self as the subject of all of the cascading representations and images the cognitive system apprehends, and any robust understanding of consciousness requires some understanding of the constitution of this self. Many other possible understandings of the term 'self' could also be cited.

And even though the term "ownership" is not as indeterminate as the term 'self', it is nearly as problematic. One of the best available conceptual analyses of 'ownership' available provides no less than eleven "standard incidents" of ownership, each an aspect that can be easily and discretely identified. For example, even though "ownership" is commonly used to refer to some indefinite collection of these primary incidents, the following list is at least one clear set of rights generated by ownership over material goods: (1) the right to possess, (2) the right to use, (3) the right to manage, (4) the right to generate income, (5) the right to security in owned property.<sup>67</sup> These incidents represent the collection of possible forms of ownership rights which might need to be considered to make sense of self-ownership. I will return momentarily to this analysis, in order to make sense of these semantic difficulties.

But "self-ownership", at least as far as it is put to use in the literature, does have

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Samuel Freeman (Cambridge: Harvard University, 1999) 388-414.

<sup>67</sup>A.M. Honoré. "Ownership." The Nature and Process of Law, ed. Patricia Smith (New York: Oxford UP, 1993) 112-119. I develop this line of argument in Kocsis, "Fundamental Legal Conceptions Applied to Nozick's Concept of Ownership." Michigan Journal of Political Science 28 (2000): 67-82.



determinate content. Human actions and abilities can be controlled, and one method of control is expressed in ownership over those actions and abilities. The powers a slave-owner has over a slave are the powers a self-owner has over herself. "Self" is used reflexively in this context, as in others, to express legal control over a person, so that the legal relations described are essentially exclusionary: the 'self', in the concept of self-ownership, signifies that what owns and what is owned are the same.<sup>68</sup> Semantic difficulties do not seriously frustrate this attempt to understand the concept of self-ownership, because the concept does not require any more sophisticated notion of "self" or "ownership" than those profiled above.

Even if the concept of self-ownership can be made stable, however, so far little theoretical progress has been made. After all, the concept of self-ownership, cannot be *false*, because concepts do not have truth values.<sup>69</sup> The important target here is the *thesis* of self-ownership. It might seem trivial to distinguish the concept from the thesis, because Nozick, of course, employs both. The sense in which Nozick might coherently make use of the concept is clear, and, as noted above, appeal to the concept is grounded by at least an intuitive pull. And it will be clear, after section 2.4, what place the notion occupies in his argument. But, to effectively reconstruct Nozick's libertarian argument, the thesis of self-ownership must be cited in detail.

According to one synopsis, the thesis of self-ownership specifies that:

Each person has an extensive set of moral rights (which the law of her land may or may not recognize) over the use and fruits of his body and capacities, comparable in content to the right enjoyed by one who has unrestricted private

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<sup>68</sup>Cohen. Self-ownership, Freedom and Equality 210-211.

<sup>69</sup>Cohen. Self-ownership, Freedom and Equality, 209.

ownership of a piece of private property.<sup>70</sup>

I would like to fix on two points in the passage above. First, the thesis specifies that each individual is entitled to “an extensive set” or package of moral rights which safeguard self-ownership. So the way any political theory determines the appropriate package of individual freedoms should, according to this thesis, be consistent with self-ownership. Second, the relation between an owner and her ‘self’ is explicitly tied to the relation between an owner and her material property. What is important at this point are not the specific features of the set of rights and privileges ascribed, but rather, the fact that the relation between self and freedoms is equated with the relation between a material property owner and her property. The core of the idea is that...

agents own themselves in just the same way that they can have maximal private ownership in a thing. This maximal private ownership is typically taken to include the right to fully manage:... the right to the full income; the right to transfer fully any of these rights through market exchange, inter vivos gift, or bequest; and the right to recover damages if someone violates any of these rights.<sup>71</sup>

Any non-consensual intrusion in these maximal property freedoms, including in particular any redistributive function of the state, is impermissible, as all such intrusions are violations of self-ownership freedoms. So the thesis of self-ownership stipulates that individuals should enjoy proprietary rights over their persons and powers, whatever the form these rights take.

There is also an important distinction between ‘formal’ and ‘effective’ self-ownership. We will see that one key problem with Nozick’s argument is that the variety of self-ownership he

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<sup>70</sup>Cohen, Self-ownership, Freedom and Equality, 117.

<sup>71</sup>Peter Vallentyne, “Critical Notice: Cohen, Gerald, Self-ownership, Freedom and Equality.” Canadian Journal of Philosophy 28 (1998): 611.

explicates is only contingently connected to his claim that self-ownership can yield full ownership of external resources. It is just as easy, one might say, to imagine a circumstance endorsing equality of condition consistent with one kind of self-ownership, formal self-ownership, but not consistent with another, effective self-ownership. On the formal characterization, individuals are entitled to a package of moral rights over the use and produce of their body and capacities, but they are entitled in a way consistent with one or more constraining principles, for example a principle limiting or regulating ownership of property. On the effective characterization, individuals enjoy rights of self-ownership which have priority over other principles, and therefore, self-ownership provides the primary principle for distribution of political goods and material resources.

Nozick. I will argue in 2.4, needs to appeal to an *effective* notion of self-ownership, rather than a formal one, in order to establish a strong register of property freedoms. He is consequently committed to full self-ownership: a variety not constrained in any way except for others' maximal private ownership of themselves.<sup>72</sup> This is a significant point, because, if accurate, it indicates that the kind of self-ownership Nozick requires, the kind I will be concerned with here, includes at least all of the standard incidents of ownership introduced above. So Nozick's argument requires at least that individuals are provided liberties which protect "the right to possess, the right to use, the right to manage, the right to generated income, and the right to security in their persons and powers."<sup>73</sup>

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<sup>72</sup>Michael Otsuka, "Self-ownership and Equality: A Lockean Reconciliation." Philosophy and Public Affairs 27 (1998): 69.

<sup>73</sup>Honoré, "Ownership." 112-119.

## 2.4 Nozick's Appeal to Self-ownership

In 2.2 we saw that Nozick's initial argument against egalitarian redistribution did not withstand analysis. What was missing from the intuitive argument, it seemed, was a reasoned connection between individual freedom and property freedom. On the intuitive argument, the motives of the interested parties were of pivotal concern. But it was not clear that the parties' *explicit* motives were more significant than the motives we should want to consider had the parties been fully informed about possible outcomes of the transaction. And further, it is not at all clear that the parties would be better off agreeing to the transaction than they would be under a situation of at least slight or minimal regulation of social resources, coordinated by their state, in the interests of long term stability or another principled consideration. What was missing from the intuitive argument was a stronger connection between freedom and ownership rights, and this connection is provided by the thesis of self-ownership. Although it remains a curiously unargued postulate in Nozick's argument, because of defects in the intuitive argument, it will become clear that self-ownership is the constitutive core of Nozick's libertarianism.<sup>74</sup> I now turn to the function, or, more accurately, the functions, served by the thesis of self-ownership in Nozick's argument. Self-ownership in fact plays *two* roles in Nozick's theory: to substantiate the principle of justice in acquisition, and to ensure due respect for the liberal principle of equality.

I will begin with the second function – respect for equality. I claimed in 1.0 that all liberals make liberal values prominent in one way or another. One liberal value endorsed by

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<sup>74</sup>For the claim that this premise is largely unargued, see Cohen, Self-ownership, Freedom and Equality 70.

libertarians is freedom, a fact which hardly needs to be stated.<sup>75</sup> Nozick is committed as well to one sort of a liberal principle of equality, however, and this commitment is apparent in his respect for the “underlying Kantian principle that individuals are ends and not merely means-- they may not be sacrificed or used for achieving others’ ends without their consent.”<sup>76</sup> This regard for equality is conspicuous in the first pages of Nozick’s defense of libertarianism:

Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong are these rights that they raise the question of what, if anything, the state and its officials may do.<sup>77</sup>

He goes on to argue that the state “...may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their *own* good or protection.”<sup>78</sup> The individual rights referred to in the passage are intended to secure the right of individuals not to be treated as vehicles for the satisfaction of others’ interests. My individual rights, on Nozick’s proposal, include the right not to have abilities and aptitudes, which properly belong to me, sacrificed for the benefit of others. This shows Nozick’s regard for equality, in the sense that his idea is to respect *equally* each individuals’ freedom to make decisions about their

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<sup>75</sup>Although I will state it here, for the sake of clarity, and provide support for the claim. The position of liberty in libertarian philosophy is detailed in Weinberg, “Freedom, Self-ownership and Libertarian Philosophical Diaspora.” Critical Review 2 (1997): 331; Narveson, The Libertarian Idea 7.14; Wolff, Robert Nozick: Property, Justice and the Minimal State 19.

<sup>76</sup>Nozick, Anarchy, State and Utopia 151.

<sup>77</sup>This programmatic claim, taken from Nozick, Anarchy, State and Utopia ix., emphasizes respect for equality because 1) Individuals should not, according to Nozick, have their talents or other properties involuntarily conscripted for others’ use, and 2) If such a right were applied universally, it would ensure *equal* treatment of individuals.

<sup>78</sup>Nozick, Anarchy, State and Utopia ix.

lives.

Self-ownership freedoms, Nozick thinks, are the appropriate way to secure my claim to be treated as an end rather than as merely others' instrument. This is where self-ownership first finds a place in the argument: as reinforcement for equality. Freedom is a prominent liberal value, and Nozick gives priority of place to this value in order to provide individuals with the means to select, revise and realize a plan of life toward some individually attractive end, where that end requires rights, or otherwise protected access, to life, civil liberties, and property, as all ends certainly do. If someone, or, in particular, a state, can impinge on my plan, or the realization of my plan, in the interests of say, egalitarian redistribution, then my own interests, the argument concludes, can be subordinated to those of another.

So Nozick uses the thesis of self-ownership to guarantee equality, and he uses equality to ensure that universal individual freedom is not violated. If all individuals enjoy rights to self-ownership, "then [each] person has certain rights over herself, rights to which the self-owner may be able to refer, for example, in justifying the kind of freedom she has, of the property to which she is entitled."<sup>79</sup> In this sense Nozick advocates *full* or effective rights of self-ownership. *Full* self-ownership includes the stipulation that only when a person possesses, "to the greatest extent and stringency compatible with the same possession by others, the aforementioned rights"<sup>80</sup> does that person enjoy full individual liberty. Since no invasion of my individual rights in the interests

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<sup>79</sup>Weinberg, "Freedom, Self-ownership and Libertarian Philosophical Diaspora." 331.

<sup>80</sup>Otsuka, "Self-ownership and Equality: A Lockean Reconciliation." 67., and Cohen, Self-ownership, Freedom and Equality 213.

of others is defensible, my self-ownership, as regards egalitarian redistribution, is inviolable.<sup>81</sup>

The other reason Nozick invokes effective self-ownership is to provide a foundation for maximal property freedom. At this point the two capacities for self-ownership in Nozick's libertarian argument connect. Treating everyone as equals ensures respect for fundamental political values, but a significant objective of Nozick's libertarian proposal was to ground opposition to egalitarian distribution schemes in a strong commitment to maximal property freedom. So the question of what makes Nozick's entitlement theory the source of just distributions remains to be addressed. Recall that, according to the entitlement theory:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding, and
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else who is entitled to that holding, is entitled to that holding.

With the inadequacy of the intuitive argument noted in section 2.2, these principles motivate a significant problem. To incorporate the thesis of self-ownership into the entitlement theory, and thereby fortify the argument, we need an argument for how self-ownership yields absolute ownership rights over originally unowned property. We heard above that whatever arises from a just situation by just steps is itself just. But no external resources were originally owned: all external resources were at one time acquired from the natural environment. It is clear that legitimate transfer plays a pronounced role in the entitlement theory, but there can be no legitimate transfer of external resources without legitimate original acquisition – the question about initial acquisition is prior to any question about legitimate transfer.<sup>82</sup> Nozick's answer, in

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<sup>81</sup>Nozick, Anarchy, State and Utopia 33.

<sup>82</sup>Kymlicka, Contemporary Political Philosophy 108.

short, is that, in virtue of my self-ownership rights, my talents and character are my own, and because my talents and character belong to me, anything appropriated through them is rightly mine as well.

John Locke also assembled his theory of property freedom from the thesis of self-ownership. and the relationship between individual freedom and property freedom in Locke will help bring Nozick's self-ownership argument into focus. The core of Locke's position. most would agree.<sup>83</sup> is that a principled defense of property rights is the preeminent foundation for an appropriate political system. "The great and chief end therefore," Locke wrote in the Second Treatise, "of Men's uniting in the Commonwealths. and putting themselves under Government, *is the Preservation of their Property.*"<sup>84</sup> And Locke built his defense of property freedom from self-ownership: "...every man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his."<sup>85</sup>

A series of arguments are provided for the particulars of how external resources become property, to wit, 'labour-mixing' appropriation and 'value-adding' appropriation. But since this system of property rights defends only those who already own or have the means at hand to acquire property, it is quite possible, even likely, that less fortunate members of the community

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<sup>83</sup>Although there is disagreement about this point. Most would agree that Locke's position essentially begins and ends with natural property rights. For discussion, see Macpherson, The Political Theory of Possessive Individualism 199-201.

<sup>84</sup>Locke, Two Treatises of Government 350-351.

<sup>85</sup>Locke, Two Treatises of Government 287.



would be left to suffer under circumstances where no means of subsistence were available. Locke sought to substantiate this variety of social structure, we noted above, by stipulating that original appropriation was legitimate only if “enough and as good” was left in the commons for others. This proviso regulates Locke’s theory of appropriation by ensuring that original acquisition, through extension of self-ownership, is “consistent with the equality of other individuals since they are not disadvantaged by [the] appropriation.”<sup>86</sup> Locke’s arguments were built from the idea that the system of land enclosure would improve land, therefore improving mankind’s circumstances, and therefore God’s mastery. The provisos draw a line between when circumstances are worsened and when they are improved, for individuals concerned, and this is how Locke insured a kind of equal consideration.

Nozick’s position on initial acquisition is that appropriation of external resources is legitimate only if it is not illegitimate, and an appropriation is only illegitimate where it aggravates the circumstances of others. “The crucial point,” Nozick argues, “is whether appropriation of an unowned object worsens the situation of others.”<sup>87</sup> For Locke, in a world of adequately available resources, individuals could legitimately appropriate resources as long as his proviso, a “...positive limit on action and property dispositions,” was satisfied.<sup>88</sup> But Nozick’s proviso is not as particular: neither the content of the phrase “worse off,” nor guidance on situations where

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<sup>86</sup>Kymlicka, Contemporary Political Philosophy 110.

<sup>87</sup> Nozick, Anarchy, State and Utopia 175.

<sup>88</sup>J.H. Bogart, “Lockean Provisos and State of Nature Theories” Ethics 95 (1985): 828-836.

scarcity resources calls for sharpening of the idea are provided.<sup>89</sup>

So according to a good faith reading of the argument, initial acquisition of external resources is legitimized by an extension of self-ownership to the produce of the exercise of self-ownership, so long as acquisition proceeds within the boundaries of Nozick's proviso. We can make the argument explicit, and make the position of self-ownership in it distinct, as follows:

1. Individuals are entitled to self-ownership freedom, consistent with proprietary rights over their persons and powers.
  2. The world is initially unowned.
  3. You can acquire absolute rights over a disproportionate share of the world, through the legitimate extension of self-ownership, if you do not worsen the condition of others.
- Therefore:
4. Once people have appropriated private property, egalitarian redistribution policies are illegitimate, and a free market in capital and labour is morally required.<sup>90</sup>

The argument emphasizes the substantial positions of the principle of liberty and the thesis of self-ownership, and provides reason to accept the entitlement theory of resource distribution. The result, if this argument were the basis for the principles of justice in a state, and the entitlement theory was the natural implication, would be a form of almost absolutely unrestrained capitalism, and maximal private property rights. Egalitarian distribution schemes, as a matter of respect for self-ownership, would be prohibited. Does self-ownership of the full Nozickian variety yield liberal individual freedom? Nozick thinks it does,<sup>91</sup> and in section 2.5 I will present an argument that his assumption misses its mark.

