Self-ownership, Marxism, and egalitarianism

part I: challenges to historical entitlement

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abstract

This two-part article offers a defense of a libertarian doctrine that centers on two propositions. The first is the self-ownership thesis according to which each individual possesses original moral rights over her own body, faculties, talents, and energies. The second is the anti-egalitarian conclusion that, through the exercise of these rights of self-ownership, individuals may readily become entitled to substantially unequal extra-personal holdings. The self-ownership thesis remains in the background during Part I of this essay, while the anti-egalitarian conclusion is supported in two ways. First, I offer a reconstruction of Robert Nozick’s well-known ‘How Liberty Unsets Patterns’ argument against all end-state and pattern theories of distributive justice; and I defend this reconstructed stance against what might (otherwise) seem to be telling criticisms. Second, I defend the two key principles of Nozickian historical entitlement theory (the principle of just transfer and the principle of just initial acquisition) against criticisms offered by G.A. Cohen.

Part II will center on Cohen’s contention that the crucial basis for the anti-egalitarian conclusion is the self-ownership thesis. There I argue that Cohen is correct to hold that he must reject the self-ownership thesis if he is to avoid the anti-egalitarian conclusion; but he is wrong to think that he has an adequate basis for rejecting this thesis. Thus, both elements in the libertarianism under consideration are vindicated. And, the self-ownership thesis plays a surprisingly direct role in vindicating the anti-egalitarian conclusion.

keywords egalitarianism, historical entitlement, moral rights, self-ownership

1. Introduction to Part I

This essay offers a defense of a particular type of libertarian doctrine. It defends the type of libertarianism that gives pride of place to the thesis of self-ownership
the thesis that each individual possesses original moral rights over her own body, faculties, talents, and energies. Adherents of this thesis believe that it best captures our common perception of the moral inviolability of persons — an inviolability that is manifested in the wrongfulness of unprovoked acts of killing, maiming, imprisoning, enslaving, and extracting labor from other individuals. They believe that the rights of self-ownership provide individuals with the moral immunities appropriate to beings whose lives and well-being are of separate and irreparable moral importance. In addition to this, the libertarian doctrine under consideration here includes the proposition that, through the exercise of these rights of self-ownership, individuals may readily become entitled to substantially unequal extra-personal holdings. According to this proposition, under perfectly ordinary and morally acceptable circumstances, significant inequalities are apt to arise among the holdings of individuals and, if they arise by ordinary and morally acceptable means, these inequalities will be perfectly licit. I will refer to this proposition as the 'anti-egalitarian conclusion' and to the overall doctrine that I defend as 'self-ownership libertarianism'.

Self-ownership libertarianism is most prominently articulated in Robert Nozick's _Anarchy, State and Utopia_ (henceforth referred to as 'N' followed by a page citation) and one of the most probing and sustained critiques of the doctrine of _Anarchy, State and Utopia_ is presented in G.A. Cohen's _Self-Ownership, Freedom, and Equality_ (henceforth, referred to as 'C' followed by a page citation). Cohen himself characterizes the self-ownership thesis as the claim that 'each person enjoys over herself and her powers, full and exclusive rights of control and use', that each person is in this sense 'entirely sovereign over himself' (C:12, 13). This characterization nicely reminds us that the self-ownership thesis asserts what Mill proclaims in _On Liberty_ — but, arguably, could not depend on the grounds of general utility. It asserts that 'Over himself, over his own body and mind, the individual is sovereign'. Cohen places great emphasis upon the centrality of this thesis to Nozickian libertarianism. Indeed, Cohen focuses on self-ownership much more and much more explicitly than Nozick himself ever does. This essay originates in my interest in understanding and, if possible, rebutting Cohen's powerful challenge to Nozick's libertarianism. Nevertheless, my defense proceeds at two distinct levels. At the first level, I defend self-ownership libertarianism as it is articulated in _Anarchy, State and Utopia_ against specific charges brought by Cohen. For instance, I point to particular mischaracterizations of Nozick's claims or indicate how responses to Cohen's charges can be found within Nozick's espousal: At the second and more important level, I defend self-ownership libertarianism against more general criticisms (including several offered by Cohen) by revisiting, revising, or expanding self-ownership libertarianism. Perhaps needless to say, however, this second-level defense will not amount to a comprehensive vindication of self-ownership libertarianism.

Cohen's most persistent goal in attacking the doctrine of _Anarchy, State and Utopia_ is to reject the anti-egalitarian conclusion. As an egalitarian, he wants to sustain the view that significant inequalities among people's holdings (or income or wealth) are unjust, except, perhaps, under extraordinary circumstances. Yet Cohen, quite properly, thinks that he may not simply invoke his own egalitarian commitments in order to reject the libertarian's anti-egalitarianism. Rather, he must confront and discredit the premises from which the anti-egalitarian conclusion arises. However, as Cohen sees it, there are two possible libertarian routes to the anti-egalitarian conclusion. The first and more obvious route consists in the libertarian's dismissal of all end-state and pattern theories of distributive justice and his related adoption of a historical entitlement account of justice in holdings. The libertarian critique of end-state and pattern theories of justice (including strongly egalitarian end-state and pattern theories) does not entail that the correct account of justice in holdings is purely historical. But it does seem to follow from that critique that the entitlements of particular individuals will depend significantly on the capacities and skills that they respectively have, develop, and exercise and on how other individuals choose to exercise their capacities and skills in interaction with them. Since individuals differ significantly in the capacities and skills that they respectively have, develop, and exercise and in how other individuals choose to exercise their capacities and skills in interaction with them, the resulting entitlements of individuals will differ significantly. If a purely historical account of justice in holdings is philosophically credible, the anti-egalitarian conclusion is even more solidly established. For, on a purely historical account of justice in holdings, the entitlements of particular individuals will depend entirely on the capacities and skills that they respectively have, develop, and exercise and on how other individuals choose to exercise their capacities and skills in interaction with them.

Part I of this essay, 'Challenges to Historical Entitlement', is concerned with fortifying this first route to the anti-egalitarian conclusion. There are two main phases within this fortification process. The first phase is carried out in the next two sections. In those sections, I offer a reconstruction of Nozick's well-known 'How Liberty Upsets Patterns' argument (N: 160–164) against all end-state and pattern theories of distributive justice; and I defend this reconstructed stance against what might (otherwise!) seem to be telling criticisms. The second phase of this fortification process is carried out in the two sections that then follow the above. In these sections, I defend the two key principles of Nozickian historical entitlement theory (the principle of just transfer and the principle of just initial acquisition) against Cohen's attack. Thus, Part I of this essay sustains the first route to the anti-egalitarian by strengthening the libertarian case against end-state and pattern doctrines of distributive justice and by defending historical entitlement theory.

One of the distinctive things about Cohen's attempt to reject the anti-egalitarian conclusion is his focus on a second route to that proposition. This second route consists of the self-ownership thesis combined with the contention...
that, from this thesis, one can infer the anti-egalitarian conclusion without the aid of additional controversial premises. In particular, according to this contention, no independently established doctrine of justice in holdings or of property rights is needed to infer the anti-egalitarian conclusion. Of course, additional non-controversial premises are needed. Indeed, the crucial ones have already been mentioned, for example, that individuals differ significantly in the capacities and skills that they have, develop, and exercise and in the ways in which others will choose to interact with them. The central idea of the second route is that individuals, through interactions that consist in their chosen development and exercise of their capacities and skills, will generate a significantly unequal distribution of holdings and that an equality of holdings can only be maintained or established by interventions that infringe upon people’s rights of self-ownership. Since, given the self-ownership thesis, it would violate persons’ rights to intervene to block or undo the significantly unequal holdings that would arise or that have arisen by way of people’s chosen actions and interactions, those unequal holdings cannot be unjust. Rather, those holdings are just; and the anti-egalitarian conclusion is established.

It is Cohen, not Nozick, who explicitly articulates and defends the contention that the anti-egalitarian conclusion can be inferred from the self-ownership thesis without the aid of additional controversial premises. Given this contention, the only way that Cohen can block the second route to the anti-egalitarian conclusion is for him to challenge and reject the self-ownership thesis itself. And, just as Cohen launches specific criticisms against the historical entitlement view because he does not think he can dismiss this view simply on the grounds that it conflicts with his own egalitarianism, Cohen launches specific criticisms against the self-ownership thesis because he does not think he can dismiss this thesis simply on the grounds that it conflicts with his own egalitarianism. Part II of this essay, ‘Challenges to the Self-Ownership Thesis’, focuses on this second possible route to the anti-egalitarian conclusion. It examines and reinforces Cohen’s contention that the self-ownership thesis yields the anti-egalitarian conclusion without the need for additional controversial premises. But it rejects Cohen’s criticisms of the self-ownership thesis and, hence, it reaffirms this second route to the anti-egalitarian conclusion. It thereby reaffirms both of the defining features of self-ownership libertarianism. Part I, ‘Challenges to Historical Entitlement’, sets the stage for Part II, ‘Challenges to the Self-Ownership Thesis’, by showing that Cohen had better claim that the anti-egalitarian conclusion arises or falls with the self-ownership thesis — because the attempt to discredit that conclusion through challenges to historical entitlement fails.

There is another important dimension to this essay that explains the presence of ‘Marxism’ along with ‘Self-Ownership’ and ‘Egalitarianism’ in its title. Cohen’s own understanding of why he has taken self-ownership libertarianism far more seriously than egalitarian social democrats such as John Rawls and Ronald Dworkin have is that, unlike such social democrats, he recognizes the intuitive force of the self-ownership thesis. At least at the point of Cohen’s initial encounter with Anarchy, State and Utopia, the intuitive force of the thesis for Cohen was connected with his own sympathy for a type of Marxist critique of capitalism and capitalism’s propensity to generate unequal outcomes. According to this critique, capitalism is unjust because it institutes the theft of the worker’s product and, indeed, of the worker’s labor itself. This critique, however, seems implicitly to be grounded on the idea that the worker has a claim in justice to his labor; and this idea, in turn, seems to reflect something uncomfortably close to the self-ownership thesis. As Cohen sees it, the reason that some Marxists or erstwhile Marxists have been more agitated by Nozickian libertarianism than egalitarian social democrats is that libertarian doctrine seems to unfold from an organizing idea (the thesis of self-ownership) to which those Marxists or erstwhile Marxists are themselves implicitly committed. Therefore, Cohen is faced with the question of how thoroughly must he purge this thesis and remnants of this thesis from his own position in order to avoid the libertarian’s anti-egalitarian conclusion. In other words, how completely must Cohen convert to ordinary egalitarian social democracy in order to sustain his own egalitarianism?

The answers to these questions depend upon what must be denied in order to block the anti-egalitarian conclusion. If the route to that conclusion requires additional controversial premises, for example, the principles that make up the historical entitlement doctrine, then one can rescue one’s egalitarianism by successfully attacking those principles — and one need not purge oneself of one’s self-ownership leanings. Part I of this essay maintains that arguments by Cohen that would allow him to rescue his egalitarianism without purging himself of self-ownership leanings fail. Thus, Cohen must go on to argue that the self-ownership thesis really is the crucial basis for the anti-egalitarian conclusion and to argue for the rejection of that thesis. Part II of this essay, ‘Challenges to the Self-Ownership Thesis’, critically examines these important philosophical contents.

2. Reconstructing Nozick’s ‘How Liberty Upsets Patterns’ argument

Nozick presents his historical entitlement theory only in a most skeletal form. All that he tells us is that a correct historical entitlement theory of just holdings will provide us with three distinguishable principles — each of which may be quite complex. First, there will be a principle of just initial acquisition that will specify the sorts of actions through which an agent establishes entitlement over some object that was previously unowned. The standard case of such initial acquisition would be entitlement generating appropriation of some unowned natural object. (Less standard cases would involve the acquisition of some object
that, although once owned, has since been abandoned or would involve entitlements to created, non-material objects.) Second, there will be a principle of just transfer that specifies the sorts of actions and interactions through which the entitlement to objects are transferred from one individual to another or through which the parties arrange for an existing entitlement of one of them to be extinguished while a new entitlement for the other is generated. Third, there will be a principle of rectification that specifies the actions or interactions through which individuals who have been deprived of objects to which they are entitled may repossess those objects or otherwise attempt to make themselves whole.

Clearly, on the historical entitlement doctrine, what objects any given individual has entitlements over and, as a consequence, what overall 'distribution' of objects is just depends upon how that particular individual has chosen to act and how other individuals have chosen to interact with him. If I had chosen to become a law professor and had been chosen as such by a law school that justified acquiring the funds for its payroll, the extent of my entitlements would be considerably greater than it now is. As it is, I became a philosophy professor and was hired by a university that, let us assume, justified acquiring the funds for its payroll and, as a result, my actual entitlements are much more modest. The actual history of people's respective holdings determines the justice (or injustice) of those holdings. Actual performances of acts of just acquisition are normatively weighty. These actual performances (but not other actions that may engender possession) confer entitlements upon the individual agents to the objects they thereby acquire. Since different histories are antecedently possible (since Harry might have reaped rather than sown and Sally might have leaped rather than hesitated) no theory of justice in holdings can antecedently specify what any given individual's entitlements or share of entitlements will be or what structure or pattern of holdings among individuals will be just.