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<sup>89</sup>Nozick, Anarchy, State and Utopia 178.

<sup>90</sup>This argument, presented here in modified form, appears in Kymlicka, Contemporary Political Philosophy 112.

<sup>91</sup>Wolff, Robert Nozick: Property, Justice and the Minimal State 8.

## 2.5 Two Arguments Against Nozick's Appeal to Self-ownership

The four step argument attributed to Nozick above substantiates the entitlement theory of resource distribution, in that it provides reason to think that individuals can legitimately appropriate external resources, and it secures individual freedom of one variety: not only security regarding basic freedoms of life and other liberties, but the kind of freedom which provides a mechanism for acquisition of external resources, and precludes redistribution of owned resources. The positive limit on the entitlement theory, also supplied by the self-ownership argument, was the modified Lockean proviso that legitimate appropriations not aggravate the circumstances of others. In other words, the freedom that Nozick's libertarianism protects is untempered, save for the idea of equality expressed in the proviso.

But there are good reasons to think that this argument does not successfully justify the kinds of inequality in resource distribution that both Locke and Nozick are willing to approve. Even if we accept the claim that individuals should enjoy self-ownership freedom, consistent with proprietary rights over their person and powers, as well as the claim that the world is initially unowned, we need not accept that it is possible to acquire a disproportionate share of external resources without worsening the condition of others.

Consider the following example.<sup>92</sup> A group of misfortunate individuals, traveling on an

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<sup>92</sup>Ronald Dworkin presents an example similar in form, and I will be concerned with the produce of his theoretical exercise in Chapter Three. This example, though similar, should not be confused with Dworkin's. Cohen and Kymlicka develop arguments from this perspective. I must again emphasize that although I think this is the most persuasive argument against this form of a moralized understanding of freedom, the most persuasive argument that can be levelled against Nozickian libertarianism is the highly practical economic argument epitomized in Galbraith, The Culture of Contentment 13-42.

ocean-going vessel, run aground near the coast of a small uninhabited island, and are forced to take refuge. Since no communication from the island is possible, and since implements and other goods are in short supply, the group is required, in the interests of collective survival, to devise a procedure through which resources can be produced and distributed, as well as a theoretical foundation for the procedure, which would be followed strictly, and might provide the foundation for a codified system of exchange. The vessel happened to have embarked from early-century England, so the possible schemes were limited by a particular idea, to which many of the travelers were absolutely committed, of how resources and goods should be distributed. The group decides to distribute plots of land to individuals, on an arbitrary basis, so that individuals can privately produce the required means of subsistence, through, quite possibly, means something like extension of self-ownership through labour-mixing and value-adding. There are one hundred individuals in the group, and more than one hundred plots of land, but some plots are more fertile than others, and some land is nearly impossible to tend. Over time, since some individuals bare the misfortune of having been granted a relatively unproductive plot, others find themselves in a position to deliver to the former resources they can produce easily, perhaps without labouring at all, in exchange for freedom to labour on productive land.

A genuine but uninteresting capitalist society would develop in this example case, along libertarian principles of justice. Clearly, under appropriate circumstances, enough resources could be produced so that all could survive indefinitely. But, just as clearly, the circumstances of some individuals would be easier to accept than those of others: some are forced, as a result of their intention to survive, to labour for others, and a fortunate remainder are positioned to provide a market for the labour of those who are unfortunately positioned without adequate

external resources, or for those who cannot produce for themselves. While some are favourably positioned, others are not, their circumstances having been significantly aggravated since the original appropriation: they are forced, because their ability to sustain themselves is challenged, or dramatically changed for the worse, to relinquish their rights to a meaningful choice about how to live, and when and how to labour. The only meaningful choice in this circumstance is who to labour for, and this is not much of a choice at all.

Even if the example case is altered, so that the inhabitants divide productive land only, according to the same scheme, over time the distribution would come to favour one group of individuals at the expense of others. As soon as the distribution was instantiated, natural and other differences would favour some and aggravate others' circumstances. Differences in talent, brute luck, good fortune with weather, and pure accidents would provide some with the ability to produce well from their land, while others would be forced to labour when their ability to produce individually is diminished, whatever the reason.

If we modify the story further still, so that initial acquisition is conducted according to a pure lottery, it appears that, in this case, the circumstances of some members of the group inevitably degenerate, to the net gain of the circumstances of other members of the group.<sup>93</sup> Indeed, it seems as if there is something about this example that makes divisions of the sort described *inevitable*: regardless of who is granted which plot of land, and regardless of how the plots are developed, over time, the circumstances of some are aggravated in favour of the

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<sup>93</sup>This claim is false only where there is unlimited abundance for all members, a situation which is implausible in any collective comprised of finite resources. I will stipulate this possibility out of consideration.

circumstances of others.

The moral of the example is this: given a social collective where resources are distributed individually, and given a period of time long enough for benefits and prosperity, as well as disadvantages, to accrue, the original appropriation, since it is the causal foundation for all other distributions, will disadvantage some members of the social collective. The kind of initial acquisition Locke and Nozick advocate, and require, to substantiate their property rights schemes, comes with a built-in mechanism which creates inequalities in resource distribution, and these inequalities aggravate the circumstances of all those who do not benefit from them. Even if it *is* the case that individuals are provided a fair crack at a fortunate spot in the collective, it is not the case that the arrangement is fair as a result. And more important for Nozick's argument, the circumstances of some are worse than they would have been under another regime of property freedom.

We might examine now *just how* the circumstances of some individuals are adversely affected, and decide whether these results are in some manner unjust. First of all, it is important to recognize that those who find themselves in the unfortunate position of having to labour for other individuals to secure means of subsistence find their lives under the control of others. These individuals lose control because important decisions about how and when they will labour, for what rate they will labour, and when their labour will be discontinued, are left to the discretion of others. In the running example, all those who labour for others *must* labour for others, and this is an inevitable result. Those who must labour to survive are free to choose not to labour, but this is not a very broad conception of freedom: the only real choice in this case is between survival and refusal to labour for others. This is an inequality of a significant order,

because individuals not fortunate enough to have secured a productive plot of land now find their lives under the control of others for many important decisions about how one might choose to direct their lives, and for any individual in such a group this inequality places them among the most disadvantaged members of the community.

So, returning to Nozick's argument, even if we grant that individuals are entitled to self-ownership freedom, and grant that the world is initially unowned, we need not accept that it is possible to acquire a disproportionate share of external resources without worsening the conditions of others, because such a negative result is nearly inevitable. Nozick's proviso, considering the work he intends it to shoulder, is obviously weak.<sup>94</sup> As a result, the argument extending from self-ownership through an unowned external world to unequal distributions of resources fails in almost every imaginable case.

The second argument against Nozick's libertarianism is as follows. In the example detailed above, as in the self-ownership argument presented in 2.4, external resources, prior to initial acquisition, were unnecessarily presumed to be unowned.<sup>95</sup> We need not accept this assumption, because it would seem more plausible that the initial acquisition condition required here has never existed. By stipulating that external resources are collectively owned, rather than unowned, Nozick's self-ownership argument provides quite unlibertarian conclusions, because all possible results, *mutatis mutandis*, provide highly egalitarian consequences. For example, had the isolated community decided that resources on the uninhabited island, including land, should

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<sup>94</sup>Kymlicka, Contemporary Political Philosophy 101.

<sup>95</sup>For a developed account of this analysis, see Cohen, Self-ownership, Freedom and Equality 76-91.

be collectively instead of individually owned, coordinated with, say, individual veto power over use of resources and production of goods, even though Nozick's proviso would be satisfied, the thesis of self-ownership would have to be so relaxed that it would be merely formal, rather than effective. In the new example case, the productive potential of the original example instance would at least be equalled, and perhaps surpassed, in part because individuals would produce on an equal basis all that was required for the prospering of the general community, and little productive potential would be ignored. But in the original case example, the general production would depend on no such coordinated effort.

All individuals in the modified example would be provided with the necessary means of survival, by the explicit agreement underlying production with collective ownership, and no individual, by outright luck, poor fortune, or any other factor, would be entitled to enjoy the productive capacities of others. Such an understanding of external resources is not at all obscure: it may be what Locke had in mind,<sup>96</sup> and it may be the most appropriate way to distribute resources, where scarcity is either an immediate or a potential issue. But the relevant effect of such a move, to repeat, is that the mode of self-ownership engaged in the resulting argument would not be as forceful as the kind Nozick required. Individuals, according to such an argument, would not enjoy full proprietary powers over their persons and powers, because there would be many actions from which individuals would be precluded. A full day's labour would not entitle one to the full produce of that labour, because, since the land was collectively owned, use of the

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<sup>96</sup>See Kymlicka, Contemporary Political Philosophy 118; Christman, "Can Ownership be Justified by Natural Rights?" Philosophy and Public Affairs 15: (1986) 156-177; and for the original contention see Locke, Two Treatises of Government 286.



produce would be subject to policies agreed upon by all individuals concerned. These policies would supervene, and therefore render merely formal, exercise of self-ownership.

As we saw in 2.3 and 2.4, this merely formal understanding of self-ownership is unavailable to Nozick, because the kind of principles Nozick needs to justify, those found in the entitlement theory, require effective self-ownership to substantiate for initial acquisition of resources, and thus underpin unequal distributions and prohibit redistribution. The claim that individuals could appropriate a disproportionate share of external resources was grounded by two assumptions: one about the status of world resources prior to original acquisition, and another about an effective understanding of self-ownership. Under the formal characterization, individuals retain a variety of individual freedoms which issue from self-ownership, but they relinquish the freedom to appropriate (unlimited) external resources through extension of self-ownership to external resources, at least as far as that right is specified in Nozick's argument. Individuals could no longer appropriate external goods, even if Nozick could provide, at this point, an argument to substantiate acquisition.

I said that individuals would retain a variety of freedoms excluding the freedom to appropriate disproportionate shares of the external world. These freedoms would include those which motivated us to accept self-ownership in the first place: the right, e.g., not to have one's eyes plucked out for the sake of others' vision, and the right not to be enslaved by another. The latter freedoms, but not freedoms to appropriate an unequal share of external resources, would follow from the first feature of contemporary liberalism, (in section 1.0), which protected individual choices, in a specified range, through protection of individual freedoms. The right not to have one's eyes plucked out, for example, is one application of liberal individual freedom. It is

easy to resist the assumption about unowned resources, and if it is resisted, any number of other distribution schemes, including egalitarian schemes Nozick disapproves of, follow just as seamlessly from formal self-ownership. Rawls' egalitarian liberal system of distributive justice, to name a substantial example, is consistent with what we have called here formal self-ownership.<sup>97</sup>

As a result of this consideration, Nozick is forced to give up either his appeal to effective self-ownership, because effective self-ownership is not compatible with the reasonable assumption about the world of external resources as originally collectively owned, or his argument for extension of self-ownership to external resources. Either way, Nozick loses the argument for maximal property freedom, because the four-step argument above fails to withstand examination.

Again it is useful to step back and consider what was lacking in Nozick's account, what was missing from this good faith representation of Nozick's strongly libertarian argument against egalitarian redistribution. As I said, the first item conspicuously absent in the argument from self-ownership to disproportionate shares of external resources was that Nozick's account offered some people an opportunity to acquire genuine control over the lives of others, because the inevitable scarcity of land and other resources would, of necessity, generate a market for labour, and the market for labour leaves some individuals worse off than they would have been. What was missing was a rationale for this circumstance that could be squared with the important features of liberalism. We would not expect that individuals would consent to such an

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<sup>97</sup>Kymlicka. Contemporary Political Philosophy 118.

arrangement, given an advised choice and a set of reasoned alternatives, and it is difficult to call the choice to participate in such an arrangement without advised choice *voluntary*. What is lacking in Nozick's system is the idea that individuals should be able to do what it is that individuals typically do: individuals should be able to develop themselves, they should be able to preserve themselves, and they should be able to pursue a good life, where this means that they are able to do many things and make a wide range of choices. Nozick relied on an inappropriately narrow conception of liberal freedom, and given the alternative ways to think about freedom, we should not follow him in this regard.

## 2.6 Self-ownership and Equality

Nozick claimed that the package of individual freedoms generated by entitlement principles "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."<sup>98</sup> This claim is significant because it demonstrates how a place is found for self-ownership, for property freedom and for equality in Nozick's argument against egalitarian redistribution. The claim especially emphasizes the manner in which Nozick appeals to equality, and this point deserves special consideration.

To show that coordinated redistribution of privately held resources is illegitimate, Nozick needs to argue that property freedoms cannot be legitimately breached without the consent of those who hold the property in question. Under these circumstances the only available mechanism for redistribution of wealth would be voluntary redistribution, or charity. The

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<sup>98</sup>Nozick, Anarchy, State and Utopia 30-31.

entitlement theory of resource distribution substantiates the claim that only voluntary redistribution is legitimate, for if the principles of the entitlement theory are legitimate, then egalitarian redistribution of property held under that theory is illegitimate. But since the connection between individual freedom and property freedom is not as direct as it seemed when the intuitive argument was presented, Nozick is forced to argue that self-ownership authenticates maximal private ownership of external resources. We saw in section 2.5 how Nozick tried and failed to use self-ownership to establish maximal private ownership of external resources. Now it is important to examine the other role self-ownership plays in Nozick's libertarianism.

All liberal theories require some dimension of equality, in order to ensure that all individuals are accorded fair consideration. To argue that individuals should *not* be provided fair consideration is to argue that the interests and concerns of some (arbitrarily specified) people are more important than the concerns of others, and this argument offends liberal justice. So Nozick invokes the Kantian principle, which self-ownership, at least as far as Nozick is concerned, satisfies.<sup>99</sup> Self-ownership, then, became the grounding for individual property freedom, because liberal justice requires that individuals are treated equally, and one way to understand equal consideration is to ensure that individuals are provided the same set of opportunities, or something close to the same set, at the beginning of some distribution of goods in a social arrangement. If individuals involved in the example case on the uninhabited island were provided with the same set of opportunities at the time land was first distributed, they were, in at least one shallow sense, considered equals.

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<sup>99</sup>Cohen, Self-ownership, Freedom and Equality 243.

Equality played a role in Nozick's argument as a rationale for implementing self-ownership, rather than as a prominent liberal value. It is interesting, and puzzling, to find this progression in the argument, because, of course, Kant thought that the concept of self-ownership was incoherent. But whether or not Kant thought the concept incoherent or indeterminate, it is important to consider the connection between self-ownership and the Kantian principle introducing Nozick's commitment to the separateness and particularly the equality of individuals.

A more detailed reading of Kant's categorical imperative is that each individual should "Act in such a way that they always treat humanity, whether in their own person or in the person of any other, never simply as means, but always at the same time as an end."<sup>100</sup> So to respect Kant's directive is to respect a basic and universal principle of morality, the force of which directs us to never fail in treating other persons as ends-in-themselves, rather than merely means to some end. I ought to act according to principles which obey this directive, and where I do treat others as means, for example when I ask colleagues to read an essay in order to improve clarity, I must always at the same time treat those others as ends in themselves. I must always respect others' status as persons, and this entails that I treat them with dignity and respect. Failure to respect others in this manner violates the Kantian imperative.<sup>101</sup>

Now most commentators would agree that this idea is one of the significant principles of modern ethics, and it is certainly one of the key principles from which contemporary liberal

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<sup>100</sup>Robert Arrington, Western Ethics, ed. R. Arrington (Oxford: Blackwell, 1998) 277.