As is well known, the historical entitlement doctrine stands in contrast to end-state theories of justice and pattern theories of justice. End-state and pattern theories antecedently specify what structure or pattern of holdings among individuals will be just. Each end-state theory directly specifies a profile of holdings that serves as the measure of justice in the distribution of holdings. The available distribution that most realizes the specified profile is the just distribution. For example, the egalitarian end-statist directly specifies that the just distribution is the one that most realizes equality among distributive shares, while the advocate of Rawls's difference principle directly specifies that the just distribution is the one within which the smallest share is larger than the smallest share contained within any alternative distribution. In contrast, the pattern theorist says that the choice of which distribution ought to be instituted among persons' holdings is determined by how some justice-making characteristic (for example, moral virtue or political loyalty or usefulness to society) is distributed among those persons. If, for example, the justice-making characteristic is moral virtue and moral virtue is equally distributed among those persons, then equality is the measure for the proper distribution of holdings among those persons. Just as end-state advocates disagree among themselves about what profile among holdings is to be directly specified, advocates of pattern theories disagree among themselves about what is the justice-making characteristic that determines the proper distribution of holdings. To a considerable extent, Nozick's endorsement of the historical entitlement doctrine is based upon his rejection of all its end-state and pattern competitors.

Nozick's best-known argument against all end-state and pattern theories is contained in a section of Anarchy, State and Utopia that is entitled 'How Liberty Upsets Patterns' (N: 160–164). Nozick and most commentators represent this argument as pointing to a conflict between respecting the liberty of individuals and maintaining allegiance to some favorite end-state or pattern as the measure of justice: 'no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives' (N: 163). In contrast with this representation, the argument that I ascribe to Nozick, perhaps with an excess of generosity, is an argument that points to a tension between advocating a justice-initiating application of a favored end-state or pattern and being committed to the repeated application of that end-state or pattern in a way that negates the outcome of individuals employing as they see fit the holdings established by the justice-initiating application of that end-state or pattern.

Nozick asks his reader to envision a world in which distribution of holdings $D_2$ obtains, where $D_1$ is the distribution that, among all possible distributions in that world, best realizes the reader's own favorite pattern. From the perspective of the pattern-friendly reader, the institutionalization of $D_1$ is the institutionalization of justice. Nozick then asks the reader to envision a set of voluntary exchanges among some of the (relatively well-endowed) inhabitants of that world that alters the distribution of holdings. These exchanges are envisioned as enhancing to some unspecified degree the holdings of each of the parties to the exchanges while not affecting the holdings of the non-participants. In fact, Nozick might, instead, have asked his pattern-friendly reader to envision the simpler yet case of relatively well-endowed individuals increasing their respective holdings under $D_1$ through purely unilateral action — through these individuals separately engaging in enhancing transformations of their assigned resources (or the resources that they have purchased with their assigned income under $D_1$). Indeed, he could also have asked the friend of structure to envision relatively ill-endowed individuals decreasing their respective holdings under $D_1$ through purely unilateral action — through these individuals separately engaging in diminishing transformations of their assigned resources (or the resources that they have purchased with their assigned income under $D_1$). Nozick then points out that the distribution of holdings $D_2$ that results from the envisioned voluntary exchanges (or, he might have said, that results from those unilaterally enhancing or diminishing actions) will almost certainly count as
unjust in terms of the very pattern that certified the starting distribution D₁ as just. For it will almost certainly be the case that D₂ will not be the distribution that, of all the distributions possible after the exchanges (or transformations) that brought it into existence, most fully realizes the pattern that anointed D₁. Since, the pattern befriended by the pattern theorist will typically embody some preference for equality in holdings. I have described exchanges or transformations that increase inequality in holdings and so, in terms of this preference for equality, tend to make the conversion from D₁ into D₂ a transition from a just to an unjust distribution. However, friends of non-egalitarian patterns could be presented with different voluntary exchanges or unilateral transformations by different individuals that would, in terms of their preferred structure, tend to move the world from justice to injustice. For example, friends of distribution in accordance with virtue could be presented with a transition from D₁ to D₂ brought about by the virtuous virtually donating their holdings to the wicked. Whatever the character of the favored pattern, the resulting distribution D₂ will be unjust in terms of that certifying pattern if it is possible to convert D₂ (presumably through finely tuned tax and subsidy measures) into another distribution D₃ that better realizes the reigning pattern than does D₂ or D₁.

According to Nozick, the pattern theorist must say both that D₁ is just when it is created and that the D₂ that is envisioned to discomfort him is unjust when it arises. In one way, the pattern theorist has no trouble at all explaining the injustice of D₂ when it arises. D₂, he says, is unjust simply because it realizes the certifying pattern less fully than some other distribution D₃ into which D₂ can be converted. But, Nozick contends that the pattern theorist is obligated to provide a different sort of explanation for the (purported) injustice of D₂. He must explain how D₂ has become infected with injustice even though D₂’s existence and structure is entirely a function of just allocation D₁ and individuals deploying their just holdings as they respectively see fit without any way impinging upon anyone else’s just holding. How could the sort of activities that are envisioned as transforming D₁ into D₂ introduce injustice into the world? These questions are not answered by pointing again to the fact that D₂ can be converted into D₃, which better realizes the favored pattern. For these questions precisely challenge the proposition that a distribution is unjust if it can be converted into another that more fully realizes some esteemed structure. The questions challenge this proposition by pointing out that it entails that a world that is (by assumption) entirely just can become infected by injustice even if individuals in that world merely deploy their just holdings as they see fit without trenching on the just holdings of anyone else. Surely anyone who is committed to this entailment is obligated to explain how these relevantly innocuous actions can transform a just world into an unjust world.¹³ As Nozick puts it:

> Is this new distribution D₂ unjust? If so, why? There is no question about whether each of the people was entitled to control over the resources they held in D₁; because that was the distribution (your favorite) that for the purposes of argument we assumed was acceptable. . . . By what process could such a transfer among two persons give rise to a legitimate claim of distributive justice on a portion of what was transferred, by a third party who had no claim of justice on any holding of the others before the transfer? (N: 161–162.)

Nozick’s questions are, of course, intended to be rhetorical. He does not expect the pattern theorist to be able to provide an answer. For the only thing the pattern theorist can appeal to is the suboptimality of the resulting D₂. If the pattern theorist attempts to respond to Nozick by insisting on the non-innocuous character of certain processes that have been involved in the emergence of D₂, he abandons his own view that the justice of any distribution is entirely a matter of the degree to which it realizes the right sort of pattern and is not at all a matter of the processes by which it arises.

Pattern theories of distributive justice appeal to us because of what they seem to promise. They seem to promise that, at long last, each person will possess what she has a claim in justice to possess. But a major part of the appeal of this promise derives from our implicit understanding of what it means to at long last be allotted one’s just endowment. Nozick’s argument takes that implicit understanding to include the expectation that one will be allowed to dispose of one’s justly allotted resources as one sees fit and without penalty as long as one’s disposition does not prejudice others from similarly employing their allotted resources as they see fit. Surely, what makes intuitively satisfying the assignment of certain holdings to individuals as justly theirs is the idea that these individuals will then be free, without penalty, to utilize these holdings as they respectively choose (either singularly or in voluntarily formed associations) to advance their values and projects. As Nozick asks about each share assigned under D₁, ‘what was it for if not to do something with?’ Especially since others have also received their just allotment, it is difficult to see how one’s cultivation of one’s own garden or one’s cooperative cultivation of gardens with other consenting adults (which is what we take ourselves to be getting the right to do by way of the institutionalization of D₁) could give rise to others having valid complaints in justice against us. The institutionalization of the just D₁ is attractive to us because it promises the realization of people’s entitlement to employ and dispose of their genuinely just holdings as they see fit. This is why when, subsequent to such employments and dispositions, the pattern theorist points out that the resulting distribution of holdings D₂ is unjust (because it can be converted into the better yet D₃), this iterated application of the favored pattern seems to violate the promise of its first application. In Hillel Steiner’s apt phrase, the iterated application of any pattern conception of justice ‘creates rights to interfere with the rights which it has created’.¹⁴

So Nozick is actually making two distinct, but interconnected, points against the pattern theorist. First, the friend of pattern is bound to explain, but cannot explain, how quite innocuous actions (indeed, precisely the non-invasive utiliti-
zations of resources the anticipation of which makes a justice-initiating distribution appealing) can inject injustice into a previously just world. Second, the program of the friend of pattern promises us more than the ongoing application of the favored pattern can deliver — precisely because the successive application of the pattern is incompatible with the entitlements to holdings that we expect under the banner of justice in holdings. ‘Patterned distributional principles do not give people what entitlement principles do, only better distributed. For they do not give the right to choose what to do with what one has’ (N: 167).

In the particular case of Wilt Chamberlain, Nozick asks us to envision Chamberlain having arranged that everyone who enters his home arena to watch him play has to place 25 cents in special boxes whose contents are delivered to Chamberlain. By the end of the season during which these arrangements have been in place, one million fans have happily paid that extra 25 cents and Chamberlain has received US$250,000. (For the sake of simplicity, let us assume that this is the only payment Chamberlain receives.) D_1 is the distribution of holdings across the participating fans, non-participating non-fans, and Chamberlain at the start of the season; D_2 is the distribution at the end of the season, after those one million voluntary exchanges. The intuition Nozick expects every sensible person to share here is that, if one takes D_1 to have been just, then one should take D_2 to be just; the only plausible way to challenge the justice of D_2 is to challenge the justice of D_1. If one rejects this intuition, that is, if one holds that the (seemingly) innocuous exchanges between Chamberlain and the paying fans introduce injustice into the world, one is obligated to explain how such actions infect the world with injustice.

Any given pattern theorist who has accepted the justice of this D_1 will very likely have to deny the justice of this D_2 and, hence, have to explain how these innocuous acts inject injustice into the world. For it will very likely be the case that a portion of Chamberlain’s concentrated post-season holdings can effectively be expropriated and redistributed to folks who are too poor to attend NBA games, whereas no effective expropriation and redistribution could have been performed on the dispersed pre-season holdings of Chamberlain’s future patrons. When that D_1 obtained, there was no other distribution available that friends of equality-leaning patterns favor over D_1; but when D_2 comes into existence, through the interchange of Wilt and his fans, so also may the possibility of converting that D_2 into distribution D_3, which more fully satisfies the relevant tilt to equality than does D_2 (or D_1). When social engineering can achieve such a D_3, the equality-leaning pattern theorist who has certified the justice of D_1 must assert the injustice of D_2. But, in doing so, the pattern theorist obligates himself to perform the unperformable task of explaining how the innocuous interaction of Wilt and the fans injects injustice into D_2 and that theorist defaults on the promise that individuals will, without penalty, be free to dispose as they see fit of the holdings assigned under D_1.

Before turning to what seems to me to be the strongest challenge to this reconstructed Nozickian argument, I want to address briefly another fairly familiar challenge. One way for the pattern theorist to avoid the whole thrust of the present argument is to avoid condemning D_2 as unjust and, thereby, avoid the need to explain how D_3 becomes infected with injustice. It may seem that this avoidance can be accomplished by insisting that justice does not concern itself with isolated cases, but rather with a society’s basic institutional structure. It may be maintained that society’s basic institutional structure cannot be expected to respond to every isolated instance of disparity between what actually obtains and the fullest feasible realization of the pattern that guides the design and operation of that institutional structure. As long as the institutional structure is reasonably well designed and employed to promote the justifying pattern, that structure is just and isolated deviations from the fullest feasible realization of the pattern are not unjust.

My response to this challenge is to accept this enhanced focus on basic institutional structure (at least for the sake of argument) as long as it is still recognized that, for the pattern theorist, the justice of the basic structure and its activities still ultimately turns on that structure’s propensity to bring about the pattern of holdings that is the ultimate justifying purpose of that basic structure. To this I would simply add that, within a large, complex, and (one presumes) economically dynamic society, the transformation within the pattern of holdings as that social order moves from society-wide D_1 to society-wide D_2 by way of millions of individuals deploying, modifying, and exchanging what they possess under D_1 will involve much more than isolated departures from the favored profile. The transformation within the profile of holdings will be pervasive and substantial in magnitude. And the disparities between the resulting D_2 and the then fullest feasible realization of the justifying pattern, that is, between D_2 and D_3, will also be pervasive and substantial. So, as this D_2 emerges, a pattern-oriented basic institutional structure will have to condemn it as unjust and proceed to require its conversion into something much more like D_3. A basic institutional structure that does not intervene to recontour holdings toward D_3 will contravene its own justifying purpose. So the shift to a focus on institutional structure and the recognition that such a structure cannot be expected to micro-manage the actual world into the fullest possible realization of the favored pattern does not enable the pattern theorist to avoid the judgment that the D_2 that emerges from D_1 through those millions of actions and transactions is (or is very likely to be) unjust. Hence, this shift of focus does not enable the pattern theorist to avoid the need to explain how a D_3 that emerges from a just D_1 by way of individuals freely utilizing their D_1 holdings becomes unjust.

3. Defending the reconstructed argument

A pattern theorist might well respond to my reconstruction of the ‘How Liberty Upsets Patterns’ argument by saying, he never promised us gardens to cultivate
— at least not gardens over which we would have full liberal ownership. The pattern theorist may say, 'I merely promised that there would be a certain distribution among individuals of lifetime income or lifetime consumption of goods and services. When I endorsed distribution of holdings \(D_1\) at time 1, I did so in the anticipation that \(D_1\) would be the first phase within a series of distributive phases among individuals such that, when one adds up the holdings each moral subject will have in the whole course of the series, my favorite pattern among individuals' total lifetime holdings will be more fully realized than in any other possible series of distributive phases. Distributive justice calls for such a best realization of the favored pattern within people's lifetime possessions; it does not call for the realization of the favored pattern within each or even within any one distributive phase. Various "interventionist" measures (in particular, various tax and subsidy policies) almost certainly will be an essential part of the plan for achieving this best possible series of distributive phases. What is allotted to individuals in the name of distributive justice is their lifetime distributive shares as they are made possible and shaped by these measures. "Interventions" that are part and parcel of the overall scheme do not contravene the entitlements assigned by justice, but, rather, are the means of sustaining just lifetime shares. Since those interventions are part of the whole scheme for insuring distributive justice, they do not run contrary to anyone's legitimate expectations. They do not come into conflict with any promise made by the pattern theorist.'

The essence of the pattern theorist's response is that the institutionalization of his favored pattern promises people certain streams of income over their lifetimes — streams that will be contoured by certain tax and subsidy policies. Of course, it would be clearer to say that the pattern theorist offers people a certain income regime, where an income regime consists in certain tax and subsidy policies, including a specification of how the rates of different taxes and subsidies will vary over people's lifetimes as diverse social circumstances vary. Particular individuals are not assured specific flows of income; rather, they are assured that a particular income regime will be in force — a basic institutional structure that is chosen in order to maximally realize some favored pattern of lifetime incomes. A pattern theorist will identify the income regime that will be advanced as just in the following way. He will anticipate how individuals will behave over their lifetimes under each of a number of different sets of tax and subsidy policies and, thereby, anticipate what distribution of lifetime income each of these sets of tax and subsidy policies will yield. He will then pick the income regime that he anticipates will yield the distribution of lifetime income that most fully realizes his favored pattern. For instance, if he is a friend of the difference principle, he will pick the regime that he anticipates will provide a higher long-term income for the least advantaged members of society than he anticipates will be provided by any other regime. Suppose the pattern theorist's chosen income regime, \(R_1\), is institutionalized in anticipation of its yielding a distribution of lifetime income, \(LD_1\). The crucial inconvenient facts for the pattern theorist's present response are: (a) it is almost certain that innocuous actions of individuals who conduct themselves entirely in accord with regime \(R_1\) will generate distribution \(LD_2\), not \(LD_1\); and (b) when \(LD_2\) is generated, it will almost certainly pervasively and extensively depart from the distribution that, among all the distributions that have then become available, maximally realizes the favored pattern. The reason that \(LD_2\), rather than \(LD_1\), will almost certainly arise is that many individuals, in unanticipated ways, will unilaterally enhance the value of what they produce and are allowed to keep under \(R_1\) or what they are allowed to purchase with what they produce and are allowed to keep under \(R_1\). In addition, these or many other individuals, in unanticipated ways, will engage in mutually beneficial exchange of what they produce and are allowed to keep under \(R_1\). Unless people are effectively prohibited from transforming and exchanging their own just holdings under \(R_1\) in accordance with the (non-Stalinist) rules of \(R_1\), there will always be many individuals who will find unexpected ways to enhance the value of their holdings by unilateral alteration of those holdings or by mutually agreeable exchange. Furthermore, it is almost certain that once these unanticipated actions and transactions are performed, the resulting \(LD_2\) will depart significantly from the best distribution that has then become available. It is almost certain that any actually produced \(LD_2\) will be convertible into another distribution of lifetime income, \(LD_3\) that will significantly more realize the favored pattern than does \(LD_2\). The reigning pattern theory of justice will, therefore, require that people be subject to a new income regime \(R_3\) (a new basic institutional structure) that is designed to yield \(LD_3\). I should emphasize that these pattern-upsetting capitalist acts are not underground capitalist acts. The individuals who achieve unexpectedly high incomes act fully in accord with regime \(R_1\); this includes their payment of whatever taxes apply to their additional income or wealth under \(R_1\). \(LD_2\) is the distribution of lifetime incomes that obtains after these individuals pay the taxes they owe under \(R_1\). That is why, given the supposition that \(R_1\) is just, it seems that \(LD_2\) must be just — or at least not unjust. More explicitly, if \(R_1\) is a just income regime and \(LD_2\) arises under \(R_1\) by innocuous actions that involve some people making unanticipated gains and no one being rendered worse off, then \(LD_2\) is a just (or at least a not unjust) income distribution. The pattern theorist who affirms the justice of \(R_1\) but who asserts the injustice of \(LD_2\) will be faced with the same puzzles as were posed by Nozick to the theorist who affirms the justice of \(D_1\) but rejects the justice of \(D_2\). If \(R_1\) is a just income regime, then one should be as puzzled about how the unanticipated distribution \(LD_2\), which arises under \(R_1\) by way of innocuous capitalist acts among solitary or consenting individuals, could be infected with injustice as one should be puzzled about how \(D_2\), which arises from a just \(D_1\) by some similarly innocuous acts, could be infected with injustice. Surely, if \(R_1\) amounts to the rules of a just distribution game, no one can have any complaint in justice against any resulting \(LD_2\) that emerges from individuals acting in ways that are both innocuous and fully in compliance with those rules.
If one asserts such a complaint, one must take up the unenviable task of explaining how innocuous actions in accord with the rules of a just system give rise to injustice. To tell individuals that they may not retain what they have acquired fully in accord with the rules of a just income regime is, in effect, to rescind that regime; just as to tell people that they may not retain what they transform their just holdings into or what they get in trade for their just holdings is to rescind the assignment of those holdings to those individuals as their just holdings. To tell individuals that they may not retain what they have acquired fully in accord with the rules of a just income regime is, to modify Steiner’s quip, to create income regimes that violate the income regimes that one has created.

The point that affirming the justice of R₁ strongly pushes one toward affirming the justice of LD₂ can be made somewhat more concretely by considering the case of Sally who has a certain expected lifetime income under R₁. Suppose that Sally, first, somehow guarantees the other interested parties that she will indeed continue to perform the actions on the basis of which it is expected that this stream of income will accrue to her and, second, sells the rights to that expected income stream to Harry for a lump-sum payment. Let us suppose further that Sally and Harry only engage in this exchange for the sake of the further opportunities they believe it will offer to them. Hence, the exchange itself does not disrupt LD₁. But, having got hold of this lump sum, Sally now purchases various materials and in her spare time (not the time she still devotes to her originally anticipated activities) she converts those materials into more valuable objects in ways that impose no loss on anybody else. Even after she pays taxes under R₁ on her incremental income, Sally’s activities add up to a transformation of LD₁ into LD₂. (Or, if one objects to the isolated case, we could adjust the story to include lots of other Sally-like people.) If R₁ is a just income regime and Sally proceeds in the manner described, it would seem that this resulting LD₂ is a just, or at least a not unjust, income distribution. But, of course, if LD₂ is a just, or even a not unjust, income distribution, then justice in income distribution cannot be entirely a matter of comportment with some favored pattern of income distribution. The explanation of the justice, or non-injustice, of LD₂ will have to invoke the historical fact that LD₂ arose under (what has been stipulated as being) a just regime by means of certain innocuous actions. The judgment that LD₂ is just will not depend upon the contrary-to-fact determination that, having come into existence, LD₂ is the available distribution that most fully realizes the favored pattern.

The steadfast pattern theorist must deny the justice of LD₂. Since positing the justice of R₁ presses one to the conclusion that LD₂ is just, the steadfast pattern theorist has to deny that people have a claim in justice to the basic institutional structure that is regime R₁ — just as the pattern theorist has had to deny that people have a claim in justice to D₁ in order to deny the justice of D₂. The response we have formulated on behalf of the pattern theorist to the ‘How Liberty Upsets Patterns’ argument is that D₁ is not itself just; D₁ is merely the first phase of a series of distributions of holdings that, it is hoped, will add up to the fullest realization of his favored pattern. The response we must now formulate on behalf of the still steadfast pattern theorist to my ‘Unanticipated Action Upsets Income Regimes’ argument is that income regime R₁ is not itself just. Institutional structure R₁ itself is merely the first phase of a series of institutional structures that, it is hoped, will yield over the long term the fullest realization of the favored pattern. (And the later phases cannot be described in advance; if they could be, all the phases would be parts of one mega-regime.)

In order to maintain allegiance to his favored pattern, the pattern theorist has to say that his doctrine never promises people any particular, identifiable, institutionalized income regime. Rather, in the name of distributive justice, people are promised income regimes that will be changed periodically (in light of what income streams have come into existence and what new technologies for generating income streams and for redistributing them seem to have been discovered) so as to attempt to produce an optimal long-term distribution. Not only ought people not to count on the particular holdings assigned to them under D₁ (or to what they transform those holdings into or get in exchange for them), people ought not to count on what they are said to be entitled to under any particular income regime R₁ or even any series of regimes R₁-Rₙ₋₁. At most, people can hope that there will be some last phase during which an income regime Rₙ will be instituted that, by correcting for all the errors embodied in previous regimes and taking advantage of the latest technologies of redistribution, will yield a just distribution of lifetime incomes among them. Or, more precisely, people can at most hope that there will be a final Rₙ that will yield the best lifetime distribution among those that are still available after all the errors of regimes R₁-Rₙ₋₁.

The problem with this final fall-back position for the pattern theorist is that it puts us all in the dark about what our just income claims really are — at least until that final judgment is rendered. We may proceed from one income regime to another, each time doing the best we can to establish a set of rules and policies that will maximally realize the favored pattern across all the contemplated time periods. But we will quickly learn the foolishness of describing the income that anyone receives under any given regime as his just income. For we will quickly learn that social calculations in the not very distant future will very likely reclassify at least some of that income as unjust. No one will be able to count her income chickens, no matter how thoroughly the acquisition of these income chickens has been in accord with the norms of past and present justice-seeking income regimes, until this hoped for final regime has been hatched. Nor, it should be emphasized, will individuals merely be subject to minor adjustments in their lifetime incomes. Which alterations should be made to people’s prospective lifetime incomes by the income regime that is presently coming online will depend on complex calculations of social interests. The most reasonable calculations at any given time may very well indicate that the favored pattern of lifetime income
will best be served by a new income regime that entirely or substantially eliminates entire categories of income that were protected under previous income regimes.

For example, it is easy to imagine calculations that would seem to reveal that the way to save the social security system and, thereby, best serve the favored pattern is to impose a tax of 75 percent on the social security payments of recipients who, aside from these payments, have an annual income of at least US$50,000. Previous income regimes did not recognize the need to save social security in this way; but now our most talented social calculators judge that this tax has to be imposed for the sake of the favored pattern. Indeed, these calculators may now judge that the favored pattern is most promoted by a new regime in which that tax is applied retroactively. Moreover, there is nothing in principle that blocks the new regime, especially if it is that final regime \( R_n \), from adjustments of income that on net will move people who had every expectation from their experience of previous regimes of having relatively high lifetime incomes to relatively low lifetime incomes (and vice versa). Such surprising adjustments will be seen to be required by justice if the most up-to-date calculations indicate that they will yield a lifetime distribution of income that significantly more realizes the guiding pattern.

Even our most talented social calculators will (I am contending) be systematically unable to anticipate how people will act within the strictures of the income regimes that they recommend; and they will be unable to anticipate how later social calculators will respond to these acts in their design of new income regimes. That is why the conscientious institution of new income regimes in the ongoing quest for justice in the lifetime distribution of income will frequently have to deprive individuals of what they expected to be their just income or even of previous income that has been viewed as just and will alert people to the fact that their current claims may well be subject to similar abnegation. Indeed, the problem for the steadfast pattern theorist can be restated in terms of legitimate expectations. A just income regime must allow people, through their actions under that regime, to establish various legitimate expectations, for example, to retain the post-tax income that they have earned under the rules of that regime, and must protect rather than defeat the fulfillment of these legitimate expectations. But the protection of these expectations will amount to the sanctioning of distribution \( LD_2 \) even when our best updated social calculations indicate that \( LD_2 \) is convertible into a distribution \( LD_3 \) that will significantly more fully realize the favored pattern. Continued allegiance to the pattern requires disloyalty to the expectations deemed legitimate under the previous applications of the pattern. The prospect of ongoing allegiance to the favored pattern undermines the very formation of legitimate expectations.

In the name of justice the steadfast pattern theorist can offer people an ongoing effort to establish that sequence of regimes that over time seems most likely to yield a fuller realization of the favored pattern than any other (still) available distribution. Yet this effort precludes offering to people currently identifiable distribution regulating institutions that they can in justice count on as a basis for their ongoing projects and endeavors. The steadfast pattern theorist cannot offer to people the establishment of a set of just holdings or a just income-regulating structure that will form the basis for their getting on with life through their deployment of their just holdings or their navigation within a system of known just rules. People will not get to live under just circumstances, but rather will continually have to undergo adjustments to what has been said to be their just holdings or just income regime in the name of ever new understandings of how best to realize the cherished pattern. For the steadfast pattern theorist, justice is relentlessly forward looking. However, individuals can be forward looking under just arrangements only if justice itself is not relentlessly forward looking.