<sup>101</sup>Tom Beauchamp, Philosophical Ethics (New York: McGraw Hill, 1991) 196.

notions of fairness and equality have drawn. Acknowledging that an individual is an end in herself respects her worth as an agent, and provides at least one way to deliver equal consideration. Both respect for self-ownership and respect for individuals as ends-in-themselves ensure that individuals will not be sacrificed as instruments for other's goods. For example, neither ends in themselves nor self-owners can be enslaved to make the lives of others more comfortable. This is what draws Nozick toward his conclusions, because his appeal to the Kantian principle arises in the context of his presentation of "side-constraints," which reflect what he sees as the natural "separateness" of persons.

But it is also be true that, even if self-ownership provides necessary conditions for treating individuals as ends in themselves, it does not provide sufficient conditions. More is required if we want to say that a theory of justice sufficiently appreciates the status and dignity of other individuals universally. Respecting people as ends in themselves involves at least acknowledgement of other's individually pursued goals, so that no individuals are used exclusively as means for other's chosen goals. This is the important notion to which Nozick is attracted – Kant's imperative is one way to secure respect and dignity universally, because to treat persons merely as means disregards their personhood, and ignores their chosen interests and needs.<sup>102</sup> If I treat others exclusively as means to my ends, I thereby consider my own interests to be more important than theirs: I fail to value their concerns equally.

A further conclusion arising from the imperative is that, should either I or another person be able to interfere with each other's pursuits, such interference would often be illegitimate. If I

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<sup>102</sup>Beauchamp, Philosophical Ethics 188.

wish to spend my life in pursuit of the trout I have not caught, while someone else desires a life in search of aesthetic stone masonry, she and I, if we both intend to respect each other's status as rational beings, must respect the wishes of the other in our chosen goals. Treating people as ends in themselves requires a commitment to non-interference in others' pursuit of their chosen goals. So if I should object to a stone mason's, or any other person's choices about how to live a good life, I have a duty not to interfere with their choices. These directives seem to be quite clearly mandated by the thesis of self-ownership as well: failure to recognize others' self-ownership in most significant cases is equivalent to treating others' merely as means.

But also included in Kant's directive was the idea that in some cases respecting others as ends in themselves requires assistance. Refusal to come to the aid of others whose ability to protect their own well-being has been undermined, constitutes failing to treat them as ends in themselves. To argue that his "side-constraints" reflect the "underlying Kantian principle" that "individuals are ends and not merely means", Nozick must satisfy at least the following pair of relevant conditions. The first is that the entitlement principles ought to be universalizable, and the second is that the principles ought to be consistent with respect for others' well-being, or consistent with allowing others achieve their chosen goals, and providing assistance where assistance is necessary.<sup>103</sup> The latter condition, which I will call the *autonomy* condition, bears a direct connection to the claim that aid to others is often required by Kantian morality: coming to the aid of those who need help in achieving their goals is in some cases morally required.

Self-ownership, at least as far as it is developed in Nozick's argument, cannot satisfy the

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<sup>103</sup>Arrington, Western Ethics: An Historical Introduction 277.

first condition, because as we saw above, effective self-ownership cannot be provided consistently to all individuals in a political community. At the beginning of the artificial situation described in 2.5, and in the imagined circumstance of original acquisition Nozick invokes, the rights and entitlements of all individuals are, by stipulation, equal, even if they are equal only at the commencement of the distribution. But as soon as the distribution begins to develop, and those who do not own extensive property are beholden to others for their means of subsistence, we cannot say that self-ownership is retained universally, because some individuals in the distribution would necessarily be forced to cede control over aspects of their persons and powers. Because these individuals must cede partial control over their persons and powers, we cannot say that they are full self-owners. So all individuals in the imagined situation are supplied with proprietary rights over their person and powers, but only some individuals are able to maintain these rights over time: the principles of the entitlement theory, given time for inequalities to develop, do not provide the same range of meaningful freedoms universally. Some individuals in this case are full self-owners, and this means that others can only be partial self-owners.

Nozick's entitlement theory principles fail to satisfy requirements of the autonomy condition as well. Again, in both the artificial situation of 2.5 and the original situation of equality Nozick imagines, individuals participating in the original distribution, engaging in the initial distribution mechanism, are empowered to act as ends in themselves. The warrant for Kant's appeal to the idea of persons as ends in themselves is that all people are rational beings, and they are therefore capable of moral autonomy.<sup>104</sup> For Kant, autonomy was a circumstance

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<sup>104</sup>See Rawls, "The Independence of Moral Theory," John Rawls: The Collected Papers (Cambridge: Harvard UP, 1999.) 299.



where individuals directed themselves according to universal moral principles, the categorical imperative being the most conspicuous example. Agents are free to make a variety of choices, and only those agents who act in accordance with moral principles, *as long as their actions were motivated by respect for moral principles alone*, are morally autonomous. Agents might choose to help a friend merely to come by a favour down the road, for example, but autonomous agents act in accordance with moral principles for the sake of acting rightly. To be morally autonomous, then, we might say that one first has to be free in determining the set of principles which guide individually selected choices.

This suggests a considerable argument against Nozick's appeal to Kantian moral principles. Kant's morality depends on moral autonomy, and as we have seen, persons with moral autonomy are to be treated as ends in themselves, which is to say that if their capability to pursue their own good depends on the aid of others, such aid is the duty of others. In other words, for anyone with moral autonomy, protection of their autonomy in a more general non-Kantian sense, i.e., capability to effectively pursue one's own good, is a duty of others. But Nozick's sense of freedom, as it is expressed in the entitlement theory, restricts the range and extent of this general autonomy for some individuals and extends the range and extent of freedoms for others. So in this instance Nozick cannot properly appeal to Kant, because, in the sense that would be most important to Kant, Nozick cannot claim that individuals are treated equally. In Nozick's state, as we saw in 2.5, some individuals enjoy more extensive and more meaningful freedoms than others, because of their ability or good fortune in accumulating private resources. The choices of some class of individuals in Nozick's state are artificially restricted, and therefore their ability to make and act upon choices about how to direct their lives is constrained by others

who control extensive resources.

The individuals in the example case of 2.5 are able to make choices about a course of life, and, we will assume, they would be provided basic civil liberties and personal freedoms in order to protect their choices. But in Nozick's social arrangement, with each successive step away from the original distribution, some individuals' capacity to effectively make autonomous choices diminishes, until the ability absolutely dissolves in some cases into a circumstance of genuine inequality, and subsequently, coercion. If it is true that successive steps away from the original distribution necessarily induce inequality, it also must be the case that the choices of individuals are corrupted, because the kind of inequalities at issue here are the source of degradation for unconstrained choice. In the instance described above, while the island inhabitants make what we might consider autonomous choices, in a general rather than a Kantian sense of "autonomy", throughout the original distribution, it is hard to see how those pressured to labour for others in order to produce their means of subsistence make an unconstrained choice to do so, in any reasonable understanding of "constraint" or "sovereign choice."

Nozick was aware that equality was a central concern, even if his arguments against egalitarian redistribution were inadequate, and this was what motivated his appeal to self-ownership. Self-ownership is at one level a guarantee of equal consideration, although the appeal to self-ownership secures only an inadequate sense of liberty. It became clear in section 2.5 that even if Nozick's libertarianism cannot effectively provide the kind of freedom we desire, or the kind contemporary liberals should consider valuable, there is one variety of freedom that Nozick's appeal to self-ownership guarantees, and one sense of equality that guarantees it

universally.<sup>105</sup> Strictly speaking, the kind of freedom Nozick defends is freedom to exercise the powers of self-ownership, provided one does not use those rights to coerce or otherwise impinge on others' corresponding rights. This is a significant point, because the appeal to self-ownership was supposed to provide individuals with freedom and control over their lives, and was then supposed to build a bridge from individual life choices to choices about and security in private property. The problem we observed in 2.5 was that, once exercised, self-ownership inevitably led to inequalities that prevented others from enjoying effective self-ownership freedom. And in similar fashion, self-ownership was supposed to provide a specified range of equality, so that the package of rights specified could be said to effectively apply to individuals universally. Any less would sting contemporary liberals' intuitions about justice.

But it is now clear that Nozick's argument does not stand up against even an unrefined idea of liberal equality. In the first argument presented in 2.5, Nozick could not establish a foundation for legitimate initial acquisition, because to be legitimate, initial acquisition had to satisfy the proviso that the situations of others not be aggravated. Legitimate original acquisition could not be defended on grounds of self-ownership, within the criteria required. In the second instance, Nozick's argument languished because there no argument was tendered to resist the possibility that external resources were originally collectively owned, rather than unowned, and the result of this consideration was that Nozick had to either loosen the scope of self-ownership or allow his argument to hang on the unfounded assumption that the world of external resources

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<sup>105</sup>Nozick provides only what might be called the "simple form of equal liberty." See Richard Arneson, "Equality," *A Companion to Political Philosophy*, eds. R. Goodin and P. Pettit (Cambridge: Blackwell P, 1995) 490.

was originally unowned. If self-ownership is loosened, the argument from self-ownership to property in external resources falls apart. If effective self-ownership is maintained, and the assumption about external resources is upheld, the modified Lockean proviso guaranteeing the rights of individuals to not have their circumstances worsened by others, is, as a result, violated. Either way, the argument developed in section 2.4 is directly and seriously challenged.

The connection between the two arguments of section 2.5 is as follows. Even though Nozick makes an implicit appeal to equality through his implicit appeal to self-ownership, the resulting theory is either unsound or illiberal for not restricting individual property freedoms in the interests of liberal equality. The most favourable reading available for Nozick's argument from self-ownership freedom to ownership of external resources inevitably allows the lives of less fortunate individuals to be subsumed under the control of others. This surrender of control is not consistent with the fundamental features of contemporary liberalism, according to which individuals should retain a certain kind of respect, including personal freedoms over self-development and self-preservation, among other important freedoms. Either the register of individual freedoms usually associated with liberalism must be restricted to provide for an unrestricted form of private property freedoms, or private property freedom must be restricted to ensure that individuals enjoy liberal freedoms universally. Since my right to freedoms and control over my life is more important to me, I will opt for these rather than unrestricted property freedoms, and I expect others will do the same. The pair of liberal values introduced in section 1.0 sometimes conflict – and in cases where private property is granted privileged position, they inevitably will.

Nozick has merely leased Kant's powerful ethical maxims and drawn his own

conclusions out of them, in order to assert that his moralized notion of freedom is equalized in a way that other theories of freedom are not. Had he investigated the much richer notion of freedom we attributed to Kant, he would have drawn quite different conclusions, and his conclusions might have been something close to those elaborated in chapter three.

So by precluding the possibility of egalitarian restrictions on property rights, Nozick has eliminated the stability of his position, at least as far as his theory is situated within the liberal context. Were it possible for individuals to restrict external resources accumulated in the dramatized but relevant example above, (2.5), Nozick would have been entitled to argue that their property freedom was demonstrably liberal, and just.<sup>106</sup> The relevant stipulation could even be as simple as this: that egalitarian redistribution on the previously uninhabited island is legitimate only if non-redistribution would incapacitate others in pursuit of their own good. Even with this *diluted* principle, Nozick's proviso would have been, in some sense, fulfilled. Even a thin principle of egalitarian justice would admit *some* egalitarian distribution, and would therefore provide for the possibility of some distributive mechanism.

The second argument of 2.5 was developed from the reasonable claim that external resources were originally collectively owned, rather than unowned. In this case equality is written into the argument from the beginning, and, as a result, no need for egalitarian redistribution in the considered example would arise. Individual property freedom in this case is restricted as a matter of course: no particular restriction on property freedom was stipulated, and

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<sup>106</sup>It is possible to take Nozick's argument to rest on just this sort of slippery slope, but my analysis entails an absolute position. In contrast to other libertarians, Nozick is explicit about the legitimate function of a state. Hayek, and others, are not so explicit. See Hayek, The Fatal Conceit. The Errors of Socialism, and Haworth, Anti-Libertarianism 116-118.

likely, none would be required, save those restrictions imposed by the original principle that land and other resources prior to initial acquisition be treated as collectively owned rather than unowned.

In both cases property freedom had to be restricted to assure respect for universal individual freedom. These examples show that egalitarian redistribution is not only *just*, it is a necessary condition of liberal freedom. This should be no surprise, because in order to maintain the fundamental principles liberals endorse, almost certainly *some* variety of external interference in or regulation of individual property freedom would be required. In the final chapter of this thesis we will examine this claim, and investigate possible alternatives.

## LIBERAL EQUALITY: THREE EGALITARIAN ALTERNATIVES

3.

In chapter two I argued that self-ownership was not a necessary condition for equal liberty, and I challenged Nozick's libertarianism on the grounds that only one of two important varieties of equality were respected. I concluded that Nozick failed to mount a persuasive argument against egalitarian redistribution schemes.

Nozick's argument, like those of other libertarians, begins from the idea of individual freedom, and what makes his libertarian principles of distributive justice particularly important, and particularly challenging for contemporary liberals, is that he appeals to self-ownership, thereby ensuring universal or equal distribution of all but only self-ownership freedoms produced by the principles of the entitlement theory, which the thesis of self-ownership is supposed to substantiate. I argued in 1.0 that contemporary liberalism embodied a potentially considerable contradiction: if property freedoms and other liberal freedoms sometimes conflict, liberals need to decide which of property freedoms and other important liberal freedoms should be weakened and which should be protected. Nozick's self-ownership argument connects liberal individual freedoms with property freedoms, in the sense that it makes all freedoms property freedoms by conceiving all freedoms as self-ownership freedoms. So one solution proposed to the central contradiction is a connection between individual freedom and property freedoms that provides grounds for conceiving of all freedoms, *qua* self-ownership freedoms, *as* property freedoms.

But there were serious problems with Nozick's argumentative strategy. His freedom argument extends only as far as the appeal to self-ownership takes it, and because self-ownership

only respects property freedoms, other important considerations are ignored. In cases where less fortunate individuals in a political community require proactive redistribution of resources in order to make use of other meaningful liberal freedoms, like personal or civil liberties, Nozick leaves no justification for, and argues for prohibition against, any redistributive egalitarian mechanisms. So individuals who command only an unnecessarily narrow range of possible choices, or, moreover, an illiberally narrow range of choices, are required to remain in such a condition because the entitlement theory does not provide tools required to deal with the problem. In this sense Nozick's libertarianism leaves individuals unequally free: the range of choices open to fortunate individuals is broad, and the range of choices open to the less fortunate is comparatively narrow.

In 1.2 and 1.3, we concluded that freedom should be appropriately defined, and, once defined, one sort of libertarian argument emerges as a direct challenge to contemporary egalitarian liberalism. Nozick's libertarianism is a clear representative of this sort of argument, because his notion of freedom is both suitably moralized and aimed directly at the moral foundation of egalitarian redistribution schemes. In 2.1 we examined the details of Nozick's principles of distributive justice, and in 2.2 we determined that an intuitive argument built from entitlement theory principles depends on an excessively narrow conception of freedom, and so, as a result, another, more substantial, groundwork is required if restrictions on egalitarian redistribution are to be established and defended.

Substantial support for the entitlement theory is provided by the thesis of self-ownership, so in 2.3 we examined the potential disorderliness of the term 'self-ownership', and settled on a stable understanding of the term. Then in 2.4 we built the thesis of self-ownership into an



extended argument, and connected the argument to both Nozick's libertarianism and the system of untempered capitalist exchange for which that theory is a theoretical foundation. In 2.5 I argued that Nozick's conclusions are illegitimate, because the primary justification Nozick provides for his self-ownership argument is a modified Lockean proviso that the circumstances of others not be aggravated by acquisition of external resources. But in several imaginable cases the circumstances of all concerned individuals are altered dramatically and demonstrably for the worse. Since Nozick's argument failed to establish that self-ownership is a necessary condition for equal freedom, in 2.6 we inspected the concept of equality, and investigated the role self-ownership was supposed to play in validating equal freedom. We found that, even though Nozick explicitly connected his argument to Kant's universal principles of morality, the connection was misleading, because the kind of equality available under a regime of self-ownership is inferior to the kind of equality contemporary liberals should endorse. The goal of this chapter will be to appropriately refine the notion of liberal equality, and determine whether any of three candidate liberal theories of distributive justice acceptably respect the notion.