So let me sum up my rejoinder to the pattern theorist's response to my reconstruction of the 'How Liberty Upsets Patterns' argument. The pattern theorist who turns from time-slice distributions to income regimes must affirm or deny the justice of \( R_1 \). If he affirms the justice of \( R_1 \), it looks like he will have to affirm the justice of \( LD_2 \). And since \( LD_2 \) will significantly less realize his favored pattern than would \( LD_3 \) (into which \( LD_2 \) can be converted), he will have to acknowledge that distributive justice is not entirely a matter of comportment with some sanctified pattern. If, instead, the pattern theorist denies the justice of \( R_1 \), he will have to say that rather than individuals having claims in justice to any particular income regime and, hence, to what they acquire in accordance with the rules of that regime, they have claims in justice to a periodic readjustment of regimes that, it is hoped, will eventually and cumulatively yield just lifetime distributions. But this ceaseless pursuit of the elusive fullest realization of some favored pattern eliminates (or at least delays until that longed for final judgment) the fulfillment of people's legitimate expectations. And it eliminates (or at least delays until the era issued in by that final judgment) the establishment of just circumstances. Against the steadfast pattern theorist we can invoke a dictum usually associated with retributive justice rather than distributive justice: justice delayed is justice denied.

4. Defending the principle of just transfer

Nozick's argument against the viability of pattern theories of distributive justice especially supports the historical entitlement view of just transfers. It insists that certain processes through which people transform what objects (or income streams) are in whose particular possession are justice preserving. If \( D_1 \) (or \( R_1 \)) is just and \( D_2 \) (or \( LD_2 \)) arises from \( D_1 \) (or under \( R_1 \)) by these processes, \( D_2 \) (or \( LD_2 \)) will also be just. The Nozickian argument assumes its opponent's view about what makes the original \( D_1 \) (or \( R_1 \)) just and, hence, does not itself take a stance on what makes original distributions (or income regimes) just. In this section, I will examine Cohen's main line of attack against Nozick's positive view about
just transfer. In the next section, I will turn to Cohen’s main line of attack against Nozick’s view about justice in initial acquisition. Here, then, we are concerned with Nozick’s claim (N: 151) that: ‘Whatever arises from a just situation by just steps is itself just.’ I want to maintain that Cohen’s critique of Nozick on just transfer turns on one minor and one major misreading of this Nozickian proposition. The minor misreading amounts to understanding too broadly Nozick’s cryptic remark that ‘whatever’ arises from a just ‘situation’ by just steps will itself be just. For Nozick is making a claim, not about all resulting situations (whatever), but only about all resulting distributions of holdings. A more careful statement of his claim that would discourage this minor misreading would be: Whatever set of holdings arises from a just set of holdings by just steps is itself just.

The major misreading is Cohen’s insistence that, according to Nozick, ‘just steps are simply any steps that are not unjust. ‘Nozick holds that steps are just if they are free of injustice’ (C: 21). ‘[J]ust steps’, for Nozick, are human actions that are free of injustice, in the sense that no one behaves with force or fraud in the course of them.’ (C: 39.) However, Nozick’s actual and more plausible position is that the principle of justice in transfer specifies the particular procedures by which an already existing set of just holdings can be transformed into a different set of just holdings. The ‘complicated truth’ about just transfers of holdings addresses:

By what processes may a person transfer holdings to another? How may a person acquire a holding from another who holds it? Under this topic come general descriptions of voluntary exchange, and gift and (on the other hand) fraud, as well as reference to particular conventional details fixed upon in a given society. (N: 150.)

I think it is pretty clear here that Nozick does not think that the answer to the question ‘By what processes may a person transfer holdings to another?’ is ‘By any not unjust process.’ And it is similarly clear that he does not think that the answer to the question ‘How may a person acquire a holding from another who holds it?’ is ‘By any not unjust action.’ The truth about the subject of justice in transfer is complicated by what is ‘specified by the principle of justice in transfer’ is ‘the means of transition from one situation to another’ (N: 151). Thus, a more careful yet statement of Nozick’s claim that would discourage both the minor and major misreadings would be: Whatever set of holdings arises from a just set of holdings by the specific transforming steps endorsed by the principle of justice in transfer is itself just.

As a consideration of Cohen’s specific criticisms and purported counter-examples will make clear, both misreadings cast Nozick’s claim as broader than it actually is. Hence, both make the claim seem more exposed to counter-examples than it actually is.

The minor misreading is at work when Cohen worries about the inequality of market power that will result from Chamberlain’s voluntary exchanges with the one million fans. Focusing merely on the immediate outcome for the fans and Chamberlain, according to Cohen:

fails to cover everything in the outcome which is relevant. For, once Chamberlain has received the payments, he is in a very special position of power in what was previously an egalitarian society. The fans’ access to resources might now become prejudiced by the disproportionate access Chamberlain’s wealth gives him, and the consequent power over others that he now has. (C: 25.)

Thus, for Cohen, part of the resulting situation is the (allegedly) negative externality of Chamberlain’s unequal market power. But why should this (allegedly) negative externality be thought to render the resulting situation unjust? Here Cohen relies upon Nozick’s casual remark that we would ‘find it disturbing’ if people’s reasons for transferring holdings within a historical entitlement system were ‘always irrational or arbitrary’ (N: 159, emphasis added). Were people characteristically to transfer their holdings in this way we would be disturbed to the point of losing confidence in the historical entitlement theory of justice. Cohen then argues that similarly:

we should also be disturbed if we can indeed see what the agent thinks he is gaining, but we know that what he will gain is not that but something he thinks is less valuable: or that what results is not only the gain he expects but also unforeseen consequences which render negative the net value, according to his preferences and standards, of the transaction (C: 23).

I take it that the main point here is not so much that certain negative externalities will be unforeseen, but simply that they will occur.24 We should be so disturbed about apparently pristine market transfers having significant negative externalities that we question the justice of the resulting situations — where the resulting situations consist of the conjunction of a resulting distribution and its negative externality. By seeing that just steps from just D₁ get one to the conjunction of D₂ and those negative side-effects, one sees how the transition to D₂ injects injustice into the world.

I shall not pause to examine Cohen’s problematic supposition that a resulting distribution’s possession of some negative externality is a good basis for describing the situation that is composed of that (otherwise just) distribution and that externality as unjust. For the gravemen of Cohen’s contention that just starting points plus just steps readily yield unjust situations is the thesis that a significant number of participants in a market economy will suffer negative externalities. Indeed, they will suffer negative externalities that, on net, outweigh the direct gains from participation and the positive externalities from these transactions. And the sole point I wish to make is that Cohen does not begin to bear the burden of justifying this contention.

As is characteristic of those who are anxious about the outcome of voluntary exchanges, Cohen’s concern is not really that Chamberlain might expend his US$250,000 in vulgar consumption. The concern is that Chamberlain will not

...
consume, but, instead, will seek to convert his capital into yet more capital. As Nozick would put it, Chamberlain might actually want "to do something with [his just holdings]." As Cohen perceives it, the danger is that Chamberlain may proceed 'to buy a set of houses and leave them unoccupied, with speculative intent' (C: 27). I have to admit that it is not clear to me why it is a bad thing to preserve the stock of housing when it looks as though the demand for housing will be greater in the future than it is now. But let us assume that this would be a bad thing, a bad side-effect of Chamberlain's disproportionate wealth. Nevertheless, one has to ask what reason there is to believe that the aggregate of side-effects of Chamberlain's wealth (and the other disproportionate shares of wealth accumulated through voluntary exchange) would be negative — indeed, negative enough to render the conjunction of D1 and those side-effects a net negative. Perhaps Chamberlain's speculation will take the form of funding a chain of fast (health) food restaurants or computer shops or Left Book Clubs that provide employment and training to many (along with a handsome return to Chamberlain). Perhaps his speculation will take the form of buying up lots of wilderness and leaving it unoccupied — on the speculation that this maximizes value. Perhaps others' accumulation of disproportionate wealth and their desire to so accumulate will lead them to rush to construct new housing when Chamberlain foolishly misjudges the housing market.

Cohen manifests a remarkably static, frozen-in-time view of the world when he says:

>a person's effective share depends on what he can do with what he has, and that depends not only on how much he has but on what others have and on how what others have is distributed. If it is distributed equally among them he will often be better placed than if some have especially large shares. (C: 27.)

For this totally ignores the fact that much of what that person now has or has enjoyed he has or has enjoyed because prior to this moment individuals have had the prospect of acquiring unequal shares through the development and enterprise of their talents and individuals with equal or unequal shares have had the prospect of unequal gains through investment. (Would the NBA fans have been better off if there had been a standing prohibition on anyone acquiring an especially large share by playing basketball or by organizing sports leagues or by manufacturing little boxes for depositing quarters?) And Cohen's static analysis totally ignores the fact that much of what this person may have (or enjoy) after this moment depends on people continuing to have the prospect of acquiring unequal shares through the development and enterprise of their talents and the prospect of unequal gains through investment. On Cohen's static view, the only effect on our frozen person of others having more is that he will have less than he otherwise would. So, of course, on this view, it is always undesirable that others have more.

Cohen's most salient attack on Nozick's maxim that whatever arises from a just situation by just steps is itself just turns on Cohen's major misreading of this claim. Recall that, according to this reading, any not unjust step counts as a just step. Given this reading it is easy for Cohen to find examples of D2's that arise by just (that is, not unjust) steps from just D1's but that Nozick himself would not take to be just. The first just D1, described by Cohen includes Cohen's rightful possession of a particular rolling pin. This rolling pin happens to roll downhill from Cohen's home through Nozick's open kitchen door. Nozick innocently thinks it is his long-lost rolling pin and proceeds to keep and use it. Nozick himself would agree that the step by which D1 is transformed into D2 involves no unjust conduct and that the resulting D2 is not just. Cohen's second example of a just D1 that is transformed into a not just D2 by way of a not unjust transaction involves the exchange for a very modest price of what the two transactors take to be a pretty piece of glass but which, in fact, is a diamond. Cohen reasonably presumes that Nozick himself would take the outcome of this not unjust process of mutual mistake to be not just.

The only problem for Cohen vis-a-vis these examples is that the sensible Nozickian will say of each D2 under consideration that it is not just precisely because the procedure by which it emerges from its D1 is not among the procedures specified by the complicated truth that is the principle of justice in transfer. In the case of the rolling pin, there is no interaction between Cohen and Nozick; nothing occurs that seems capable of transferring an entitlement to the rolling pin from Cohen to Nozick or extinguishing Cohen's entitlement while simultaneously creating Nozick's entitlement. Indeed, in the language of the common law, Cohen would have a cause of action against Nozick for conversion were Nozick to fail to return the rolling pin. In the case of the pretty piece of glass, my understanding is that the common law rule is that a transference based upon mutual mistake does not count as a procedure that genuinely transmits entitlement. I am not sure what the philosophical basis is for the exclusion of this not unjust procedure from the list of procedures that are specified as entitlement-conveying. Perhaps, to a considerable extent, the non-inclusion of this not unjust procedure is a matter of conventional detail — so that a large part of the reason that this procedure does not convey entitlement among us is that it is not part of the practice within which transactions among us are nested. All that the Nozickian needs to point to in order to respond to the example is that our judgment about whether the D2 at hand is just will follow our judgment about whether the process by which it emerges from its D1 is among the specified entitlement-conveying procedures.

Cohen himself proceeds to two examples that he takes to be more 'substantial'. Since I am not sure how to understand it, here is Cohen's statement of the first more substantial counter-example:

an insurance company (innocently) goes bust and thereby (in the absence of state assistance to them) ruins the lives of people who could not have known that its position
would come to be exposed, people who now have to sell their assets voluntarily (in the relevant libertarian sense), for a spin, to alert non-fraudulent buyers (C: 46).

My best guess here is that we are being asked to envision a situation in which some people discover that they are in much more difficult financial straits than they reasonably expected to be. Perhaps this is because they now have to expend additional resources on the purchase of new insurance policies. Or perhaps it is because they do not now receive payments from those policies that they would have received had the insurance company not gone bust. (It is hard to say from Cohen's description, but I assume that their problem is supposed to be specific to its being an insurance company that has gone bust.) These individuals now have to sell some of their (remaining) assets to raise cash. Their need for this cash is urgent and so 'alert non-fraudulent buyers' are able to induce them to sell those assets for less than they would have sold them had the failure of the insurance company not put them in unexpected straits. So, I think we are supposed to see this as a case in which the pre-failure D1 is just, the whole transition from D1 to the post-divestiture D2 proceeds in accord with just steps (as Nozick understands just steps), and yet the resulting situation D2 is unjust. This is how the example has to be understood if it is to be a counter-example, parallel to the rolling pin and piece of glass counter-examples, to Nozick's maxim.

The problem with this case, however, is that, although Cohen tells us that the insurance company has innocently gone bust and we are supposed to infer from this that no Nozickian injustice has been visited upon the company's policyholders, we do not really accept this inference. From the fact that the company has innocently gone bust, it simply does not follow that no injustice is done to its clients when the coverage that they purchased ceases to exist or the payments from their purchased policies simply are not made. And, in fact, it sounds like an injustice has been done to them — as much as when someone, no matter how innocently, fails to pay me my contracted wages or fails to repay the loan I extended to him. As long as our sense is that these people in dire straits have gotten into those straits by way of such injustice, we will view the eventual outcome D2 as being imbued with injustice. But this will not constitute a counter-example to Nozick's maxim because it will not be an instance of an unjust outcome arising from a just starting point via just steps. Suppose, on the other hand, that we do manage to view all the steps as just (or at least not unjust). We can do this by imagining that our protagonists are in dire financial straits because they were stockholders in the insurance company. When it innocently goes bust, these greedy speculators lose their entire investments, even to the point of needing to raise cash to cover their margin calls. When the example is viewed this way, we have a just starting point and not unjust steps; but we also have a not unjust outcome. So we still do not have a counter-example to Nozick's maxim. Cohen anticipates that the Nozickian may 'stonewall' (C: 46) in this way. Yet this stonewalling seems quite reasonable. Features of this D2 are certainly unfortunate. Things have gone badly and some people have been undeservingly hurt, even if they were speculators; some (at least) of those very same people have not gotten in exchange for their assets as much as they previously reasonably expected to receive. But the sensible Nozickian points out that many things can go badly in a wide variety of different ways and many meritorious people can fail to end up with what they morally deserve or reasonably expect without the world's being unjust in the sense that some people possess what they are not entitled to and others do not possess what they are entitled to. The only thing that is remarkable about the insurance company case, if I have understood it correctly, is that there is nothing here to discomfort the friend of Nozick's maxim.

Let us turn, finally, to Cohen's last and most challenging counter-example against Nozick's just transfer maxim. This is 'the case of the person who advertently becomes the monopoly holder of drinking water. No injustice generates that situation, but Nozick thinks that it calls for rectification.' (C: 46.) Cohen here is alluding to Nozick's own endorsement of a Lockean proviso according to which a set of steps in accord with the principles of just initial acquisition or just transfer, or both, that yields Harry's possession of an object will not give rise to Harry's 'full ownership' of that object if Harry's exercise of full ownership rights over that object would worsen Sally's position (relative to what it would be were that object still unowned). For Nozick, all cases of Harry's private possession that so worsen Sally's position are cases in which that possession enables Harry to monopolize access to some object. Thus, a given agent's possession of the only waterhole in a (large) desert or the only island in a (large) body of water are the standard examples of private possession that triggers the proviso. Nozick seems to say that such monopoly possession may arise via just steps; and he most definitely says that the resulting possessor would not be fully entitled to his possession. Hence, we do seem to have a counter-example to Nozick's maxim that 'Nozick himself provides' (C: 46).

We should note at least a terminological point that Nozick could make in response to this example and then proceed to a stronger response that Nozick himself could not make. Nozick is careful to say that the adoption of his Lockean proviso adds some complexity to the specification of just steps. In effect, the addition of the proviso makes the principles of just initial acquisition and just transfer somewhat more restrictive. So if Harry's exercise of full ownership rights over some object, for example, that waterhole, does worsen Sally's position, then one step or another of Harry's acquisition of that object must have contravened one or another of these now more restrictive principles of just acquisition. Hence, Nozick might say, this unjust outcome could not really have arisen through just steps and, so, it cannot serve as a counter-example to the maxim that whatever arises from a just situation by just steps is itself just. Of course, the problem with this move is that it comes uncomfortably close to defining just steps as steps that yield acceptable outcomes. That is something
that a defender of a pure procedural conception of justice does not want to come close to.

The stronger response to the waterhole example involves a different understanding of the Lockean proviso than Nozick himself has. As we just noted, Nozick takes the proviso to amount to a tightening modification of the principles of justice in initial acquisition and transfer. This is why he has to say that, if Harry's possession of the desert waterhole is not in accord with the proviso, Harry will not have 'full ownership of it' (N: 175). A little reflection indicates that there is something odd about Nozick's position here. If Harry's acquisition of the waterhole does contravene the appropriately modified principles of initial acquisition or transfer, then the conclusion should be that Harry is not entitled to the waterhole. Period. Nozick, however, does not draw this conclusion — because he does not really believe it. What he really believes is that Sally would have a just complaint against one particular deployment by Harry of his waterhole. She would have a just complaint against Harry's worsening her situation (compared to what it would be were the waterhole unowned) by denying her all access to that waterhole. In virtue of this, she would also have a just complaint against Harry's threatening to so worsen her situation as a way of his eliciting payment from her. What Nozick really believes (or, in any case, should believe) is that the problem is with what Harry does to Sally — namely, should believe) that the problem is with what Harry does to Sally — namely, that Harry's threat to deny her access to that waterhole is a threat to her, that Sally is open to a just complaint against Harry's threat to deny her access to that waterhole. The problem is not Harry's lack of full ownership over the waterhole (which then has to be projected back to some subtle defect within Harry's acquisition of the waterhole).

So my proposal is to assimilate Sally's just complaint in the waterhole case to Sally's other just complaints about agents subjecting her to impermissible forms of treatment. The Lockean proviso should be understood as expanding the list of moral side-constraints that restrict how Harry may treat Sally through the deployment of his person or his property, rather than be understood as contracting Harry's property rights. Contrary to Nozick's own understanding, the constraint against Harry's denying Sally all access to that waterhole ought to be viewed as akin to the constraint against Harry's inserting his knife into Sally's chest. The existence of this constraint against Harry's inserting his knife into Sally's chest does not at all show that Harry has anything less than full ownership of his knife. The fact that Harry's inserting his knife into Sally's chest 'calls for rectification' (C: 46) in no way suggests that the knife is not fully Harry's. The existence of this constraint ought not to be taken as evidence that there is a restrictive clause regarding just acquisition to the effect that acquisitions resulting in possessions that are used for stabbing others are not justice preserving. Asserting such a constraint on what one does with one's knife is not at all a matter of 'introducing an additional bit of complexity into the structure of entitlement theory' (N: 174).

In parallel fashion, the existence of a constraint against Harry's worsening Sally's position by way of denial of all access to the waterhole does not at all show that Harry has anything less than full ownership in the waterhole. If one has a proper understanding of the proviso (an understanding of it as an articulation of the constraint against worsening by way of denial of all access), one can recognize that Sally has a just complaint against Harry's denying her all access to the waterhole without at all concluding that Harry is not fully entitled to the waterhole.29 Thus, if one has a proper understanding of the proviso, one will not see the constraint that Harry is under in the waterhole case as a counter-example to the maxim that whatever arises from a just situation by just steps is itself just. For the constraint will not be evidence of Harry's lack of full ownership over his justly acquired waterhole.

Of course, this proposal about how one should understand Sally's complaint in the waterhole case and a fortiori how one should understand the libertarian's proviso requires defense. A justification must be provided for the self-ownership libertarian's addition of worsening by way of denial of all access to his list of morally prohibited behaviors. A provisional justification for this addition and, hence, for the proposed understanding of the libertarian's proviso is offered in the third section of Part II of this essay. For now, let me note that, in rejecting Nozick's own understanding of the proviso, I am rejecting his independently puzzling contention that the proviso is based upon 'Considerations internal to the theory of property itself, to its theory of acquisition and appropriation' (N: 180–181). I am proposing that the constraint articulated in the proviso is no more based upon considerations internal to the theory of property itself than is the constraint against Harry's inserting his knife in Sally's chest. The thesis that I will be defending when I return to the revised understanding of the proviso is that both constraints are based on considerations internal to the theory of self-ownership. The proviso articulated in this revised account is the Self-Ownership Proviso. (It is the SOP!)30

5. Defending the Principle of Just Initial Acquisition

Now let us turn to Cohen's major critique of the other crucial element in the historical entitlement doctrine: the principle of just initial acquisition. Here, too, clarifications about the nature and function of a well-formulated proviso within a historical entitlement doctrine will play an important role in our discussion. In shifting his focus to the principle of just initial acquisition, Cohen takes himself to be moving to, or closer to, the bedrock of libertarianism's anti-egalitarianism.

On any characterization of private property, the question of what constitutes a rightful original acquisition of it enjoys a certain priority over the question of what constitutes a rightful subsequent transfer of it; since, unless private property can be formed, it cannot a fortiori be transferred. (C: 72.)

Unfortunately for Cohen, his critique of the Nozickian principle of just initial acquisition is based upon a major misreading of it. The misreading is to take Nozick's proviso (which, as we have seen, is supposed to introduce 'an addi-
tional bit of complexity into the entitlement theory’ [N: 174]) as ‘the most important part of the theory on offer’ (C: 73). Indeed, Cohen states that Nozick’s elaboration of the proviso ‘is Nozick’s doctrine of appropriation’ or, somewhat more cautiously, the proviso is ‘the controversial element in his doctrine’ (C: 76, Cohen’s emphasis). Cohen’s textual basis for this reading is that Nozick devotes almost all of the two sections about the proviso to discussion of the proviso, rather than to either the principle of just initial acquisition or the principle of just transfer. Cohen’s conceptual basis for this reading seems to be the belief that outcomes and not processes must be the crux of the matter:

resistance to an appropriation is more likely to fix on its impact on others than on the means whereby it was brought about. And if, in particular, its impact on others is (at worst) harmless, as the satisfaction of Locke’s proviso would seem to ensure, then it will be difficult to criticize it, regardless of how it was effected (C: 75).

As Cohen sees it, the powerful reply to anyone’s complaint about any appropriation and any claimed entitlement is that ‘no one has been adversely affected by it’ (C: 75). Yet surely it would be odd for Nozick’s doctrine, which is supposed to be fundamentally historical and procedural, instead to be fundamentally outcome oriented in this way.

What Cohen misses here is the specific place of the proviso’s satisfaction within Nozick’s overall historical account of the justification of a particular set of holdings. The primary phase of any such justification consists in showing that the holdings under consideration have arisen through actions and transactions that accord with the principles of justice in initial acquisition and transfer. This showing presumptively establishes the justice of those holdings. But, according to the proviso, this presumption can be overturned if the exercise of full ownership rights over those holdings would, in the relevant way, worsen the situation of some individuals. If the presumptive justice of the holdings is challenged by the claim that they (or the exercise of full rights over them) would worsen the situation of some individuals in the relevant way, this challenge can only be rebutted by showing that the situation of others is not worsened. The fact that a set of holdings satisfies the proviso is not itself the primary vindication of those holdings; rather, this fact rebuts a particular challenge against presumptively justified holdings. The lion’s share of the work, so to speak, is done by the specific holdings arising through entitlement-conferring means, not by those holdings satisfying the proviso.

If Harry’s possession of O has arisen through actions and transactions that are sanctioned by the principles of just acquisition, then he is entitled to O, unless there is a really serious problem connected with his possession of O (or his exercise of full ownership rights to O). Sally’s not gaining as much from Harry’s possession of O as Harry gains will not be such a really serious problem. Sally’s not gaining at all from Harry’s possession of O will not be such a really serious problem. According to the proviso, however, Sally’s being made worse off (in the relevant way) because of Harry’s possession of O (or exercise of full ownership rights over O) will be such a really serious problem. Notice, though, that even if Sally is worse off (in the relevant way), Nozick merely says that Harry will not have full ownership over O. Harry will merely be precluded from charging ‘certain prices’ for access to O (N: 179). So far is satisfaction of the proviso from being the crux of Nozick’s doctrine of the justice of holdings that even when Harry’s disposing of O in a certain way will violate the proviso, Harry is merely required not to dispose of O in that way (or he is required to compensate Sally for his disposing of O in that way).

Another way of seeing the peripheral role of the proviso within Nozick’s account of just holdings is to note that, within Nozick’s structure, a set of holdings can readily satisfy the proviso while being thoroughly unjust. This may, for example, be the case under better run social democratic regimes. The actual distribution of holdings under such a regime is governed by a complex of institutions and regulations, including diverse forms of taxation and subsidy, and (still!) no one’s situation is worse than it would have been had all resources remained unowned (or had all resources recently returned to unowned status). Satisfaction of the proviso is the low hurdle over which any set of holdings must pass in order to be just. Arising through actions and interactions that accord with the principles of justice in initial acquisition and transfer is the much higher hurdle. (Talk of the height of the second hurdle points to the stringency of the procedural requirements, rather than a stringency of outcome requirements.)

What, then, is the criticism of the principle of just initial acquisition that Cohen makes on the basis of his mistakenly taking the proviso to be the crux of Nozick’s doctrine of just initial acquisition? Cohen’s criticism is that the satisfaction of the proviso does not by itself suffice to vindicate entitlements. For instance, the fact that Harry’s possession and control of O does not leave Sally worse off than if O had remained unowned does not by itself suffice to vindicate Harry’s right over O. For, according to Cohen, Sally could reasonably say: ‘Well perhaps I am no worse off than if O remained unowned and open to general use (for as long as O would have lasted). Perhaps, Harry’s appropriating O has saved O from suffering the tragedy of the commons and has brought intelligent management to O—a management in which I have found a place as an employee of Harry. But why should I accept the baseline defined by where I would have been if O had remained unowned and open to general, promiscuous use? Why should not the baseline for determining whether my situation is worsened be defined by where I would be if I had been the appropriator of O?’ At this point, Sally cites Cohen, ‘had [Harry] not appropriated, then a different factual situation might have come to obtain; not that in which common use persisted but one in which [Sally], perhaps concerned lest [Harry] do so, would have appropriated in the actual situation’ (C: 80). And Sally continues, ‘If I were the appropriator of O, I might still find it advisable to hire Harry for his managerial skills and even work under Harry’s supervision. But I would end up with considerably more of the
surplus generated by Harry’s managerial skills if, because of my prior appropriation of O, Harry would have had to get permission from me to exercise those managerial skills on O. Given the baseline defined by where I would be had I been the appropriator of O, I am worse off under Harry’s appropriation of O.’