### **3.1 The Liberal Notion of Equality**

Equality is a notoriously difficult concept to define in any context, but here, since the objective is to determine how equality can be invoked in a general theory of individual freedom, the task is even more difficult. According to Ronald Dworkin, equality is a "popular but mysterious political ideal," and Amy Gutmann describes it as word "used with great frequency but rarely

defined.”<sup>107</sup> Especially outside the domain of normative political conjecture, “it is an empirical fact that human beings are unequal in almost every way.”<sup>108</sup> But even if the notion of equality, no less the even more challenging idea of liberal equality, presents conceptual confusions and problematic usage, it is important to examine how equality can provide appropriate restrictions on liberal individual freedom. According to many contemporary theorists, equality is *the* prominent liberal value. All plausible positions should make explicit sense of the concept, and liberal theories in particular should tightly regulate liberal individual freedom with an appropriate and grounded conception of equality.<sup>109</sup>

But liberal equality must be sufficiently defined for reasons specified above: one sense of equality was the grounding Nozick used to appeal to self-ownership, and another sense of equality was the foundation for each of the arguments used to assail Nozick’s self-ownership argument in section 2.5. It is important to be clear about the content of ‘liberal equality’, because only with such clarity will we know how to relax individual property freedom in the interests of providing universal and meaningful liberal individual freedoms. Although it is not necessary to render the moral assumption of equality in any more detail than would be required by a mode of restriction on liberal property freedom, it is important to properly understand the concept

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<sup>107</sup> For the built-in difficulty in defining the term, see Richard Arneson, “Equality,” 505-506; Ronald Dworkin, “What is Equality? Part 1: Equality of Welfare,” Philosophy and Public Affairs 10 (1981): 185-246; Amy Gutman, Liberal Equality (New York: Cambridge Press, 1980) 3.

<sup>108</sup> Louis Pojman and Robert Westmoreland, introduction, Equality: Selected Readings, eds. Louis Pojman and Robert Westmoreland (Oxford: Oxford UP, 1997) 1.

<sup>109</sup> John Baker, Arguing for Equality (New York: Verso, 1987) 73-84.

nonetheless.

Most libertarians begin from initial assumptions about the liberal concept of freedom, and argue that (egalitarian redistribution) measures undertaken to ensure equality, in varying degrees, are unjustified. Nozick argues that no such measures are justified, while Hayek, and others, argue that only some such measures can be justified.<sup>110</sup> But equality is just as foundational a concept as freedom,<sup>111</sup> and, I suggest, would be just as defensible an arbitrary starting point. *Equal freedom*, then, might provide the appropriate framework from which to establish and defend a liberal theory of individual freedom, and Nozick's inability to defend a theory of liberal individual freedom alongside an unrestricted register of property freedoms is the best intuitive evidence for the assertion that equal freedom is a foundation of liberal freedom.

Since a package of individual freedoms is one necessary element in any liberal theory, if we intend to force any particular package of individual freedoms to respect the notion of equality, we need to first specify the content of the liberal notion of equality. It is important, that is to say, to stipulate clearly what should be equal in a just social arrangement, and what role the concept of equality should play in building principles of distributive justice.

In section 2.4 I considered a connection, first developed by Locke, between individual freedom and private property. That connection granted privileged position to property, and made protection of property a key function of the state, as well as a key justification for the existence

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<sup>110</sup>See Hayek, *The Constitution of Liberty*, and; Haworth, *Anti-Libertarianism* 119-120.

<sup>111</sup>For discussion of the concept as 'bedrock,' see especially Kai Nielson, *Equality and Liberty: A Defence of Radical Egalitarianism* (Totowa: Rowman & Allanheld, 1985) 7. For a discussion of equality as a candidate for the prominent value in political philosophy, see Louis Pojman and Robert Westmoreland, introduction, *Equality: Selected Readings* 1-3.

of the state. Like Locke, Rousseau was committed to a strong conception of freedom. But Rousseau's position on equality and private property differed sharply from Locke's, and the historical connections here might bring issues into focus. Liberal thinkers both before and since Rousseau took as the main objective of political philosophy definition of the nature and extent of a just state.<sup>112</sup> This is certainly true of at least Locke and Nozick, and particularly in the case of Nozick, the extent of the state is extremely narrow.

On one prominent reading of Rousseau, the state could play a significant role in ensuring that individuals enjoy authentic freedom, even if this freedom is only a corrupted version of the freedom all individuals enjoyed prior to the introduction of political authority into human society. Equality, for Rousseau, meant more than just providing a register of individual freedoms to all individuals and protecting equally all property accumulated as a result of those freedoms.<sup>113</sup> Equality would of course subsume equal political treatment, but would also involve a comparably broad and meaningful body of choices from which individuals could select and pursue a meaningful plan of life. The state should provide protection for all those engaged in a meaningful plan, according to Rousseau, but the state is as well *obliged* to distribute equally the means required to form, revise and achieve such plans. The state, on Rousseau's conception, should protect more than just a modest register of freedoms, the state should take an active role in helping all individuals make unconstrained choices, where 'unconstrained' sometimes

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<sup>112</sup>Peter Gay, introduction, Rousseau: The Basic Political Writings (Cambridge: Hackett, 1988).xv.

<sup>113</sup>Macpherson, Property: Mainstream and Critical Positions 29.

demands only that proactive external assistance is required.<sup>114</sup>

Rousseau also thought that private property was *the* corrupting force in human society.

From "The Origin of Inequality"...

The first person who, having fenced off a plot of ground, took it into his head to say *this is mine* and found people simple enough to believe him, was the true founder of civil society. What crimes, wars, murders, what miseries and horrors would the human race have been spared by someone who, uprooting the stakes or filling the ditch, had shouted to his fellow-men: Beware of listening to this imposter: you are lost if you forget that the fruits belong to all and the earth to no one!<sup>115</sup>

We are not obliged to follow Rousseau this far in his analysis of private property and inequality.

The idea that private property was from the beginning a social evil is quite possibly historically unverifiable, and, at any rate, the idea falls out of the scope of this analysis.<sup>116</sup> Rousseau indeed acknowledged to some extent that property could secure "available resources necessary for

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<sup>114</sup>Kieth Dixon, Freedom and Equality (London: Routledge & Kegan Paul, 1986) 15.

<sup>115</sup>Rousseau, "The Origin of Inequality." Property: mainstream and Critical Positions, ed. C.B. Macpherson. (Toronto: University of Toronto, 1992) 31.

<sup>116</sup>We might wonder, however, whether the effort to reconcile property freedoms and other freedoms is worthwhile. The notion of private property might of course in itself generate an insuperable problem. We might wonder also in this context what would be the Marxian analysis of the question presented here. Marx's position on equality, even if it cannot be described uncontroversially, is that any principles of distributive justice, whether or not they effectively respect equality, conceal defects internal to the modes of production and exchange of the social arrangement in which the principles find a position. The only purpose Marx had for discussion or formulation of principles of distributive justice was 'in order to point out the defects in any such enterprise.' For an authoritative discussion on this issue, see Allen Wood, "Marx and Equality." Issues in Marxist Philosophy (New Jersey: Harvester, 1981) 195-221. There is, of course, no reason to think that Marx's ideas about equality, or the language of analytical Marxism generally speaking, cannot be brought to bare on the contemporary liberal notions here discussed.

survival,”<sup>117</sup> even if his idea of the scope and nature of private property is distinct from Locke’s and Nozick’s. And further, it must be recognized that private property is an essential feature of contemporary liberalism, as that position has here been rendered, so the important question is whether or how private property can be reconciled with liberal individual freedom in a way that does not frustrate or restrict the universalizability of that freedom. The question now is whether property can be restricted in a way consistent with liberal individual freedom, in something related to Rousseau’s conception of the function of a state.

This cursory discussion of Rousseau supplies two theoretically significant points. First, although one essential role of the state is to protect individual freedom through individual rights, given that this discussion takes place within the context of liberal theory, the state might also play an important and active role in the freedom of individual citizens. This role could take various forms, but the important point here is that actively distributing liberties and other goods through individual members of society is a possible and possibly legitimate role of the contemporary nation-state. Second, since individually held resources play such a significant role in the ability of citizens to realize other goods, since liberalism’s “kingdom of ends” in important ways depend on property freedom, one role the state can and should play is in maintaining a minimal level, or a “baseline”, of “provision and protection with respect to material needs.”<sup>118</sup>

We might now introduce a central and significant distinction, and set it in context.<sup>119</sup> This

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<sup>117</sup>N.G. Dent, Rousseau (Oxford: Basil Blackwell, 1989) 84.

<sup>118</sup>Dent, Rousseau 201.

<sup>119</sup>The details of this distinction were introduced to me by Ron Elliott, and I am indebted for the ideas developed in this section. The details of the set of possible notions of equality which

is the important distinction between political equality and equality of condition. In a state perfectly consistent with political equality, individuals would enjoy the same register of individual freedoms with regard to civil liberties, whatever the content of those freedoms. Or, at any rate, individuals would at least enjoy the same status provided to others as agents in a political community. Equality in this sense is the foundation for the powerful idea that if any individual should be allowed to vote for his or her political representation, all individuals should be provided such a vote. According to Dworkin, political equality is a distinct aspect of equality generally, with political power the factor to be equalized.<sup>120</sup> It should not be a surprise that Nozick's appeal to equality emphasized political equality at the expense of other considerations, because this is the sense of equality that generates the strongest intuitive conviction.

The other side of the distinction was equality of condition. In a state perfectly consistent with equality of condition, the private resource holdings of individuals would be, roughly speaking, equal. While this sense of equality, interestingly enough, seems to require a free market in goods and resources,<sup>121</sup> the general idea is that, under an equal distribution of resources, all individuals should be entitled to an equal share, generally speaking, regardless of

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might instead have been developed are overwhelming, so I will confine myself here to the set included, and thereby sacrifice clarity for brevity.

<sup>120</sup>Dworkin, "What is Equality? Part 4: Political Equality." University of San Francisco Law Review 22 (1988): 6.

<sup>121</sup>Dworkin, "What is Equality? Part 2: Equality of Resources." Philosophy and Public Affairs 10 (1981): 284. The idea behind this claim is that, if equality of condition is to be achieved, a market in goods and services is required as well, because otherwise no suitable standard for the constitution of equality would remain. The converse of this claim, of course, is the assertion that only in the absence of a free market in resources can authentic equality of condition be achieved.

other considerations. It is easy to imagine ways to achieve equality of condition, and all sorts of mechanisms might serve such a purpose. But the important idea is that all individuals are provided a “minimally proper standard of life,” and none are put in disadvantaged position as a result of differentials in resource holdings. The “minimally proper standard” here assumes egalitarian redistribution, and equality of condition in general entails restrictions on liberal property freedom.

Now, quite clearly, both senses of equality introduced here artificially feature one or another way to think about equality, in order to emphasize that, various senses being available, particular senses must enter consideration. So it is not a particularly strong criticism to say that neither could alone successfully substantiate a liberal theory of distributive justice. The point of drawing the distinction here was to provide some manner of clarity in the term ‘equality’. I argued in section 2.6 that Nozick’s appeal to self-ownership was motivated by a need to provide equal consideration, in terms of the freedoms provided by entitlement principles, to each of the individuals who live under a regime governed by the principles. In this sense, as I suggested, Nozick, as had Locke in the early modern period, appealed to a *political* conception of equality.<sup>122</sup> But the claim defended above, that maximal property freedom, or a prohibition on egalitarian redistribution schemes, is not compatible with authentic liberal freedom, makes it clear that political equality is not a sufficient guarantee that individuals will be treated fairly. Although political equality is a necessary condition for fair treatment, some appeal to equality of condition is necessary if individuals are to retain freedom and genuine control over their lives.

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<sup>122</sup>For the claim that Locke appealed to such a conception, see Hampton, Political Philosophy 53. For the claim that Nozick does so as well, see Arneson, “Equality.” 490.



Given the argument presented in 2.5, that the two fundamental features of contemporary liberalism are discordant, it is now necessary to determine what role the concept of equality can play in liberal theory, or, more precisely, what role it can play beyond ‘simple political equality,’ which is, of course, a *necessary* condition of all just liberal political regimes.

The elements which should play a role in a theory of freedom consistent with liberal equality would have some connection to each of the following.

1. Full Individual Autonomy: the circumstance of genuine control over one’s life.
2. Political Equality: the circumstance of equality with respect to civil liberties and political representation.
3. Equality of Condition: the circumstance specifying that, to rectify arbitrary inequalities, all will have necessary means to apply 1 and 2.<sup>123</sup>

I will begin with the obvious faults in this set of criteria. First, the concept of autonomy hardly seems fit to apply as a response to another semantically imprecise term. Self-ownership was a problematic term, and so might best be replaced with a construct less entangled with theoretical confusions. “Autonomy” has been used to stand for a variety of possible states of affairs, and as we saw in 2.6, it sometimes entails a technical usage: *moral* autonomy is the circumstance where individuals live according to Kant’s universal moral principles. Kantian moral autonomy is a subset, one might say, of the possible range of choices available to individual agents. Individuals are free to act according to Kant’s moral laws, because they are free to act according to any set of regulating principles. Those rational agents who apprehend the

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<sup>123</sup>For discussion of criteria one and three, see Cohen, Self-ownership, Freedom and Equality 102.

moral force and universality of the categorical imperative choose to act rightly, and satisfy Kant's universal moral principles, and these individuals, according to Kant, are morally autonomous agents.

But others might choose to act according to principles which deviate from Kant's principles, and the notion of individual autonomy captures this more extensive range of choices. For these reasons full individual autonomy should be conceived as a rich notion, emphasizing more extensive freedom, because what we are looking for here is not direction in terms of moral behavior, but some metric through which we can decide on a range of individual choices that is broad enough to count as just and liberal. Individuals should be free to make choices about how to live their lives, consistent with appropriate respect for others' choices, and this is the sense of freedom conveyed in individual autonomy. Individual autonomy is presented here as the condition in which people are both free to make value judgements and free in their outlook, including freedom in their beliefs and freedom to take action on the basis of those beliefs.<sup>124</sup> This notion better approximates both the Kantian and the liberal individual idea of freedom, because it guarantees that individuals will be protected in their choices about how to direct their lives.

Second, it is the *package* of freedoms required to secure autonomy that we should be most concerned with, and these might not be any more accessible under new terminology. But as we saw, the change here is not only a change in terminology. The notion of freedom brings with it a political tinge, but the notion of *full individual autonomy*, as delivered here, accentuates the most important aspect of liberal freedom, introduced in 1.0 as a distinguishing feature of liberal

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<sup>124</sup>Beauchamp, Philosophical Ethics 195-196.

theory: the ability to assert control over individual conceptions of how to live a good life – the ability to make unconstrained choices about how we live our lives.

Full individual autonomy, then, represents the condition under which individuals enjoy a sufficient degree of control over their lives, where this control includes decisions about self-preservation and self-development, among other important liberal freedoms. Individuals should be free to do all sorts of things in a just liberal nation-state – as we saw, Nozick emphasized freedom to accumulate property, and freedom to exercise self-ownership freedoms. The idea of autonomy conveyed here is much more broad than Nozick's notion of freedom, and indeed Kant's notion of moral autonomy. The idea of full individual autonomy here includes those freedoms necessary to universally provide individuals with control over the important decisions in their lives.<sup>125</sup>

We also saw above that political equality was a necessary condition of liberal equality, because political *inequality* is a transparent case of failing to treat others as equals. Political equality ensures that people are entitled to the same register of political rights and freedoms, and that people are entitled to the same kind and level of political representation, so any state inconsistent with political equality fails to recognize the dignity and worth of those left out of consideration. A state which does not recognize the equal legal and political status of individuals is not in any sense just, and in a clear sense it is inconsistent with equal liberty. Furthermore, since participation in the political sphere and exercising political rights is one substantial way to

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<sup>125</sup>Notice also that each of the essential liberties invoked in Nozick's argument, (life, health and in some sense property) find comparable support under this conception of full individual autonomy. My individual autonomy is violated where my personal security, health, and even, where necessary, my individual property is impinged upon.

secure appropriate treatment in a political community, political inequalities not only relegate individuals to a position outside consideration, they condemn individuals to such a position. Since political rights and freedoms are potentially a secure form of protection against unfair treatment, and even therefore against tyranny, political equality is a necessary condition of liberal equality.

Since we should not want autonomy to generate significant material inequalities any more than we wanted unrestricted libertarian freedom to do so, the third criterion provides assurance that all individuals, within a specified range of equality, enjoy a comparable degree of control over their lives. The problem with libertarian freedom, surveyed above, was that the liberty of fortunate individuals played out as more meaningful, or more extensive, than the liberty of the unfortunate members of a political community. This we saw clearly in the imagined situation of 2.5. Such disparity means that eventually but inevitably the circumstance of genuine control over life choices of some is consigned to the control of others. Given the conclusions of chapter two, we can be confident in the assertion that equality of condition guarantees individuals a minimal level of autonomy, according to economic and other social conditions, because it provides insurance that both freedom over important decisions and equality in legal and political standing are provided universally, regardless of the particularities in the individuals' social situation, industry, genealogy, or other intervening factor. Equality of condition in this case is a standard of security to ensure that if possible *a*) individuals will be provided the appropriate means to exercise their political rights and especially their full individual autonomy, and *b*) individuals will be precluded from accumulating material resources to such an extent that others will be unable to exercise their political rights, or especially their full individual

autonomy.

What individuals should desire most in principles of distributive justice is genuine control over their lives, including meaningful liberal freedoms described above, including civil liberties and personal freedoms, and including freedom over choices about self-preservation and self-development. This idea – the idea of genuine control over our lives – is the cardinal feature of contemporary liberalism, and it is the notion loosely captured here in the notion of full individual autonomy.

There are other ways to think about ‘control’ that are not equivalent to the idea presented here, however. We might think of being driven by necessity, or being ‘out of control’, in the sense that people sometimes lose effectual command of their lives against their will. To recall the argument of section 2.5, we might imagine a circumstance where individuals fall under the control of others in important decisions about their lives. But the kind of genuine control at issue here is more like a continuum, because individuals can be more or less in control of their lives and choices. The important point is that the institutions in a state, and the principles of distributive justice from which they are built, should be configured so that they provide the kind of control that persons should want over their lives. What we should want is the kind of control that allows us to make important decisions about the course of our lives, consistent with providing others the same kind of control over their lives, and the notion of autonomy introduced here, in conjunction with notions of political equality and equality of condition, provide the kind of equal liberty individuals should value, and contemporary liberals should endorse.

In the remainder of this chapter I will consider three candidate liberal theories of distributive justice, decide which of them best approximates the notions extracted in 3.1, and

decide which of them, if any, provide individuals with equal freedom and genuine control over their lives. In chapter one I argued that two commitments were the prominent features of contemporary liberalism: the first commitment was to individual freedom and the second was to a particular but restricted system of property freedoms. Here we will examine three possible proposals, each representing a different level of limitation on property freedoms, each more or less consistent with my contention that full individual autonomy is the primary liberal freedom, and property freedom, to reflect this contention, should be somehow restricted.<sup>126</sup> Each alternative represents a different level of restriction, and each will be evaluated with attention to its respective stands on individual property freedom.

All liberal theories, if my contention about the conflict between full individual autonomy and property freedom is accurate, are subject to specific qualifications, and these are three significant theories of distributive justice that satisfy the restrictions cast in 3.1. Each is significant in terms of the history of contemporary liberalism, and more particularly, in the context of contemporary egalitarian liberalism. These theories represent in varying degrees efforts to achieve equality of condition, and therefore they draw conclusions about restrictions on property freedoms, because property freedoms, as we saw, tend to conflict with liberal individual freedoms. This conflict always tends away from material and political equality, leading thus to

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<sup>126</sup>This claim is accurate even though neither Rawls nor Dworkin nor Nielsen necessarily couch their arguments in this language. The goal of each theory, even if there are other important goals, is to restrict property freedoms so that otherwise unfortunately situated individuals might enjoy more meaningful individual freedoms. It is patently true that all three candidate liberal theories of distributive justice admit and entail some manner of restriction on property freedom, and each candidate in its own right demands such egalitarian policies on grounds that valuable freedoms should be available to all individuals.

the prosperity of those who least need more prosperity, and to the disadvantage of those already disadvantaged. Nozick's goal was to make sense of his idea of liberal equality by subsuming all important liberal freedoms under self-ownership. The goal in the following three sections will be to judge whether any of the three alternatives provide an overall conception of freedom that blends a limited range of property freedom with a greater range of other important liberal individual freedoms. The goal will be to determine, in other words, if any of these liberal theories of distributive justice appeal to a rich enough sense of equal freedom, thereby providing all individuals with genuine control over their lives. This, if my arguments are sound, should be the cardinal feature of contemporary liberalism.

### **3.2 Alternative One: Nielsen and the Principles of Radical Egalitarianism**

Kai Nielsen's radically egalitarian principles of distributive justice do not give expression to the contradiction between property freedoms and individual freedoms. Nielsen does not disjoin and privilege property freedoms, because the goal of his system of distributive justice is to accentuate equal individual freedom, rather than to underwrite property freedoms. We will see that Nielsen provides the fully egalitarian alternative to Nozick's libertarianism, and for this reason his principles of egalitarian justice deserve attention.

Nielsen acknowledges that equality and egalitarianism are unclear notions, and he acknowledges that the important work of defining them properly precedes the equally important work of formulating principles of distributive justice.<sup>127</sup> Equality can be considered a goal, or a

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<sup>127</sup>Nielsen, Equality and Liberty: A Defence of Radical Egalitarian Justice 165.

right, or both. Nielsen argues, and these discriminations must be properly refined. Some egalitarians might think that equality of condition is an admirable goal, but not a right. For even if it is taken as the prominent liberal value, it might be the case that liberal rights to equality of condition cannot be derived by normative argument, or at any rate, derived from within the liberal context.<sup>128</sup> Or it might be true that in some state of affairs equality has already been achieved, and therefore would not need security in the form of legal or institutional rights. Alternatively, it is possible, although slightly difficult, to think of equality as a right, but not a goal. For example, all individuals enjoy the right to use profane language to some degree in liberal nation-states, but use of profanity is hardly a *goal* of our political institutions.

Nielsen's position is that equality should always be a goal, and that, under certain conditions, equality is a right as well.<sup>129</sup> The rationale for the first of these claims, that equality is always a goal, is not provided in detail, because equality, according to Nielsen, is "so close to bedrock that it is difficult to know [how to respond]."<sup>130</sup> The idea behind this claim is that some normative concepts are so close to essential that efforts to properly substantiate their value are bound to fail: as we saw in 1.2, freedom is a difficult concept to acceptably define, even though it is clear that freedom is an underlying goal of liberal philosophy. Whether or not it is clear which

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<sup>128</sup>I think many contemporary libertarians take this to be the case. For many libertarians, including Jan Narveson and particularly Hillel Steiner, individual freedom *can* be secured through individual rights, but equality is either only illegitimately secured with individual rights, or not possible to secure in this context at all. See Steiner, "Liberty and Equality," Political Studies 29 (1985): 559-569.

<sup>129</sup>Nielsen, Equality and Liberty: A Defence of Radical Egalitarian Justice 7.

<sup>130</sup>Nielsen, Equality and Liberty: A Defence of Radical Egalitarian Justice 7.



sort of equality is material, whether or not it is clear what would be equalized in a properly just state, it should be abundantly clear that equality of one sort or another is a goal toward which political communities should aspire.

The general goal of equality is to provide equal consideration for all individuals. When political equality was discussed above, we determined that political freedoms were not sufficient unless they applied to *all* members of a political community. This is why notions like consent and fairness are so important in political and moral discourse; if the contributions and claims of some individual, or some group of individuals, can be summarily dismissed, it would be impossible to argue successfully that the political community in question is just. All liberal theories need to appeal to some sense of equality, and an appeal to the notion of equal consideration for all members of a political community is a reasonable place to begin.

But equal consideration conceived as political equality is not the only sort of equality Nielsen has in mind. The sort of equality Nielsen advocates is basic equality of condition, including equalization of resource ownership and significant restrictions on property freedoms. The goal of equality of condition, on Nielsen's proposal, is a necessary condition for genuine autonomy, the condition where individuals enjoy authentic control over their lives. All individuals are entitled to equal consideration, and one way to conceive of equal consideration is that all individuals are entitled to the resources necessary in order to effect genuine control over their lives. According to Nielsen: "...everyone, as far as possible, should have equal life prospects, short of genetic engineering and the like and rooting out any form of the family and

the undermining of our basic liberties.”<sup>131</sup> In this sense the goal Nielsen offers here is consonant with the elements specified in 3.1, because the *method* is equalization of property and resources, and the underlying *justification* is possible universal provision of genuine control over individuals’ lives.

Nielsen also argues that equality of this sort is a right. When we are in a position to achieve the goal of equality, in the rich sense of equality described here, so that all individuals are able to affect important decisions about how to live their lives, then this broad freedom becomes a right. For it would certainly be unjust, were it actually possible to provide such authentic freedom, to deny individuals or some class of individuals that freedom. But this is moderately problematic, because the only ground on which the claim is planted is ‘natural right’, a ground which dramatically frustrated Nozick’s attempt to establish property rights.<sup>132</sup> In this case, however, the foundation is different: Nielsen has nothing hanging on his appeal to natural rights except conceptual attraction, and Nozick had his entire theory hanging. The important point Nielsen wants to make here is that all individuals deserve a certain sort of consideration, consistent with equality of condition, and that while we should strive to make this condition a primary goal, the fact that individuals deserve this consideration is independent of both our striving and our goals.<sup>133</sup> If such a circumstance is feasible, individuals are entitled to a condition

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<sup>131</sup>Nielsen. Equality and Liberty: A Defence of Radical Egalitarian Justice 283.

<sup>132</sup>A developed discussion of the three-way derivation between natural rights, private property and equality can be found in Christman, “Can Ownership be Justified By Natural Rights?” 156-174.

<sup>133</sup>Nielsen. Equality and Liberty: A Defence of Radical Egalitarian Justice 9.

of genuine control over their lives, and this condition requires restrictions on property freedoms and a commitment to equality of condition as a goal, because property freedoms tend to significantly narrow the range of choices available to a class of individuals in political communities.

This distinction is also important because it demonstrates the dual role equality plays as a foundation for Nielsen's principles. If equality is a goal to which communities should aspire, and if equality is a virtue of social institutions, then it is easy to marshal an argument that "human beings have an equal right to concern on the part of society." From this claim it is easy to gather how principles of distributive justice, tailored to a liberal understanding of individual freedom, might restrict property freedom in a manner consistent with equality and justice. The principles, being liberal principles of distributive justice, should begin from individual freedom as a foundational idea. But the principles should also respect equality of two important varieties. First, political equality would be respected, because political equality is a necessary condition of justice. Treating people as equals necessarily involves supplying them with the same register of individual freedoms, including especially rights to participate in public elections, legal institutions and rights to other social goods. Second, the principles would respect equality of condition, because treating people as equals entails providing them with the means necessary to make autonomous decisions about how to conduct their lives. Where egalitarian redistribution of social resources is the only means available to provide individual freedom universally, egalitarian redistribution is required to substantiate liberal principles of distributive justice. Nielsen's principles of radically egalitarian distributive justice specify that:

1. Each person is to have an equal right to the most extensive total system of equal basic liberties and opportunities (including equal opportunities for meaningful work, for self-determination and political and economic participation) compatible with a similar treatment for all. (This principle gives expression to a commitment to attain and/or sustain equal moral autonomy and equal self-respect.)
2. After provisions are made for common social (community) values, for capital overhead to preserve the society's productive capacity, allowances made for differing unmanipulated needs and preferences, and due weight is given to the just entitlement of individuals, the income and wealth (the common stock of means) is to be so divided that each person will have a right to an equal share. The necessary burdens requisite to enhance human well-being are also to be equally shared, subject, of course, to limitations by differing abilities and differing situations. (Here I refer to different natural environments and the like and not to class position and the like.)<sup>134</sup>

The first principle secures equal liberty for individuals universally, and specifies in advance which freedoms should be protected. Nielsen cites equal opportunities for meaningful work, for self-determination and political and economic participation, and these specify a total system of equal basic liberties. This is important, because it demonstrates a commitment to autonomy and a rich sense of liberal freedom. Although the first principle of justice is explicitly credited to Rawls, Nielsen does not give priority to it as does Rawls, and this is an important step, because it demonstrates the degree to which Nielsen is willing to approve equality as a liberal ideal. But it is important to recognize this important connection. According to Nielsen: "The crucial thing about the first principle is insistence that in a through and through just society we must all, [...], be in a position to control the design of our own lives, and we must in our

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<sup>134</sup>Nielsen. Equality and Liberty: A Defence of Radical Egalitarian Justice 48. These principles are explicitly credited to Rawls, and although I will minimize references to Rawls's principles, some reference is necessary in order to properly present Nielsen's system. For this reason I will assume some familiarity with Rawls's original egalitarian theory of justice.

collective decisions have the right to an equal say."<sup>135</sup>

We will see that Nielsen's second principle of egalitarian distributive justice is markedly distinct from Rawls's second principle, even though, for both Rawls and Nielsen, the second principle shoulders most of the theoretical work required to fairly distribute social goods and resources. With Nielsen's second principle, because Nielsen is clearly concerned with potential inequalities and how these inequalities stand in the way of individual freedom and autonomous choice. The key is that Nielsen makes an explicit claim about the status of equality in his principles. Equality in this circumstance is a right, so along with claims underwriting individual liberties, individuals in Nielsen's state enjoy a right to particular equal freedoms. On the basis of these freedoms, after all necessary social requirements are satisfied, the aggregate social income and wealth is to be shared equally. The "requisite burdens" necessary to enhance human well being are to be shared equally as well, with allowances made for differences in ability and industry, so that individuals are required to contribute what they can to the social arrangement, but they are entitled to a proportionate share of the net social produce.

For both Rawls and Nielsen, as we will see, individuals are required to contribute what they can to social production. In both systems natural differences in ability and industry between individuals are built into the function of the system, because in both systems individuals are required to transfer only what they can toward the good of the community. But in Rawls's system individuals who contribute a relatively substantial amount to aggregate resources are permitted to withhold a share of their individual production, and decisions about the employment

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<sup>135</sup>Nielsen, Equality and Liberty: A Defence of Radical Egalitarian Justice 49.

of these shares are left up to individual preference. For Nielsen, individuals contribute what they can and consume what they need, with little difference between the consumption of those who produce a disproportionate amount and those who produce a minimal amount. The result of this condition is that no individuals are able to accumulate a disproportionate share of external resources, because the second principle specifies that individuals are entitled to equal shares, once social needs have been satisfied. Further accumulation of wealth is therefore precluded. The positive consequence in this case is that no individuals find themselves able to control the lives of others, at least as far as they might have through controlling a disproportionate share of resources. No individual in such a community would be able to subordinate the interests of others by way of a gross disparity in wealth.