Notice that crucial to Sally’s complaint (and Cohen’s argument) is her supposition that Harry’s actually being the first appropriator of O (through actions the entitlement theorist sees as entitlement-conferring steps) has as such no moral weight. Sally’s claim to what she would have attained had she been the first appropriator of O is completely on an equal footing with Harry’s claim to what he has attained through actually being the first appropriator of O. There is a moral equivalence between what has arisen and what might have arisen. Harry’s natural response to Sally’s complaint is that his actually greater income is just because of his actual appropriation (and management) of O. Harry says that had Sally actually performed these actions, she would justly possess a greater income than she in fact has. But she does not because she did not. However, the supposition that generates Sally’s complaint dismisses Harry’s response out of hand. The only thing that matters is what has resulted and what else might have resulted, not how actual results have been brought about. Now this proposition about what matters could, in some final analysis, be correct. What is extraordinary, however, is that a critique of a historical entitlement doctrine should take as a premise the proposition that the history of a set of holdings does not count. How could Cohen have viewed this as an acceptable premise within an argument against Nozick’s doctrine of justice in holdings? Only by mistakenly taking the one component within that doctrine that is (arguably) result oriented, namely, the proviso, to be that doctrine. That, as we have seen, is to fail to see the place of the proviso within the overall historical entitlement doctrine.

Let us, however, return to Sally. Sally does not make the mistake of thinking that what might have arisen would, if it had (counter to fact) arisen, be preferable to what has in fact arisen. As she continues to explain, ‘Of course, were I the appropriator of O and were I then to say to Harry that he has no legitimate complaint about my appropriation because he ends up no worse off than he would be were O to have remained unowned and open to the use of all, Harry could reasonably object. Harry could ask why he should accept the baseline defined by where he would be were O to remain in the commons. Harry could insist that his being no worse off under the arrangements that arise after my (Sally’s) appropriation than he would have been had O remained unowned is not good enough. Just as I (Sally) can reasonably complain if I am worse off than I would have been had I been the appropriator, Harry can reasonably complain if my (Sally’s) complaint is precluded by giving me (Sally) ownership of O.’

The upshot according to Cohen, then, is not that we should search for a proviso that is suitably more stringent than Nozick’s proviso. For, if we make the proviso stringent enough to insure that, when it is satisfied, Sally has no just complaint, we will have a proviso the satisfaction of which will generate a just complaint on the part of Harry. Instead, the entire enterprise of searching for a suitable proviso should be abandoned:

there will always be some who would have been better off under an alternative dispensation that it would be arbitrary to exclude from consideration. . . it almost certainly follows that not only capitalism but every economic system will fail to satisfy a defensibly strong Lockean proviso, and that one must therefore abandon the Lockean proviso way of assessing the legitimacy of economic systems (C: 87).

To sum up and conclude, Cohen’s core critique of Nozick on just initial acquisition turns on the same sort of misreading of this principle as was at work in his critique of Nozick on just transfer. In the transfer case, Cohen takes there to be no positive content to the principle of justice in transfer; he interprets Nozick as holding that any not unjust transfer is supposed to be justice preserving. Similarly, in the initial acquisition case, Cohen takes there to be no positive content to the principle of justice in initial acquisition; he interprets Nozick as holding that any (not unjust) sequence of events that results in Harry’s initial possession of object O has the same power to confer upon Harry an entitlement to O as any other (not unjust) sequence of events. Since it is implausible to think that any not unjust sequence of events that results in an initial possession has the power to confer entitlement to that possession, Cohen maintains that (even for Nozick) some other feature of Harry’s holding of O must undergird Harry’s entitlement to O. Since the only other thing that Nozick mentions is the satisfaction of the proviso, Cohen concludes that a requirement that this proviso be satisfied must be the real core of Nozick’s stance on just initial acquisition. In other words, at the core of Nozick’s stance is the admission that the case for Harry’s entitlement to O rides entirely on how his possession of O affects Sally. And, if the entitlement depends entirely on how it affects Sally, it is certainly reasonable for Sally to say that its having the effect of not worsening her situation is not good enough. Unfortunately for Cohen, however, all of this rests upon not appreciating the relatively peripheral role of the proviso within the historical entitlement doctrine.

6. Conclusion of Part I

Cohen’s most persistent concern in his encounter with self-ownership libertarianism is to reject the anti-egalitarian conclusion that substantial inequalities in holdings are readily justifiable. There are two distinct libertarian routes to this anti-egalitarian conclusion. One route proceeds both negatively through a critique of end-state and pattern accounts of distributive justice and positively through advocacy of the historical entitlement doctrine of justice in holdings. In the present part of ‘Self-Ownership, Marxism, and Egalitarianism’, I have supported the negative phase of the first route by reconstructing Nozick’s ‘How Liberty Upsets Patterns’ argument and by defending this reconstructed argument.
against natural challenges. I have also supported the positive phase of the first route to the anti-egalitarian conclusion by defending the two main principles of the historical entitlement doctrine (the principles of just initial acquisition and just transfer) against Cohen’s objections. The second libertarian route to the anti-egalitarian conclusion combines the self-ownership thesis with a contention that Cohen himself much more explicitly advocates than does Nozick. This is the contention that one can infer the anti-egalitarian conclusion from the self-ownership thesis without appeal to any additional controversial premises, such as the key principles that constitute the first route. Part II of this essay, ‘Challenges to the Self-Ownership Thesis’, will examine and defend this second route to the anti-egalitarian conclusion.

notes

I thank Scott Arnold, David Schmidtz, and Mary Sirridge for their very insightful and helpful comments on an earlier version of this essay.

1. Of course, the ‘anti-egalitarian conclusion’ is not that inequalitarian distributions are better or more just than egalitarian distributions. The anti-egalitarian conclusion is that neither degree of equality nor degree of inequality as such enhances the value or the justice of a distribution.


5. Most obviously, I do not provide a foundational argument for the self-ownership thesis, although I do, in Part II, discuss some of the theoretical and intuitive costs of rejecting this thesis.

6. Cohen recognizes that, even if he is successful in his attack on the purely historical understanding of just holdings, he may not escape the anti-egalitarian conclusion. For, one need not subscribe to the purely historical view in order to arrive at this conclusion. (See the discussion of the propensity of a left-wing libertarian regime to yield substantially inequalitarian outcomes in the second section of Part II.) Since the anti-egalitarian conclusion does not require the adoption of the purely historical view, this essay’s defense of that conclusion is not ipso facto a defense of the purely historical view.

7. In speaking of the propensity of capitalist economic orders to yield unequal outcomes, I am not subscribing to the empirical view that such economic systems yield more inequality than other actual systems.

8. Neither Cohen nor I claim that this justice critique is the acknowledged doctrine of Marx. Indeed, both Cohen and Marx would be eager to point out that, in its individualism and rights orientation, this critique recapitulates bourgeois consciousness. Cohen sees his own recognition of the temptation of self-ownership and his overcoming of it as a necessary transcendence of bourgeois consciousness. (Compare C: 125.)

9. As Cohen puts it, ‘libertarianism disturbs some Marxists, since . . . an appeal to self-ownership is latent in the standard Marxist condemnation of exploitation’ (C: 12).

10. Part II also examines whether the remaining element of this Marxist justice critique, that is, Cohen’s condemnation of certain capitalist interactions as exploitative, contains enough of a trace of the self-ownership thesis to be at odds with Cohen’s egalitarianism.

11. Thus, when Nozick offers a statement of his doctrine in slogan form, it is ‘From each as he chooses, to each as he is chosen.’ (N: 160.)

12. Here is another way in which, on any given pattern-based view, injustice can emerge from justice without any morally problematic activity (on the part of those who will be said to have begun to have unjust holdings). Suppose that D1 simply persists from time to time2. But in the interim, someone has discovered an effective technique for realizing to a greater yet extent the aspired pattern. For example, if the pattern is significantly egalitarian, the discovery of an effective moral incentive for the most productive (perhaps public initiation into the Productivity Hall of Fame) will make possible a greater downward distribution of holdings from the more productive to the less productive and, hence, a better yet realization of that egalitarian structure. When this better-yet distribution of holdings becomes possible through the miracles of better techniques of social engineering, the previously just D1 must be condemned as unjust. (Or we must say that what previously seemed to be just has now been revealed not to have been just.)

13. The argument here admittedly relies on the intuition that, if D1 is just and D2 arises from D1 via certain actions and D2 is unjust, then some defect in those actions must play a role in explaining the injustice of D2. This intuition would be undercut if we had at hand a convincing argument for some robust pattern principle. For then an advocate of that pattern could say that D2 is just when it obtains because, at that time, it is the fullest available realization of the proven pattern and that D2 is unjust when it obtains because, at that time, it deviates significantly from the fullest available realization of the proven pattern and that the quality of the actions that transform D1 into D2 have nothing to do with the injustice of D2. So lurking behind my sharing of the present intuition is my belief that we do not have at hand a convincing argument for any robust pattern principle.

14. Hillel Steiner, ‘The Natural Right to the Means of Production’, Philosophical Quarterly 27 (January 1977): p. 43. As Steiner also points out, the argument of ‘How Liberty Upsets Patterns’ only undermines purely patterned conceptions of justice. The argument does not show any incoherence in a doctrine that combines a pattern for initial holdings with acceptance of what arises by just steps from those initially just holdings. (But, one might argue that once one is partially liberated from pattern worship, even the proposal that initial holdings be patterned will lose its luster.)

15. But, when Nozick makes this remark, he is focused on the special case of pattern theories not allowing one, without penalty, to use one’s distributorial share for ‘the enhancement of another’s position’.

16. That such anticipations are pipedreams is the basis for the response that follows. As
Scott Arnold reminds me, that ‘those setting tax and subsidy policy are exclusively motivated by the desire to do what is just’ is another pipedream.

17. Here and over the next several paragraphs, I assume that all lifetimes are temporally coextensive. The fact that there is not one generation in which all lives are temporally coextensive complicates things considerably for the theologian who, out of loyalty to some favored pattern, holds that income regimes should be revised as more information comes in relevant to what income regime will yield the best long-term distribution of income.

18. Other individuals will, in unanticipated ways, unilaterally diminish their holdings under \( R_k \).

19. Had these pattern-disrupting, capitalist actions been anticipated, our farsighted pattern theorist would have factored them into the original choice of what income regime should be instituted. Had they been anticipated, income regime \( R_k \) (which is \( R_k \), plus the procedures for converting \( L_k \) into \( L_{k+1} \)) would have been adopted. Of course, were it known to the relevant individuals that they were living under \( R_k \) rather than \( R_k \), they might very well not engage in the income enhancing actions that, if they occur, make \( L_k \) possible. This points to the interesting question of whether a pattern theorist should favor an income regime with secret clauses if the secrecy of those clauses makes possible a fuller realization of his favored pattern for the distribution of lifetime income.

20. As is appropriate, this case is an adaptation to income regimes of Nozick’s example of the individual in a socialist economy who does some extra work in his spare time with materials assigned to him under the socialist regime (N: 161–162).

21. It will have been highly convenient not to have previously anticipated the need for this tax to save social security. For, had this need been previously anticipated (that is, had better-off people recognized that their contributions would not be earning them entitlements to the projected payments) there would have been much less public support for the establishment of the system.

22. David Hume, as Scott Arnold reminds me, is the most famous advocate of the idea that justice requires known and stable ascriptions of property rights. See, especially, David Hume, A Treatise on Human Nature (Oxford: Oxford University Press, 1968), Book III, Part II, Sections I–VI. An alternative expression of the argument of this section is that: (a) justice requires either the ‘old property’ that consists in rights to particular holdings or at least the ‘new property’ that consists in rights to the operation of known and stable administrative rules; but (b) allegiance to a favored pattern in a world of systematically unanticipated developments precludes the institution of either the old or the new property.

23. Cohen acknowledges that this projection may seem ‘hysterical’, but ‘we have to consider the upshot of general performance of transactions of that kind, and then the projection is entirely realistic’ (C: 25).

24. Will not even NBA fans foresee that, after they each pay Chamberlain 25 cents per game, they will be at a competitive disadvantage vis-à-vis Chamberlain when they bid against him for stretch limousines? (We should also ask whether it is a bad thing that Will, who has provided so much excitement for these fans, should subsequently have this competitive advantage? Is it a bad thing that these attending fans lose some of their competitive advantage vis-à-vis less wealthy fans who could not afford the 25 cent premium when all those fans bid against one another for wrestlemania tickets?)

25. I ignore here interesting questions concerning how great Chamberlain’s consumer surplus is, that is, how much less that US$250,000 would have been sufficient to elicit his training and performance. For a critique of the taxing of the producer surpluses of self-owners, see Cohen (C: 217–223) and Eric Mack, ‘Gauthier on Rights and Economic Rent’, Social Philosophy and Policy 9(1) (winter 1992).

26. Notice that when things go awry the only thing that can prevent people’s lives being ruined is state assistance.

27. If Cohen were claiming that the resulting situation \( D_k \) is unjust in virtue of the unjust exploitative character of the exchange with the alert, non-fraudulent buyers, then he would not be presenting the case as one in which just steps from a just initial situation gives rise to an unjust resulting situation.

28. However, not every case in which Harry’s possession enables him to monopolize access to an object (to an object) triggers the proviso. If the object would not exist except for Harry’s creation of it, then Harry’s exercise of full ownership rights over it does not worsen Sally’s position. He does not exclude her from access to something to which there would have been common access except for his appropriation of it.

29. If Sally would have a just complaint against Harry in virtue of simply being denied all access to the waterhole, then it would be odd to insist that Harry has full ownership of the waterhole. Here, however, Sally’s just complaint is more specific. It is against her situation being worsened (relative to what it would have been in the absence of private entitlements) by her being denied all access.


31. Cohen accurately reproduces Nozick’s words when Cohen says, ‘So I agree with Nozick that “the crucial point is whether an appropriation of an unowned object worsens the situation of others”’. (C: 75; N: 175.) But Nozick is talking about this being the crucial point within the formulation of the proviso, not within the entire historical entitlement doctrine. For Nozick, that the situation of others not be worsened is a necessary condition of any appropriation being just. But it is not a sufficient condition.