Other liberal egalitarian principles of justice authorize inequalities – Dworkin's and Rawls's systems do so in the sense that they entitle some to accumulate an unequal share of resources, under certain conditions. They authorize inequalities that permit individuals to realize a significant degree of control over the lives of others. Not so for Nielsen's system: *a*) no individual is sanctioned to accumulate the body of resources required to control the interests of others, because disparities in resource holdings are minimized, and *b*) since the needs of individuals are satisfied, as a matter of an explicit right to a relatively equal share, the conditions necessary for antagonism, or for an open market in labour, would not arise. Rawls authorizes inequalities of a magnitude sufficient to allow some individuals to render others less powerful, in the sense that he permits a free market in labour and other crucial resources, like modes of production and natural resources. This labour market requires not only property freedom, and consumers of goods and resources, the labour market requires a reservoir of individuals prepared

to cede partial control of their lives to others. This ceding of control is, in many ways, and even on Rawls's terms, irrational, because no rational individual would willingly refuse complete control of their life, where such control is available to other members of the community. No individual, given the possibility to decide otherwise, would relinquish control over his or her life. We are forced to assume that the (authorized) relationship between the fortunate and the unfortunate individuals of Rawls's state is coercive and exploitive, in light of the fact that no rational agent would accept others' capacity to make important decisions about their lives, and this condition should sting egalitarian liberals' sense of justice.

It is an easy objection at this point to argue that the status of people under the conditions described is equal, and in some sense preferable to alternatives. For most individuals the labour market provides voluntary and temporary employment, and this form of production can be both preferable to unemployment and extremely lucrative. Even in socialist arrangements there are jobs, and these jobs are controlled by managers, even if the managers are elected. But the goal of Nielsen's system is to ensure equality, and equality in this sense means equality among individuals in a political community. The injustice in the present example case comes from the fact that control is ceded to other individual members of the community: it is not a particularly strong objection to say that other social arrangements harness individuals' productive capacities in similar fashion, or that coercive interference imposed by fellow community members is equivalent to coercive interference imposed by an elected or otherwise accountable authority. Of course, the idea of coercive interference imposed by fellow community members is not consistent with the idea of a social arrangement consistent with equality among community members.

Individuals in Nielsen's state are entitled to an equal and therefore adequate share in aggregate social resources, so no individual could accumulate the resources necessary to induce an exploitive relationship, and no individuals would find themselves in the unfortunate position of having to accept an exploitive relationship because no other preferable option is available. The aggregate needs of all individuals are satisfied, if they can be sufficiently satisfied at all, as a matter of the second principle. But since the remaining social production is not accumulated by fortunately situated individuals, and instead is shared equally among individuals, no exploitive circumstances need develop, because all individuals are relatively fortunately situated.

These principles are thoroughly consistent with both senses of equality introduced above. The first principle secures political equality, because it guarantees equal basic civil liberties and personal freedoms. Individuals in Nielsen's state enjoy the same register of individual freedoms, and the explicit commitment here is to equal freedom as regards economic and political participation, and self-realization. The principles are consistent as well with equality of condition, because equality of condition would be the inevitable result of an equal share, once necessary provisions are made, in the "common stock of means" and an equal share in "the necessary burdens requisite to enhance human well-being." Thus the criteria for liberal equality are satisfied. The question now turns to whether these criteria can also be met by a more moderate, less egalitarian social distribution.

### **3.3 Alternative Two: Dworkin and Equality of Resources**

One moderate proposal for ameliorating the contradiction between property freedoms and personal freedoms is Dworkin's position on equality of resources. This position is a single but



important element in a more general project, which can be described as the project of deciding what it means, in terms of political philosophy, to treat people as equals.<sup>136</sup> Egalitarians need to be clear about the concept of equality, according to Dworkin, because of the many possible readings of the term. egalitarians should, one would think, be committed to only one consequential reading, or committed most vigorously to one, whatever that concept actually is. Political equality, for instance, begins from the abstract principle that “[any] government must act to make the lives of citizens better, and must act with equal concern for the life of each member.”<sup>137</sup> There are a number of possible principles of justice which could make explicit a commitment to political equality, but the key point is that the notion of equality in play will generate the principles, and therefore the possibility of justice, in the situation concerned.

It would be difficult to find grounds to disagree with Dworkin on this point. I claimed in section 3.1 that the concept of equality is difficult but not impossible to pin down, and the difficulty is often a result of running together distinct but related definitions of the term. Nozick, for example, appealed to something like a political conception of equality, and he took this to be a sufficient account of what it means to respect the interests of individuals equally. Political equality, of course, is a necessary component of justice, in that no just state, inside or outside of contemporary liberal political theory, gives the interests of some individuals priority over the interests of others. So even if Nozick’s theory provided one way of guaranteeing equal consideration, other conceptions of equal consideration are available, and possibly more

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<sup>136</sup>Dworkin, “What is Equality? Part 2: Equality of Resources.” 285.

<sup>137</sup>Dworkin, “What is Equality? Part 4: Political Equality.” 1.

meaningful. Political equality, as we saw, *is not a sufficient* element in a liberal theory of justice, because inevitably, in the absence of other appropriate measures, simple political equality leads to inequalities in wealth and power that unjustly limit the personal freedoms of some and protect or expand the freedom of others. We determined that ‘appropriate measures’ include at least some degree of egalitarian redistribution of resources, in order to balance private ownership of external resources.

Dworkin’s proposal begins with an underlying belief in the “moral equality of persons” discussed above in connection with the notion of liberal equality (3.1).<sup>138</sup> Here the important starting point is that all individuals should be considered equally, or, more specifically, individuals should have their interests considered equally in decisions which affect everyone. So Dworkin is in the first instance committed to political equality, because political equality is necessary for treating people as equals. But this sort of equal consideration also entails at least some egalitarian redistribution of resources, because simple political equality is a necessary but not sufficient condition of equal liberal freedom.

Dworkin thinks it difficult to distribute material resources equally, in a manner that is fair to all individuals – in a manner consistent with justice. We decided above that some degree of redistribution was required, on grounds of equality, in order to maintain that all individuals are provided equal freedom. But if resources really were equal, if resources were distributed to all members of a political community on the basis of straightforward equality alone, those members of the community who contributed a disproportionate share of aggregate resources would seem

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<sup>138</sup>Nielsen, Equality and Liberty: A Defence of Radical Egalitarian Justice 48.

to have been treated unfairly. The question of distributive justice is not as simple as calculating the equal share of aggregate resources and using the state to regulate deviations from the straightforwardly equal distribution without exception.<sup>139</sup> Such a ruthlessly egalitarian system would artificially restrict the freedom of some individuals in the interests of a political or distributive ideal, and this would be the sort of egalitarian redistributive scheme Nozick had in mind as a target for the intuitive argument of section 2.2. In this case, Nozick would have been correct. Dworkin might argue, to think that liberty upsets patterns of distribution.

Rather than formulating a set of principles which might direct distribution of material resources as a matter of distributive justice, Dworkin considers a test, reformulated as follows. Consider (as we did in 2.5) a number of shipwreck survivors, stranded on an island which has substantial resources, but no other human community, and no prospect of immediate rescue.

These immigrants:

accept the principle that no one is antecedently entitled to any of these resources, but that they shall instead be divided equally among them. (They do not yet realize, let us say, that it might be wise to keep some resources as owned in common by any state they might create.) They also accept (at least provisionally) the following test of an equal division of resources, which [will be called] the envy test. No division of resources is an equal division if, once the distribution is complete, any immigrant would prefer someone else's bundle of resources to her own bundle.<sup>140</sup>

Now, the test is straightforward, in that it makes explicit a commitment to equality, and a procedure for deciding which distributions are just and which are not. The test expresses a

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<sup>139</sup>Hampton, Political Philosophy 155.

<sup>140</sup>Dworkin, "What is Equality? Part 2: Equality of Resources." 285.

commitment to equality because it is only in virtue of the consent of all individuals involved, and therefore the interests of all involved, that the distribution is considered just. This confirms that Dworkin's test respects one sense of equality considered above, because the interests of each individual are considered on an equal basis. And the test distinguishes just from unjust distributions, because, transparently, just distributions are those in which no individual envies the holdings of another, while unjust distributions are those in which at least one individual envies the holdings of another. But the question Dworkin and others would like to answer is not, strictly speaking, a question about how we might be able to distinguish just from unjust distributions, even though this question might provide information needed to find the right answer. The consequential question here is about how to find a mechanism of distribution that will respect the criteria developed above.

So Dworkin provides a distributive mechanism consistent, or at least potentially consistent, with the envy test. He imagines an auction on the imagined island, where all individuals are provided the same set of resources (he suggests seashells) at the outset, and seashells are the currency through which the value of all other resources will be reckoned. Then all resources are auctioned, so that individuals each have an opportunity to contend for each of the resources desired. Land and other important primary resources would, of course, maintain a premium demand, because individuals would all want more rather than less land, in comparison with other resources, like coconuts, which might be unpopular, or sand, which would be too plentiful to command any interest at auction. Prices in the auction would have to be stipulated artificially at the beginning, but once the interests and preferences of individuals become a factor, as they surely would when actual bidding begins, the equilibrium price for all resources would

register the demand for that resource, given the goals of individuals and the utility of the resource. Over time, all individuals would find satisfaction in the distribution. Dworkin suggests, because each would have been provided equivalent opportunities at the beginning of the distribution, in the sense that each was provided the same purchasing power, and actual purchases were reasoned on the basis of uncoerced individual preference. All individuals on the island would have enjoyed equal consideration, because they were provided the same package of freedoms at the outset of the distribution and because justice in the distribution depends on whether individuals envy others' shares in the distribution.<sup>141</sup>

The moral Dworkin wants readers to gather from the exercise is that, given the appropriate redistribution measures, a state can "arrange the environment so as to duplicate the results of the auction, giving people roughly equal (but not exactly equal) shares of resources to spend so as to enable them to pursue their life plans."<sup>142</sup> So if this proposal were the basis for a procedure underpinning the institutions of a nation-state, some degree of egalitarian redistribution would be licenced, and required: individuals would be provided resources necessary to participate in the distribution by exercising their freedom according to individual preferences.

Dworkin's distribution mechanism exhibits some significant characteristics. First, one considerable aspect of equality has been satisfied: individuals are provided the same set of freedoms at the beginning of the exercise. Individuals are provided the same number of seashells,

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<sup>141</sup>Hampton, Political Philosophy 156.

<sup>142</sup>See Dworkin, "What is Equality? Part 2: Equality of Resources." 291.. and Hampton, Political Philosophy 156.

so that, through application of individual preferences, the initial distribution satisfies individuals equally well. Only my preferences distinguish my shares from other shares in the distribution, and because they were *my* preferences, I should be satisfied, because others were provided the same resources, and others acted on the basis of their preferences as well. This factor is assured and underscored by the character of the envy test. Second, since individuals' preferences are the key to equality in the distribution, it is also true that the goals and concerns are in one sense recognized. This is an important claim, because it leaves room in the discussion for further egalitarian measures: if consent is a significant factor in the derivation of principles, and individuals consent to more profound restrictions on property freedom, then more profound restrictions are permissible.

But even before the auction is evaluated as a potentially just distribution mechanism, we might consider what role the envy test played as conceptual tool. According to that test, individuals would not have been provided an equal distribution if they envy other individuals' resources after the distribution is complete. This is an unreasonable method of calculating the justice in the distribution. The envy test appears to keep individuals uninformed about the distribution they choose until after the distribution is complete. The test insures that individuals are provided a fair distribution, but it does so in a way that requires parties involved to be uninformed about the distribution until they have the opportunity to examine and compare their shares with others. The alternative to this claim is that individuals *are* fully uninformed, in which case they would be just as likely to opt for Nielsen's highly egalitarian arrangement and principles of distributive justice, because these principles deliver better prospects for those who will not be favoured in the distribution. Individuals would opt for Nielsen's system because the

community in which Nielsen's principles find a place is for all individuals more straightforwardly equal, and so more just, and so more free, than the arrangement suggested by Dworkin.

Dworkin's appeal to the envy test generates three significant problems. First, if it requires ignorance on the part of involved parties, the test is unreasonable, because acting with less information is acting with less freedom. Even if the mechanism provides a suitable distribution, a scheme which does not 'blindfold' participants would be preferable. Second, because individuals are required to decide on a desired distribution of social resources based on incomplete information, they would be more inclined to accept gross disparities in resource distribution, and resulting disadvantages in power and control. Individuals, under these circumstances, would be more inclined to cede control of their lives to others, and this jeopardizes their prospects for authentic equality in the longer term. Finally, the situation of those who do surrender control of their lives to others, if they cannot participate even collectively in the exercise of that power, exhibits a form of unfreedom to which liberals should object. Those who lose power over their lives to others, regardless of the history and rationale for the loss of control, are not free in the sense that they would otherwise have been. This is not consistent with the criteria of autonomy, (3.1), because the idea of the criteria was to ensure that individuals enjoy the same register of freedoms.

There is no secondary mechanism in Dworkin's proposal to ensure that the results of the distribution will not, at a later time, become unfairly unequal. Indeed, connecting Dworkin's example and the parallel story of 2.5, it is not difficult to see how inequalities would *inevitably* result from the original auction exercise. Even if I was provided an appropriate package of

resources at the beginning, even if I was supplied a share of seashells equal to all other shares. I might, over time, find myself unable to develop myself or even preserve myself, as a result of any number of physical or other inequalities. I might, for example, be physically inadequate, or I might not be able to properly develop my plot of land, assuming that a plot of land was both necessary for my survival and one of the preferences I was able to secure in the auction.

Dworkin's answer in this case would be that, as well as the original equal distribution of resources (seashells), individuals should be able to purchase insurance in the auction, so that, where disabling inequalities develop, all individuals are able to enjoy a meaningful range of freedoms<sup>143</sup>, likely including freedom to develop and preserve themselves. This response, of course, is unsatisfying: insurance would provide resources sufficient to survive in a liberal state, but it would also produce two unequal varieties of community members – those who required insurance in order to live, and those who only had to pay the premiums, because they were able to survive without insurance. This circumstance would be one of genuine inequality, because the unfortunate individuals would be subject to arbitrary measures on the part of the fortunate, the most arresting measure being the withdrawal of insurance altogether, which would magnify inequality and leave unfortunate individuals where they were in the first place.

One way to improve this possible circumstance is to insert a stronger stipulation into the insurance policy, to the effect that unfortunate individuals should be provided insurance whose compensation is equivalent to the usual resource holdings of the community, some average or other metric. With this response, however, Dworkin's argument deteriorates, because this

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<sup>143</sup>Hampton, Political Philosophy 156.



stipulation would require radical and constant redistribution of resources subsequent to the original procedure, and this is the condition Dworkin resolved to avoid. Redistribution of resources on this second insurance policy, as it might be called, would be comparable to a policy mandating the straightforward equality distributive mechanism sketched above.

Finally, there is no possible insurance for those who find themselves dispossessed of means of production. Individuals who are unable to secure a viable piece of land at auction, or those who are unable, because of some natural or other inequality which prevents sufficient individual production, must labour for others in order to produce necessary means of subsistence. This labour would take many forms. But whatever form the labour would take, a class of individuals is left alienated from the means of production, while others remain in control of those means. This is another circumstance of genuine inequality: because where some individuals control the means of production and others depend on those who have control, antagonism and exploitation are inevitable.

Dworkin's proposal for equality of condition depends on a free market as a distributive mechanism, but the kind of market built into his proposal cannot be reconciled with the notion of equality in question. Either Dworkin's market generates inequalities in resource distribution that frustrate the ability of some individuals to enjoy equal liberal freedoms, or the distributive mechanism which averts such inequalities regulates ownership of external resources so inflexibly that a straightforward equal distribution of resources would have been the preferable mechanism anyway. This disjunctive seems even more sharp when we consider that a *finite* set of resources would quickly increase the market's impulse toward inequality, because the necessary result would be permutations in price and value not dependant on individual preferences. Either way,

once we accept that the sort of original distribution mechanism Dworkin has in mind will not function as desired, his argument for equality of condition and restrictions on property freedom appears inadequate. Dworkin was willing to accept the central conclusions presented above, but his appeal to a free market as distributive mechanism, in this case, defeated his argument.