32. See the third section of Part II of this essay.

33. In order to assess the adequacy of Cohen’s challenge to Nozick, over the last several paragraphs I have reverted to Nozick’s understanding of the proviso. According to that understanding, the satisfaction of the proviso vis-a-vis Harry’s holding \( O \) is a necessary condition of Harry’s being fully entitled to \( O \). My own proposal is that the satisfaction of the proviso vis-a-vis Harry’s holding \( O \) is a matter of Harry’s not deploying his justly held \( O \) in one particular impermissible way.

34. The closest Cohen comes to countering the idea that actual processes of initial acquisition may generate entitlements to the holdings that result from them is a passage in which Cohen portrays the person who engages in initial acquisition not as a transformer of raw material engaged in some insightful or effortful endeavor, but rather as a ruthless appropriator. In contrast, the non-appropriator is someone who has too much regard for others to be a ruthless appropriator.
although A's appropriation in the actual situation satisfies Nozick's proviso, it does not seem that A has . . . a right to force B to accept it [as A would have if he were entitled to this holding]. For why should B be required to accept what amounts to a doctrine of 'first come, first served'? Perhaps B abstained from appropriating out of regard for A. Ought A to profit only because he is more ruthless than B? (C: 80.)

Self-ownership, Marxism, and egalitarianism

part II: challenges to the self-ownership thesis

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abstract

Part I of this essay supports the anti-egalitarian conclusion that individuals may readily become entitled to substantially unequal extra-personal holdings by criticizing end-state and pattern theories of distributive justice and defending the historical entitlement doctrine of justice in holdings. Part II of this essay focuses on a second route to the anti-egalitarian conclusion. This route combines the self-ownership thesis with a contention that is especially advanced by G.A. Cohen. This is the contention that the anti-egalitarian conclusion can be inferred from the self-ownership thesis without the aid of additional controversial premises. Cohen advances this contention, not because he wants to support the anti-egalitarian conclusion, but rather because he wants to emphasize the need for one to reject the self-ownership thesis if one is to reject the anti-egalitarian conclusion. In Part II of this essay, I support this second route to the anti-egalitarian conclusion by reinforcing Cohen's special contention while rejecting his challenges to the self-ownership thesis. Cohen's special contention is reinforced by way of an explanation of why the redistributive state must trench upon some people's self-ownership rights. One important challenge to the self-ownership thesis is answered through the articulation of a new and improved Lockeian proviso. Another challenge offered by Cohen is answered by arguing that the philosophical costs of denying the self-ownership thesis are as great as the self-ownership libertarian maintains. Thus, I defend both of the key elements of self-ownership libertarianism, the self-ownership thesis and the anti-egalitarian conclusion.

keywords

autonomy, distributive justice, egalitarianism, exploitation, Lockeian proviso, self-ownership, slavery
1. Introduction to part II

"Self-Ownership, Marxism, and Egalitarianism" as a whole examines and defends two routes to the anti-egalitarian conclusion that, under perfectly ordinary and acceptable circumstances, significant inequalities among the holdings of individuals are apt to arise and, if they arise by ordinary and morally acceptable means, these inequalities will be perfectly licit. Part I of this essay, "Challenges to Historical Entitlement", supports the first route to this anti-egalitarian conclusion. This is the route that proceeds through the rejection of end-state and pattern theories of distributive justice and through the advocacy of a historical entitlement doctrine of justice in holdings. Part II of this essay, "Challenges to the Self-Ownership Thesis", focuses on a second route to the anti-egalitarian conclusion. This route combines the self-ownership thesis (the moral claim that "each person enjoys over herself and her powers, full and exclusive rights of control and use") with a contention that is especially advanced by G.A. Cohen. This is the contention that the anti-egalitarian conclusion can be inferred from the self-ownership thesis without the aid of additional controversial premises. Cohen advances this contention, not because he wants to support the anti-egalitarian conclusion, but rather because he wants to emphasize the need for one to reject the self-ownership thesis if one is to reject the anti-egalitarian conclusion.

In "Challenges to the Self-Ownership Thesis", I support the second route to the anti-egalitarian conclusion by reinforcing Cohen's special contention while rejecting his challenges to the self-ownership thesis. Thus, I defend both of the key elements of self-ownership libertarianism, the self-ownership thesis and the anti-egalitarian conclusion.

For a theorist such as Cohen, who at least initially is attracted to the self-ownership doctrine, but who also is strongly committed to egalitarian outcomes, attacking the first route to the anti-egalitarian conclusion will seem to be an appealing and non-drastic strategy. It will seem appealing and non-drastic because it is a way of challenging the anti-egalitarian conclusion without having to confront the self-ownership thesis. However, two problems emerge for such a non-drastic strategy. The first problem, as I have argued in Part I of this essay, is that the libertarian critique of end-state and pattern theories is stronger than it may at first seem and Cohen's specific criticisms of the historical entitlement doctrine miss their mark. The second problem, as Cohen himself comes to recognize, is that even if one justifies significant departures from the historical entitlement doctrine, the anti-egalitarian conclusion still threatens. In particular, this conclusion still threatens even if one substitutes an egalitarian principle that mandates an equal initial distribution of raw resources for the historical principle of just initial acquisition. For, as we shall see in the next section, even a regime that attempts to contain self-ownership by instituting equal ownership among individuals of natural resources will yield outcomes that (to Cohen) are unacceptably inegalitarian. And, as we shall see in the section entitled "Self-ownership and the anti-egalitarian conclusion", there are good general reasons for thinking that state intervention to block the emergence of inequalities or to undo them through extensive redistribution will contravene self-ownership. Therefore, the egalitarian must move on to the more drastic strategy of rejecting the self-ownership thesis. My defense of the second route to the anti-egalitarian conclusion consists in supporting Cohen's judgment that he must proceed to challenge this thesis combined with denying the adequacy of his challenge.

Let me close this introduction with a brief indication of how the argument of Part II unfolds across its several sections. In the next section, "Self-ownership and equal world-ownership", I describe Cohen's investigation of "left-wing libertarian" regimes that institute self-ownership, yet so far depart from pure historical entitlement that they also institute equal ownership of the natural world. Cohen is interested in whether any regime that hedges in self-ownership with equal world-ownership will guarantee sufficiently egalitarian outcomes while not being fatally objectionable in other ways. Cohen plausibly concludes that the only regime that combines self-ownership and equal world-ownership and is not fatally objectionable in other ways will generate inequalities among people's holdings that are unacceptable to him. The anti-egalitarian thrust of self-ownership will not be contained by the institution of equal world-ownership. According to Cohen, the only recourse for the committed egalitarian is to deny the self-ownership thesis.

In the third section, "Able, worker Z, and the self-ownership proviso", I describe a challenge to friends of the self-ownership thesis that emerges from Cohen's discussion of regimes that attempt to combine self-ownership and equal world-ownership. Cohen points out that the libertarian will want to say that one cannot have a regime that institutes both self-ownership and joint-ownership of the natural world. The reason is that joint-ownership of the natural world means that no individual may engage in any action involving any access to any part of the natural world without everyone else's permission and this constraint contravenes self-ownership. At the same time, according to Cohen, the libertarian will want to say that private ownership of the natural world that requires that worker Z get permission from the property owners before he (Z) engages in any action that involves access to any part of the natural world does not contravene Z's self-ownership. Cohen's challenge to friends of the self-ownership thesis is to show how, on one consistent understanding of self-ownership, collective world-ownership contravenes self-ownership while private world-ownership (by other people) does not. In this third section, I explain how this ingenious challenge to self-ownership libertarianism can be met by appeal to the self-ownership proviso that I introduced in the fourth section, "Defending the principle of just transfer", of Part I of this essay. The third section of Part II, also provides a statement of the rationale for this revised and restructured Lockean proviso.

The fourth section of "Challenges to the Self-Ownership Thesis" (entitled "Self-ownership and the anti-egalitarian conclusion") assesses the case for
Cohen's unintentionally positive contribution to libertarian theory, that is, the contention that the anti-egalitarian conclusion can be inferred from the self-ownership thesis without the aid of additional controversial premises. I maintain that Cohen's argument for this claim is a bit too quick; but I offer two better versions of the argument for Cohen's contribution. The fifth section (entitled Exploitation and Inequality) focuses on the tension between, on the one hand, the appeal of self-ownership, entitlement to one's labor and the fruits of one's labor, and freedom from exploitation and, on the other hand, the appeal of egalitarian outcomes. I argue that, although Cohen generally recognizes this tension, he fails to acknowledge that a consistently robust egalitarianism has to jettison freedom from exploitation along with persons' rights over their persons, labor, and the fruits of their labor. The libertarian challenge that forces the erstwhile Marxist to become more consistently egalitarian (C: 160) requires, I maintain, that Cohen purge himself of all remnants of the justice critique of capitalism and capitalism's egalitarian tendencies; and Cohen's condemnation of exploitation is among these remnants.2

Lastly, the sixth section (entitled 'Self-ownership unscathed') examines Cohen's attempt to reduce the appeal of the self-ownership thesis. Cohen seeks to show that the rejection of this thesis does not incur the philosophical costs that friends of the thesis claim are associated with its rejection. I argue that this attempt to reduce the appeal of the self-ownership thesis fails. Thus, given the self-ownership thesis and Cohen's contribution, the anti-egalitarian conclusion follows: The self-ownership thesis remains unscathed and, with Cohen's vital assistance, another route to the anti-egalitarian conclusion has been blazed.

2. Self-ownership and equal world-ownership

Let us suppose, contrary to the arguments offered in 'Challenges to Historical Entitlement', that Cohen's critique of historical entitlement principles is credible — or, more specifically, that the critique of the more fundamental principle of just initial acquisition is successful. Let us also suppose, for the sake of argument, that Nozick is wrong in his belief that people have no original claim-rights to the natural world. He is wrong to believe that the natural world is originally unowned. This is a major supposition because, despite Cohen's description of Nozick's belief as a 'blithe assumption' (C: 94), surely the default position about 'raw worldly resources' (C: 92) is simply that they are unowned. In the absence of credible positive argument for some form of original proprietorship over nature, the assumption that raw worldly resources are originally unowned is not blithe to all.3 And, let us add a third major supposition that builds upon the second. The supposed original proprietorship over raw worldly resources is an equal proprietorship. The claim-rights to raw extra-personal material to which each of us is born are, in some way, substantively equal. The question is, if all of these suppositions are accepted, is the route to the anti-egalitarian conclusion blocked or are these suppositions still insufficient to thwart the anti-egalitarian conclusion as long as the thesis of self-ownership is not itself rejected? Will a regime formed by surrounding and hedging in self-ownership with equal world-ownership guarantee outcomes that satisfy Cohen's egalitarian intuitions? If not, the conclusion will have to be that only a regime that trenches upon self-ownership will guarantee sufficiently egalitarian outcomes. Hence, the justification of a regime that guarantees sufficiently egalitarian outcomes will require the justified rejection of the self-ownership thesis. Cohen has provided the convenient label 'left-wing libertarianism' for the program of combining self-ownership and equal world-ownership. The suppositions that we have just made clear the way for an investigation of left-wing libertarianism — in particular, an investigation of whether there is a form of left-wing libertarianism that guarantees substantial equality of outcomes without being seriously objectionable in some other way.4

Cohen's position is that whether the addition of original equal world-ownership to a regime of self-ownership guarantees egalitarian outcomes depends upon which of two conceptions of equal world-ownership one adopts. One conception of equal world-ownership is the equal division (ED) conception. According to ED, each individual (at least each individual who presently exists or will exist in the future) has or will have an entitlement to an equal share of the world's raw resources. Let us put aside all the natural questions about how one measures the total quantity of raw resources that are now or will in the future be available, including questions about what it means for something to be a resource and what it means for it to be available. Let us also put aside all the natural questions about how one determines the total number of present and future individuals among whom these total resources are to be equally divided.5 We can at least envision a scheme of equal division of raw worldly resources if we imagine that: (a) human history consists of just one generation all the members of which begin their (adult) lives at the same time; (b) all the raw 'resources' that will ever be 'available' to any member of that generation are available at that time; (c) at that time, each of these (equally knowledgeable?) adults is provided with an equal amount of currency to spend in an auction for those available resources; and (d) in that auction, everything or almost everything of economic value (as judged by the auction?) is purchased by somebody and all or almost all of the currency is expended. The result of this fantastic auction could plausibly be described as a world in which individuals begin their economic careers with equally extensive endowments of extra-personal resources.

The problem from the perspective of egalitarianism is that, under ordinary circumstances, a regime of self-ownership and ED will give rise to intolerable inequalities. This is evident when one takes note of how much of the inequality that strong egalitarians object to arises out of inequalities in personal endowments and circumstances. As Cohen says:

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Notice that, under many circumstances, equal division will generate capitalism. If people's talents and/or luck are sufficiently unequal, relatively high flyers may so transform their original shares that they can profitably hire others to work on them at wages superior to what those others could glean from working their own resources. Low flyers will then have reason to sell their shares to more fortunate brethren and become their wage labourers. [...] Self-ownership together with equal division will not yield the equality of condition prized by socialists. (C: 103–4)

We should note in passing that, contrary to Cohen's casting of this process in terms of 'capitalists' and 'workers', the emergence of inequality in outcomes need not much involve those who have 'talent and/or luck' becoming capitalists and acquiring income through their employment of workers. Indeed, most inequality of income in market orders is due to differences among people in what they receive in remuneration for the exercise of their own talents and skills. However, the defects of Cohen's specific scenario do not undermine his central point. The ED version of equal world-ownership is not strong enough medicine to cure self-ownership of its anti-egalitarian tendencies — even within the highly fantastic one-generation world that we have been envisioning.