I argued above that Dworkin's proposal would induce various inequalities, and significant inequalities, in resource distribution, given time for potential benefits and deficiencies, the results of inescapable natural inequalities, to develop. Further and intense redistribution would be required in such a state, because without further redistribution two classes of individuals would emerge: those who are able to successfully deploy their shares in the distribution, and those who must rely on insurance and other redistribution from others. This is an inevitable effect of Dworkin's distribution mechanism and this circumstance is potentially a circumstance of genuine inequality, because those who find themselves in the unfortunate position of having to rely on others to satisfy their needs do not, in many imaginable cases, enjoy freedom and genuine control over their lives. The unfortunate class of individuals in Dworkin's state are much better off than the probably more numerous corresponding class in Nozick's state, but they in any case lose a significant measure of control over their lives, and this loss of control indicates that Dworkin's system of distributive justice does not satisfy the requirements set out in 3.1.

### **3.5 Alternative Three: Rawls' Egalitarianism and the Difference Principle**

Rawls's original egalitarian proposal is another substantial example of an egalitarian position more moderate than Nielsen's, but Rawls's principles of justice are more egalitarian than Dworkin's. Like Dworkin, Rawls's proposal begins with an underlying belief in the moral

equality of persons.<sup>144</sup> But as well, Rawls is interested in the conditions in which the social, legal and political institutions of the modern liberal nation-state can be made consistent with justice. The primary argument for Rawls's system of distributive justice is a social contract argument, built on an imagined situation of perfect equality. In that situation, famously called the "original position," individuals ignorant of the particularities of their circumstances deliberate about what each should expect from their political community, especially in terms of individual freedoms. Individuals in the original position settle on a set of principles of justice, and this set of principles, since they were drawn from the considered convictions of individuals interested only in how, generally speaking, individuals should be treated, would be acceptable, Rawls thinks, to all members of liberal nation-states.

The principal idea of Rawls's system of distributive justice is that: "All social primary goods – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured."<sup>145</sup> Individuals, according to Rawls, are entitled to rights which secure freedom to develop themselves and preserve themselves – in short, freedom to assert control over individual ends – because this freedom is necessarily connected to an equal distribution of social goods. Only if individuals enjoy an appropriate package of civil liberties and personal freedoms, where the freedoms allow people to do what they should be able to do, are the institutions of a liberal state just. But since there are a number of important freedoms to be specified, it is not yet

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<sup>144</sup>Nielsen, Equality and Liberty: A Defence of Radical Egalitarianism 48.

<sup>145</sup>John Rawls, A Theory of Justice (Cambridge: Harvard UP, 1971) 303. I will set aside the more detailed theoretical foundation which allows Rawls to present the principles of justice.

clear what Rawls can say about the priority of some rights over others. A universal individual right to play golf, for example, would be far less meaningful, generally speaking, than a universal individual right to be represented suitably in a court of law, because the latter can be enjoyed by everyone, or, moreover, the latter has a bearing on every individual in that every individual has an interest in the manner in which individuals and their legal institutions interact, but the former is important only to those who already enjoy golf.

So Rawls develops the system to include as social primary goods all those things which "satisfy rational desire." That is, given that individuals select individual life plans, and liberal individual freedoms are intended to allow individuals to realize those plans, through choices about self-development and self-preservation, as long as they do not interfere with the plans of others, social primary goods are the necessary means for realizing individually chosen ends: "Greater intelligence, wealth and opportunity, for example, allow a person to achieve ends she could not rationally contemplate otherwise." We should all want more primary goods than less, Rawls thinks, because what are important to us are our life plans, whatever they are and however they are selected, and the freedom and resources required to realize these plans are the instrumental goods necessary to lead a good life. Quite clearly, individual freedom is a foundational instrumental good in Rawls's system, because freedom enables other individually selected plans. Income and resources are all-purpose general instrumental goods, because, for example, my plan to develop and preserve myself in the capacity of a university lecturer cannot be realized without a significant outlay of material resources. All meaningful life plans are similar to this example, because all plans require the exercise of primary social goods. Rawls argues that: "The expectations of [political representatives and therefore state institutions] are,

then, to be defined by the index of primary social goods available to them.”

The system Rawls arranges, through the imagined deliberation of individuals cast in an ideal procedure for modelling fairness, is characterized by the following principles of justice, which should be instantiated in the institutions of a just state, consistent with ‘justice as fairness’:

1. Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
2. Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.<sup>146</sup>

The first principle, called the ‘liberty’ principle, is assigned “lexical priority” over the second, or ‘difference’ principle. Liberty can only be restricted if less extensive liberty strengthens the total system of liberty, or less than equal liberty is acceptable to those with lesser liberty: liberty can only be restricted for the sake of a general increase in liberty.<sup>147</sup> A key example of this condition, of increases in net liberty being *the only* justification for restrictions on liberty, are the rules of order individuals are expected to obey in public meetings. In these forums particular and reasonable restrictions on individual freedom in fact maximize the freedom of all parties concerned, because rules of civility and fairness allow more individuals to take part

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<sup>146</sup>The first principle has been modified in Rawls’ second book, Rawls, Political Liberalism (New York: Columbia UP, 1993) 12., but I will maintain the wording of the original formulation of the principles. In my view the change was motivated by the communitarian critique of Rawls’ (1971) egalitarian liberalism, and was unnecessary, as I argue in “Rawls’ New Liberalism and the Communitarian Challenge.” Michigan Journal of Political Science 28 (2000): 83-105. I have maintained the wording from *Theory* because the original egalitarian position provides the strongest stance, or at any rate, the most notable stance, of egalitarian distributive justice. The principles are catalogued in Rawls, A Theory of Justice 60.

<sup>147</sup>Rawls, A Theory of Justice 302.

in the proceedings, and those who choose to take part do not face unreasonable and therefore sometimes exclusionary behaviour on the part of others.<sup>148</sup>

So as I pointed out above, Rawls begins with an initial assumption about the moral equality of persons, as does Dworkin, but Rawls' theory of justice develops an assumption about the compatibility of political equality and social and economic inequalities.<sup>149</sup> This is a moderately safe assumption, because nothing necessarily fixes the relationship between political equality and social and economic inequalities, even if, practically speaking, in every case, over time, economic inequalities lead to inequalities in political rights and representation. Political equality is secured by the liberty principle (principle #1), as well as the lexical priority rule, designating that liberty can only be restricted for the sake of liberty.

But it is the difference principle that shoulders most of the work of interest here. For as a result of the lexical priority of the liberty principle over the difference principle, individual freedoms, and the universality thereof, are supposed to be secured exhaustively. But other social primary goods, e.g., income and wealth and the bases of self-respect, can be arranged in various ways, so long as they are compatible with the priority of the liberty principle. The difference principle is Rawls' brace against drastic inequalities in income and wealth, and inequalities in self-respect and other considerations that come with them.

Nozick's strategy was to secure important personal freedoms by designating them

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<sup>148</sup>An example of these rules of order are Robert's Rules, and these provide an interesting example of the pattern of liberties and unfreedoms Rawls has in mind.

<sup>149</sup>Norman Daniels. "Equal Liberty and Unequal Worth of Liberty." Reading Rawls, ed. N. Daniels (New York: Basic, 1975) 254.

property freedoms, in this case particularly self-ownership freedoms. Rawls's approach is to determine the important liberal individual freedoms and opportunities, and from them determine the freedom-enabling all-purpose means required to make the important freedoms available to all individuals. This approach requires some balancing, because, as noted, property freedoms and other freedoms tend to conflict, even if the conflict disadvantages only a class of individuals in a political community. Given this presentation, we see that Nozick's strategy was to *reduce* all freedoms to self-ownership freedoms, but Rawls's approach is to specify, prioritize and *balance* important freedoms. The liberty principle provided a specification and prioritization of important freedoms, and the difference principle is about balancing freedoms, in the sense that it provides an argument for how important freedoms and corresponding enabling all-purpose means can be fairly distributed.

Rawls's conviction is that, in any state, principles of justice can be modelled by individuals ignorant of the particularities of their situations. Individuals asked to specify principles of justice would not know, or, more accurately, would ignore, their knowledge of the position they in fact occupy in the social collective.<sup>150</sup> Now, the deliberators could opt for principles which provide no redistribution of wealth whatever, so that some individuals would be extravagantly wealthy and others unfortunate. But they would not choose this arrangement, because no one would decide to risk living in the undesirable conditions of the latter group, even

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<sup>150</sup>I will continue to set aside, but not disregard, challenges to Rawls' view based on difficulties with the original position, or based on the possibility that those engaged to deliberate in that position would converge on other principles of justice. In this case the fortunate and unfortunate might uniformly select principles which eliminate the caste-like system I manufactured, on the assumption that anyone with such a choice would prefer to modify the choice rather than face the possibility of living in the unfortunate circumstance.

if the alternative possibility was living in a fortunate position of affluence. Nor would the deliberators select principles which provided for a complete or unreservedly equal distribution of wealth, because, and this is the crucial claim, the productive capacity of the social collective is such that the unfortunate are *better off* for some inequalities in wealth and income. Social inequalities, on this view, sometimes “draw out socially useful talents and energies.”<sup>151</sup> and this might make everyone better off. Since the moderately fortunate thrive on ingenuity and industry, and since, according to many, ingenuity and industry are stimulated by incentive, the productive capacity of the social collective increases the share of wealth provided to the unfortunate even if their shares are unequal, across the board, with the fortunately situated. According to this model, Rawls thinks we should ‘maximize the minimum’, and by introducing or authorizing some inequalities, augment the circumstances of the least fortunate. The details of which inequalities would be permitted are left unspecified, save those explicitly licenced by the difference principle.

This is a powerful argument, because it is based on an idea of political organization which depends upon fairness, and the concerns of the less fortunate or vulnerable members of the community are explicitly modelled in the artificial decision procedure. The argument demonstrates that equality among individuals is a primary goal, and that restrictions on liberal property freedoms should be fixed accordingly, but it also establishes a rationale for introducing inequalities of a certain variety (inequalities in social or economic circumstances, rather than political equality), and provides reason to think that those who might suffer the inequalities would readily consent. In this argument Rawls has both explicitly endorsed political equality and

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<sup>151</sup>Kymlicka, Contemporary Political Philosophy 53.



provided moral justification for a narrow range of what he thinks are inevitable inequalities in any liberal system of resource distribution.

But the difference principle might not provide the kind of strength required to defend the inequalities Rawls will admit. First, recall that Rawls began with an assumption about the consistency of political equality with social and economic inequalities. It is nearly indisputable that along with private resources of significant magnitude come political power, so any substantial differential in resources produces a significant difference in power,<sup>152</sup> and this change dramatically alters relationships among individuals in both fortunate and unfortunate circumstances. In particular, substantial resource holdings enable an ordinarily fortunate individual to wield an extraordinary and unequal share of political power, and this condition is ripe for exploitation.

Rawls thinks that the principles of justice sufficiently, or potentially, provide an answer to the question: "What inequalities should be admitted by just principles?" The initial answer is that inequalities should always be coordinated so that the circumstances of the less fortunate are augmented. Where the unfortunate members of the community are considered equally, their plight, and the enhancement of their circumstances, should be the yardstick on which the distribution is considered, and the plight of the unfortunate should always be augmented even if those fortunately situated enjoy magnificent wealth, so that all unfortunate individuals are entitled to a basic social minimum: to whatever resources it takes to enjoy meaningful liberal individual freedom. This much, Rawls would say, is both authorized and demanded by liberal

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<sup>152</sup>Dworkin. "What is Equality? Part 2: Equality of Resources." 283.

justice.

Consider a social arrangement comparable to the running shipwreck example, but equal among individuals in terms of social and economic conditions.<sup>153</sup> The principles of justice instantiated in this arrangement are exclusively Rawlsian principles, so any move away from equality must be justified by an appropriate increase in every person's circumstances – increases in inequality in this case aggravate no one's circumstances. All individuals in this society enjoy a liberal set of individual freedoms, and the only question to be answered is the inevitable question about the distribution of income and wealth, as the distribution moves away from straightforward equality. The problem is this: at each successive step away from equality, the interests of all individuals, the fortunate and the worse off, need to be promoted, and the only available answer, on Rawls's terms, is that the inequalities benefit everyone, including especially the disadvantaged. But over time, as social and economic inequalities increase, and begin to track natural inequalities in talent, ingenuity and industry, individuals who count among the least fortunate begin to see their options for exercise of individual freedoms constrict, while other, more fortunate individuals, enjoy more and more appreciable individual freedoms. The ability of the less fortunate to enjoy the political freedoms guaranteed by Rawls's principles decreases with each successive move away from perfect equality in this situation, and their ability to appreciate primary social goods decreases as time increases from the original distribution.

This seems to be a condition Rawls could simply designate unjust, given his principles of justice, because moves away from equality would be authorized only in so far as they benefit the

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<sup>153</sup>Brian Barry, Theories of Justice (Berkeley: California UP, 1989) 226-234.

unfortunately situated members of the community. Rawls even makes an explicit argument to this effect, when he argues that it is the *value* of particular liberties that should be protected, rather than merely the liberties themselves. The problem here is that even if individuals are entitled to the same register of individual freedoms, because of social or economic factors or other factors, some individuals might not be able to exercise their freedoms, and this is equivalent to having not provided the freedoms in the first place. But Rawls argues that the liberties available under his arrangement of individual freedoms are established on the presumption that they are available to all individuals, so the difference principle should guarantee that all individuals, including the unfortunately situated, should be provided the “equal worth” of liberties provided to others.<sup>154</sup> In this sense Rawls discharges the immediate objection that some individuals enjoy only a superficial sense of some important freedoms, like those suggested here.

But in another important sense Rawls has failed to recognize the full force of this objection. Along with significant disparities in resource distribution come disparities in ranges of individual choice. Individuals or groups in control of immoderate shares in the distribution enjoy a greater range of choices in life than those less fortunately situated, and this is an important inequality regardless of its justification. Even if those who face a restricted range of individual choices willingly accept their circumstances, we might wonder whether there is reason to consider those circumstances *just*. Rawls even recognizes the problem, acknowledging that “those with greater means can combine together and exclude those who have less in the absence

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<sup>154</sup>Rawls, Political Liberalism 327.

of the guarantee of fair value of the political liberties.”<sup>155</sup>

Rawls thinks that the difference principle dissolves the issue, but the problem is that the *system in general* fails to account for the kinds of inequalities specified here. Those who find themselves having to labour for other individuals in order to secure means of subsistence form a class of people who face a more limited range of choices, while those who are not in such a situation face a more extensive range of choices. Even if it is true that the unfortunate are better off in terms of material resources for having accepted this arrangement, it is clear that here the unfortunate individuals are accepting an inequality in favour of other concerns. Rawls is willing to accept a limited set of inequalities in his preferred social structure, but these inequalities are of a significant magnitude. These inequalities put one class of individuals in a position to coerce other classes of individuals, and this circumstance offends the condition of autonomy justified in 3.1.<sup>156</sup>

And the *kinds* of inequalities authorized by the difference principle should be inspected as well. Quite possibly inequalities in resource holdings can be sanctioned if the circumstances of individuals concerned are improved, especially if the consent of individuals to inequality is forthcoming. But in certain cases the consent of concerned individuals takes second position: where the inequalities provide some people or class of people with inordinate power over others, even where consent is provided, justice requires that further egalitarian redistribution remedy the inequality. As in the example cases of 2.5, when individuals are delivered the power to influence

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<sup>155</sup>For the clearest argument see Rawls, Political Liberalism 328.

<sup>156</sup>Nielsen makes an argument along these lines. See Nielsen, Equality and Liberty: A Defence of Radical Egalitarianism 50-53.

important decisions about others' lives, those whose lives are influenced in this manner do not enjoy equal liberal freedom.

Take, for example, the case of a straightforward unit of production like a factory.<sup>157</sup> Nothing in Rawls's system of distributive justice precludes my ownership of a general production factory, and the first principle seems to authorize it, as long as it does not offend other individuals' civil liberties. The relationship between me and those who labour in the factory is consistent with liberal justice, in an important sense, because even though I am able to make decisions about how, when, and for what duration my workers will labour, their freedom to participate in the public sphere – to vote for political representatives, to obtain legal council, to run for office – is absolute. Political equality, on Rawls' proposal, is absolutely protected, and this protection is clear because Rawls's first principle secures specific personal and civil liberties. But it is important to recognize that I do enjoy a possibly unjust relationship with my labourers, in the sense that I can influence to a significant degree decisions about their lives. I can decide how, when and for how long they labour, and, in the absence of appropriate and enforced labour regulations, I can arbitrarily discharge my labourers, and thereby challenge their ability to secure means of subsistence. Under certain conditions, say, a surplus of similarly skilled labourers, I enjoy an increased degree of power over those who work in my factory, because I have an impact, in a significant sense, on the ability of my labourers to preserve themselves. Should I discharge my labourers in these circumstances, they might be less effective in securing means of subsistence. They might be unable to preserve themselves through meaningful work, and the

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<sup>157</sup>Richard Miller, "Rawls and Marxism." Reading Rawls, ed. Norman Daniels 206-209.

well-being that follows from meaningful work.

In this case Rawls would rely on the 'safety net' upon which his system of social distribution depends. With the insurance of a social safety net individuals who could not produce the "socially acceptable minimum"<sup>158</sup> would, as a result of the social distribution system, be provided the minimum, through taxation on the production of highly productive fellow citizens. The problem is not obviated by Rawls's response, however, because under these conditions an unequal balance of power and resources would leave some individuals with an extensive range of freedoms, and leave others to rely on the system for survival. Unfortunate individuals in this example would, on Rawls's system, be able to preserve themselves, but they would be able to do little else, and they certainly would enjoy a far more confining range of individual freedoms. Even if those in the example case *are* able to preserve themselves, my command of their productive capacities precludes modes of their self-development not consistent with my needs as a factory owner. This example shows that many individuals in a Rawlsian state would remain among a disadvantaged class of individuals, while others would not. Even if Rawls's principles protect against certain forms of unfreedom, e.g., abuses of political power, they fail to protect against other sources of unfreedom like those presented here.

Similar examples are easy to imagine. If I controlled an immoderate share of the gross resources in any community, or some crucial but not absolutely essential demanded resource like

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<sup>158</sup>The idea of a socially acceptable minimum is not exclusive to Rawls, even if Rawls produced the powerful and innovative theoretical foundation for the idea, initially in Rawls, A Theory of Justice. For context, recall the cursory introduction of egalitarianism in section 1.0. The precise notion here must be credited to Cohen, "Illusions About Freedom and Private Property," 225.

fossil fuel, and inequalities in resource distribution were arranged even so in favour of the least advantaged, I would be able to exercise power over the lives of others in a manner not compatible with liberal individual autonomy. The difference principle secures a measure of equal freedom, because it supplies a procedure through which the social and economic conditions of the least fortunate can be augmented, so that the range of choices available to individuals, aside from resource distribution, is never dramatically unjust. But it must be acknowledged that Rawls' system authorizes inequalities which frustrate self-preservation and self-development, as well as various other freedoms, and therefore autonomy, and therefore genuine control over the lives of many unfortunate individuals.

Liberals will be divided over the sources and degree of control asserted by those who are subject to the inferior side of the relationships described here. This is because it is not absolutely clear how such control make others unfree, and why it is unjust. In one sense 'social control' is something all individuals have to live with, for in all liberal states individuals are subject to the power exercised by those who control political institutions: in a democracy these usually being either the general community or some elite class. While it is clear that political power exercised inappropriately usurps the freedom of those subjected to it, it is not as clear that individuals or groups outside of the political authority can secure control over others in the senses of unfreedom and injustice denoted here. But the fact that social power can be exercised at all is a potentially direct source of injustice and unfreedom, and regardless of where the injustice in this transaction lies, or whether the precise source or extent can be identified, the important fact is that some individuals lose genuine control over important aspects of their lives to others, and this fact offends the liberal value of freedom, regardless of how we conceive the term.

### 3.5 Conclusions: Distributive Justice, Equal Liberty, and Liberal Freedom

Two connected arguments against Dworkin were presented in 3.3, the first against his appeal to a relatively unrestricted market to achieve just distributions of resources and social goods, the second against Dworkin's inability to satisfy appreciably the requirements set out in section 3.1. Dworkin's position was vulnerable in both cases because it was predicated on both the liberal notion of freedom and an assumption about the moral equality of persons, but neither the 'envy test' nor the free market in resources developed therefrom ensure that all individuals are autonomous in their choices about how they live their lives, because even if political equality is protected, equality of condition is not. Those who live in Dworkin's state enjoy one measure of equality, in the sense that they are provided standing equivalent to all others at one occasion in the distribution. But some, as they say, are more equal than others, and Dworkin's appeal to a free market in resources cannot provide the kind of protection for full individual autonomy required by a liberal theory of justice. Individuals in Dworkin's state lose autonomy, because over time some always come to depend on others, as a function of the distribution, and no guarantee is provided that this dependency will not lead to unfreedom.

Recall also that in 3.4 the pair of key arguments against Rawls's theory of distributive justice. Since the difference principle authorizes inequalities so long as the inequalities benefit in relevant respects the least advantaged community members, we wondered whether the possible set of inequalities authorized by the difference principle were compatible with the notion of equal freedom. It appears that the difference principle stands shorthand for a foundational principle that approximates justice, but permits inequalities that are, even by Rawls's system, unjust, because in certain circumstances even slight social and political inequalities lead to dramatic inequalities



in freedom. Because the difference principle allows some individuals to secure a position of power over others, in the sense that it allows significant inequalities in resource distribution under certain conditions, it appears that Rawls's system allows some people more extensive freedom than others. Second, on examining the varieties of inequality authorized by the difference principle, we found that, practically speaking, many citizens in Rawls's egalitarian liberal regime would, over time, be subject to an order of coercive external influences not consistent with individual autonomy – not consistent with genuine control over individuals' lives. In other words, to permit an increase in general social productive capacity, Rawls is willing to admit an unequal distribution of resources. But since significantly unequal distributions in resources inevitably produce more considerable inequalities – deep divisions among members of the social collective – some individuals, or, more to the point, some *class* of individuals, are left to depend on and profit from the productive capacity of others. Where this relationship exists, through history, and in the modern liberal nation-state, a great deal of freedom and especially coercive power is afforded those who find themselves at the top of the arrangement, while the less fortunate find themselves consigned to their positions. In this case, then, Rawls's principles ensured political equality, as well as some measure of equality of condition. But because of the potentially coercive relationship described above, Rawls's principles cannot satisfy the criteria of autonomy.

Clearly Nielsen's principles of distributive justice best approximate the restrictions developed in 3.1, and the most persuasive arguments in favour of Nielsen's principles are as follows. The sort of equality advocated by egalitarians specifies something like this: everyone should have a challenging education, everyone should live in a decent neighbourhood, everyone

should have satisfying and safe work.<sup>159</sup> This sort of equality cannot be properly ensured while the social conditions always tend away from equality of resources, as they do in Rawls system. or cannot be properly protected through a set of guiding principles introduced at the beginning of some social distribution, no matter how strong the principles, as they do in Dworkin's system. As long as the principles of distribution provide moral justification for continuous advantages of some individuals over others, or for advantages to the children of some over the children of others, it is hard to see how the important content of equality is secured, because certain inequalities tend to manifest themselves in situations where liberal individual freedom and property freedoms are not properly coordinated, and these inequalities aggravate individual autonomy and liberal individual freedom alike. Freedom to a challenging education, to a decent neighbourhood, to satisfying work. – cannot be secured absolutely or universally by Rawls's or Dworkin's proposals, but they are secured, equally and with explicit acknowledgement, in Nielsen's principles.

Rawls' original egalitarian position was designed for conditions of relative abundance, in the sense that Rawls' system requires that the productive capacity of society be predictable and consistently expanding. When scarcity is introduced into the social arrangement, individuals not fortunate enough to have participated in the arrangement from the original distribution are left out of consideration. In the Rawlsian shipwreck example, those entering the social arrangement some time after the original distribution, after plots of land have been distributed and a market for labour has developed, suffer the sharpest material consequences for the scarcity. Since

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<sup>159</sup>Baker, Arguing for Equality 143.

productive resources are owned by others, by a fortunately situated class of individuals. Unfortunate individuals find themselves forced to labour in order to produce their means of subsistence. Scarcity might aggravate all community members, but it surely aggravates most severely the circumstances of those who have not benefited from the original distribution. Nielsen's principles of justice do not leave this possibility open: the surplus in social produce is either large or small – but it is fairly distributed.

The terms we have been attempted to be clear about in this thesis – equality, freedom, justice, autonomy – are not inconsistent, as they are often thought to be. If they can be assigned reasonably coherent content at all, they must be assigned consistent content. In other words, in a state where dramatic inequalities in resource distribution frustrate the efforts of some to develop and preserve themselves, or to exercise their personal freedoms or civil liberties, authentic freedom has not been achieved, whatever the prevailing ideology. As Plato argued, these terms, even if they appear distinct, might merely be the conjunction and coordination of other, more primary, elements of justice. Like liberty and equality, they come in a package or not at all, and only when the project is to justify other, less meaningful ideals is it difficult to make the important values consistent.<sup>160</sup> Nielsen's proposal is the only example among our three alternatives with any prospects for a balance amidst the liberal notions discussed here.

It might be a natural question at this point to consider whether contemporary liberalism can be a tenable position at all, from a moral standpoint, considering how difficult, and how prone to conceptual confusion, is any enterprise which intends to establish that freedom requires

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<sup>160</sup>Nielsen, Equality and Liberty: A Defence of Radical Egalitarianism 9

some restrictions on individual property, where the goal of the restrictions is equality of condition. This natural question leads, I submit, to the natural conclusion that if there are going to be liberal freedoms at all, there have to be significant restrictions on the way property freedoms are coordinated in liberal nation-states. In other words, if individuals would prefer to enjoy individual freedom and accumulate private property, according to contemporary liberal notions, then significant restrictions on the concept of property need to be in place in order to regulate and avert inequalities inevitably produced by the system of individual freedom and property freedom usually associated with liberal philosophy.

The key question of this essay was about the moral permissibility of (almost certainly coercive) egalitarian redistribution policies, most often known simply and unfortunately as taxation of privately held goods and resources. This question immediately turned, as it should, to the purpose taxation ought to serve. In Nozick's case, taxation was always and only permissible where defence of the community or enforcement of legitimate contracts and obligations were the goal. But because Nozick appealed to property freedom to assail egalitarian redistribution, he had to appeal to property freedom as the foundation for his general freedom argument. This strategy, I argued, was spurious: freedom arguments only run successfully where the freedoms mandated apply to everyone, and this cannot be the case unless property freedoms are constrained to a substantial degree.

For Dworkin, the goal of egalitarian taxation was to ensure a just distribution, where a just distribution is one in which no individual would rationally 'envy' another's holdings. This might have been a worthwhile move, but doubts still lingering from analysis of Nozick's libertarianism exposed the central flaw in Dworkin's argument – that for some participants in the

preferred distribution, individual freedom is artificially restricted, because the distributive mechanism allows some individuals to acquire partial control over others' lives. Dworkin's envy test cannot be satisfied in the straightforward market auction he describes, because the auction represents a free market, and free markets depend on envy to function effectively. Without genuine control over their lives, individuals do not enjoy a sufficiently broad range of liberal individual freedoms. Dworkin's project, I suspect, is as much a straightforward defence of a free market in goods and resources as it is a justification for taxing the fortunate to ensure that the unfortunate enjoy a minimal capacity to preserve and develop themselves in the absence of coercive interference from others. Put simply, Dworkin would not admit enough restrictions on property freedom to ensure that individuals enjoy a parallel range of individual choices.

Rawls's principles of distributive justice are indeed a defence of the sort of basic social minimum on which, I argued, Dworkin's system languished. Rawls's important idea was that social primary goods, those all-purpose goods which enable other liberal individual freedoms, can be prioritized, so that individuals can be provided an equal degree of political power and control over their lives. But at the same time, because of intrinsic differences in talent and industry among individuals, inequalities in the social distribution of some goods, social and economic goods, is authorized, as long as those inequalities benefit the least advantaged. The goal of taxation, for Rawls, is to obviate inequalities in resource distribution except those which benefit the least advantaged. But even if Rawls's system eliminates the most striking and the most dramatic inequalities in resource distribution, it fails to exclude some of the most significant and illiberal inequalities. For example, since some in Rawls's state might control an immoderate share of resources and others might control the socially acceptable minimum, the

ability of the least fortunate members of the community to affect important decisions about how they live their lives is challenged, and so even if everyone in the community enjoys freedom, generally speaking, the freedom of some is greater in magnitude than the freedom of others, and the circumstances are illiberal. In simple terms, Rawls was willing to restrict property freedom, but his system authorizes inequalities in power and social status that leave unfortunate individuals unfree or illiberal in certain important respects.

But Nielsen's principles of radical egalitarian justice, fashioned from the idea of 'justice as equality,' where the overriding goal of taxation was to ensure that all individuals live in circumstances where no individual or class of individuals enjoys unjust or otherwise coercive power over others, the important criterion is genuine control over individual lives. It is no surprise that Nielsen's principles are the only principles that are patently liberal, given the conclusions of this discussion. Individuals in Nielsen's state, as those in Rawls's state, enjoy a broad range of individual freedoms, including freedoms of self-realization and other personal freedoms, but *all* individuals in Nielsen's state are guaranteed a broad and parallel range of liberal freedoms, and *all* individuals are guaranteed the opportunity to exercise their civil liberties and personal freedoms, because no individuals are provided the opportunity to assert control over their lives, where this opportunity includes ownership over disproportionate shares of external resources and control of significant and unregulated productive resources.

In this sense Nielsen's willingness to restrict property freedom makes his proposal more meaningful: the appeal here is to the cardinal liberal principles, and no consideration, property freedom being the conspicuous case, is given priority of place. The inequalities permitted by Nielsen's principles are indeed incidental, because individuals are provided the same package of

individual freedoms, and inequalities induced by any factor subsequent to an original distribution are obviated by a strict policy of equality of condition.

This suggestion might offend those who are committed to a strong register of property freedoms, because in practice the property freedoms enjoyed by most individuals under Nielsen's preferred social arrangement would be quite narrow in comparison to those enjoyed by individuals in contemporary liberal nation-states. But I submit in response that this circumstance is one to be sought, rather than avoided, because, to again appeal to Rousseauian language, "...given the invidious effects of competition and comparisons among people generally, only approximate economic equality and strict limits upon economic competition will establish a fraternal society."<sup>161</sup> Individuals might be offended by the distributive arrangement Nielsen has in mind only because it is so unlike the social arrangements in almost all extant nation-states that the kind of freedom Nielsen advocates is, to many of us, unrecognizable in character. But this is not an argument against Nielsen's conception of freedom and justice. Rather, it is an argument against the conception of freedom which convinces and therefore satisfies many, if not most individuals, in contemporary liberal nation-states.

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<sup>161</sup>See Gutmann, Liberal Equality 219.

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