So we must turn to a second conception of substantively equal original world-ownership to see whether combining it with self-ownership will yield a regime that guarantees sufficient equality. On this joint-ownership conception (JO), all raw worldly resources are 'under the joint ownership of everyone in society, with each having a veto over what is to be done with them' (C: 93). Cohen invites us to consider the situation of two individuals, Able and Infirm, each of whom is a self-owner and one of the two joint-owners of all the raw worldly resources associated with their mini-society. Able has considerable productive capacity; if he has access to the jointly-owned raw resources, he will certainly be able to produce enough to sustain both himself and Infirm. And, it may be that he will be able to produce enough for each of these individuals to enjoy substantially more than a bare sustenance existence. Infirm has no productive capacity; but, as we shall see, he has certain lawyerly skills. Able will be at liberty to bring his talents and efforts to bear on these raw materials only if he gets Infirm's permission to do so. Cohen plausibly maintains that, in exchange for his permission to allow Able to bring his productive powers to bear, Infirm will be able to elicit from Able an agreement to provide Infirm with an equal or a near equal share of what Able will produce upon- beings given permission to produce.

Does this show that there is a way to add equal world-ownership to self-ownership so as to define a regime the outcomes of which will necessarily be acceptable to the egalitarian? Does this show that self-ownership itself does not put one on a one-way street to inequality of outcomes? Cohen thinks not. And he thinks not for a reason that he rightly believes the libertarian will want to urge. That reason is that, within the JO regime, equal world-ownership does not really complement self-ownership; rather it impinges upon self-ownership. As Cohen formulates this objection:

It looks as though the suggested form of external resource equality, namely, joint world ownership, renders nugatory the self-ownership with which he had hoped to combine it. Self-ownership is not eliminated, but it is rendered useless, rather as it is useless to own a corkscrew when you are forbidden access to bottles of wine. (C: 98)

Moreover, Cohen agrees with the libertarian that the JO regime should be rejected. So Cohen's conclusion is that there is no acceptable way to combine self-ownership and equal world-ownership. This would seem to leave Cohen with his original conflict between the appeal of equality and the appeal of self-ownership. For, while the ED regime is rejected because it too much contravenes equality, it would seem that the JO regime is rejected because it too much trenches upon self-ownership. This, however, is not Cohen's own analysis of the defect within the JO regime. Rather, according to Cohen, the problem with the JO regime is that it trenches upon something other than self-ownership; it trenches upon autonomous governance. Self-ownership is the villain within the ED regime; but autonomous governance, not self-ownership, is the victim in the JO regime. Since Cohen does not embrace self-ownership within his account of the unacceptability of the JO regime, Cohen can allow himself to conclude from his analysis of the ED regime that 'socialists must reject self-ownership' (C: 94).

(But why not think that autonomous governance is the villain within the ED regime? Why, for the egalitarian, does not the propensity of the ED regime to yield unequal outcomes discredit autonomous governance?)

3. Able, worker Z, and the self-ownership proviso

Consideration of the ED regime indicates to Cohen that self-ownership must be rejected because its anti-egalitarian tendencies cannot be thwarted by a benign doctrine of equal world-ownership. Consideration of the JO regime serves a very different purpose for Cohen. That purpose is to elicit the libertarian's insistence that any JO regime contravenes self-ownership. This is the departure point for a powerful argument that Cohen launches against Nozick. This argument proceeds by juxtaposing the libertarian's claim about the JO regime with a striking claim that Nozick seems to make about a standardly libertarian regime. As Cohen represents Nozick's discussion, Nozick envisions a worker Z who 'must either sell his labour power to a capitalist or die' (C: 100) and maintains that such a worker's decision to work for that capitalist is voluntary. Since the choice of Z, 'the most abject proletarian' (C: 100), is voluntary, it follows for Nozick that no right of self-ownership of Z is trenched upon by Z's being confronted with this choice. Although the case that Cohen describes may not be precisely the case that Nozick actually envisions, let us accept Cohen's reading of the case to see what he makes of it.

What Cohen makes of it is to claim that the situation of worker Z vis-a-vis the capitalist for whom Z must work or starve is relevantly identical to the situation
of Able vis-a-vis Infirn in the JO regime. Thus, Cohen argues, if the libertarian says that the joint world-ownership of the JO regime contravenes self-ownership, he must also say that the private world-ownership of the capitalist regime contravenes Z's self-ownership. If, on the other hand, the libertarian insists that worker Z's self-ownership is not compromised, he must also hold that Able's self-ownership is not compromised under the JO regime. If the libertarian makes the latter set of claims, he will be employing a merely 'formal' notion of self-ownership — a conception that is much less robust than libertarians like to think they have available. But, if the libertarian attempts to move to a more substantial conception of self-ownership (one that will sustain the claim that JO contravenes self-ownership), he will not be able to avoid the conclusion that worker Z's self-ownership is compromised by the capitalist's private ownership. Note that we have now crossed the threshold to arguments that are directed against the self-ownership thesis itself. We have crossed over to the more drastic strategy for avoiding the anti-egalitarian conclusion.

Cohen is correct in maintaining that, if one holds that Able's self-ownership is trenched upon in the JO regime, one must also say that worker Z's self-ownership is trenched upon when the capitalist precludes Z from bringing his powers to bear on extra-personal material so as to sustain his existence. And, I believe that one should, indeed, say that both Able and Z undergo impositions upon their rights of self-ownership. The trick for the libertarian, then, is to show that the particular case of worker Z and the capitalist is different from all, or at least most, cases of private world-ownership. This showing would block the general conclusion that Cohen wants, namely, that private world-ownership is comparable to joint world-ownership in its propensity to trench upon self-ownership. Put differently, the trick is to add enough additional substance to self-ownership so that one can explain why Able's self-ownership and Z's self-ownership are impinged upon, but typically the self-ownership of those who live under a libertarian regime will not be impinged upon. The means for accomplishing this trick is nothing but the Self-Ownership Proviso (SOP) that was introduced back in the fourth section of Part I. I shall argue that in the particular case of Z and the capitalist (as it is represented by Cohen), the constraint articulated by the SOP is violated, as it is in the case of Able and Infirn. But this does not put the JO and libertarian regimes on the same footing. For violation of this constraint is built into the nature of JO regimes; one cannot have a JO regime that does not systematically violate the SOP and impinge upon self-ownership. In contrast, violations of this constraint are simply possible within and ameliorable within libertarian regimes.

When the SOP was introduced in the fourth section of Part I of this essay (entitled 'Defending the principle of just transfer'), the issue was whether the libertarian's acknowledgment that Sally would have a just complaint if Harry were to preclude all access to the only waterhole in the desert amounts to the libertarian's recognizing that an unjust holding can arise through entirely just steps. I argued that it is a mistake (a mistake of which Nozick is guilty) to construe the libertarian's proviso as a restrictive strand within the principles of just acquisition. It is a mistake to talk as though just complaints such as Sally's in this waterhole case disclose some defect in the process by which Harry comes to possess the waterhole. Rather, Sally's just complaint has to do with what Harry does to her.¹⁴ What he does to her is to worsen her situation through denying her the access to the waterhole that she would (we are supposing) have had if the waterhole had remained unowned. At that earlier point, I argued that Sally's just complaint should be viewed on the model of the complaint that she would have were Harry to insert his knife in her chest. The problem is what Harry does to Sally with what is his; the problem is not that Harry lacks full title to what he does it with.

In the fifth section of Part I ('Defending the principle of just initial acquisition'), I described how a libertarian should think of the relationship between a well-formulated proviso and the procedural principles of a well-formulated historical entitlement doctrine. I said that the primary vindication of a set of holdings consists in showing that those holdings have arisen in accordance with those procedural principles. Such a showing presumptively justifies those holdings and this presumption can only be overturned if those holdings or their disposition affects some agent in a really morally problematic way. I characterized that really morally problematic affect as worsening an agent's situation by way of diminishing her access to resources (below the level of access that would obtain if the relevant resources were unowned). A well-formulated proviso, that is, the SOP, forbids this worsening. I maintained that it was relatively easy for a socioeconomic system to satisfy the demands of such a proviso. All sorts of regimes, even well-administered social-democrac regimes, will not run afoul of this constraint. This is why satisfaction of the proviso is a necessary condition, but not a sufficient condition, for the justice of a set of holdings.

There is a slight tension here. My remarks in the fourth section of Part I place the constraint articulated by a well-formulated proviso entirely outside the theory of property, while my remarks in the fifth section of Part I place that constraint on the periphery of the theory of property. This tension is resolved by noting that if the constraint against worsening is violated not by any single private property holder's decision, but rather as the joint (and typically unintended) effect of many private property holders' decisions, it is natural to think of the defect as residing in the associated set of holdings and of the requirement that this effect not be imposed as a condition of the justice of that set of holdings. Natural as it is, however, it remains more accurate to view the proviso as a constraint on how persons may deploy what is fully their property. It remains more accurate to view the constraint as internal, not to the theory of property (as Nozick says it is), but rather to the theory of self-ownership.

What I have to do at this point is to articulate at least a bit further the constraint that is embodied in the SOP and to explain how this constraint fits into the self-
ownership-affirming libertarian view. In the course of doing so, I need to make
good on the promise offered back in the fourth section of ‘Challenges to
Historical Entitlement’, to explain how the SOP is internal to the theory of self-
ownership. Articulating this constraint as internal to the theory of self-ownership enriches the conception of self-ownership just enough so that Able’s and Z’s self-ownership turn out to be impinged upon, but not the self-ownership of the typical participant in a libertarian regime.15

Let me begin with the intuition that self-ownership morally precludes un-
provoked imprisonment — even very gently accomplished imprisonment.
Suppose Sally is asleep in the middle of an unowned meadow that, in turn, is in the
middle of a large unowned region. While she sleeps, Harry silently constructs
a cage around her using bits of high-tech plastic to which he is entitled in virtue
of his invention and creation. When Sally awakes and starts to rattle her cage,
Harry warns her to keep her hands off his property. But Sally rightly complains
that she is the aggrieved party, that Harry cannot consistently endorse the thesis
of self-ownership and the sort of control of Sally’s person in which he is engaged.
Now suppose that, while Sally slept, Harry had disposed of his highly malleable
plastic in a somewhat different way. Rather than surrounding Sally with it, Harry
surrounds everything that Sally might subsequently have made use of had Harry
not encased those objects in his plastic. Sally awakes and Harry, once again,
warns Sally to keep her hands off his plastic. Notice that what Harry has really
done here is to fashion a more complexly shaped prison for Sally. Pretty clearly,
Sally has the same (or almost the same) just complaint against the latter form of
imprisonment as she has against the former form of imprisonment.

These examples intuitively reveal that a person’s self-ownership can some-
times be trespassed upon by her interaction with the world being blocked. If, in the
unowned meadow, Harry and his friends simply surround Sally and warn her
to keep her hands off them, they similarly trespass upon her self-ownership by
blocking her interaction with, including her movement through, the world. If you
simply block my movement by standing still at the narrowest point in the
unowned slot canyon I am hiking through, you trench upon my self-ownership.
To be a self-owner is to be an owner of the world-interactive agent who one is.
To have rights over one’s world-interactive powers is to have some sort of claim
against being blocked from bringing those powers to bear on the extra-personal
world. The question is, what sort of claim?16

Suppose that Harry has invented and created some nifty plastic objects that
Sally would like to use as gardening tools. But Harry hides those objects from
Sally or quickly moves them out of her grasp whenever she reaches out for
them. Sally cannot in this case legitimately claim that Harry is undermining or
nullifying her world-interactive powers. The reason is that Harry has not on
net rendered the world less open to, less hospitable to, Sally’s exercise of her
powers. Sally’s claim against having her world-interactive powers undermined or
nullified is not violated by Harry’s declining to provide her with additional
objects to interact with.17 Here is another way in which Harry can be innocent
of rendering the world less open to, less receptive to, Sally’s exercise of her
powers: Harry uses some natural material to make his plastic that Sally might
otherwise have used in her endeavors; but there is still lots of that or similar
natural material around for Sally to use. And, here is a more interesting way in
which Harry can be innocent. Harry uses some natural material to make his
plastic that otherwise Sally would have used, but the plastic that he has produced
is also useful to Sally and he is prepared to rent (or sell) some of that plastic to
Sally. It will cost Sally something to rent (or buy) the plastic; but it would have
cost her something (in time and effort) to lay hands on the original material. And,
the plastic may be better for her purposes, better for her use, than the original
material would have been.

The crucial general point of this last example is that one person’s private
acquisition need not involve diminished access for use by another. Something’s
being somebody else’s property is entirely consistent with its being available for
one’s own use.18 (The more people who own nice coffee bars, the more places I
can go to plug in my laptop and work on this paper.) Indeed, one person’s private
acquisition may be essential to the resource being preserved for anyone’s future
use.19 It is not merely that something else that already exists may remain for
Sally’s use even that the very same material (in more accessible form) may
remain available for Sally’s use (or even ownership), rather, it is also that
many things may become available for Sally’s use the absence of which she could
never have legitimately complained about. The contention of friends of private
property and free markets is that the systematic establishment and expansion of
private property rights, of voluntary trading of private property, of associated
forms of contractual relationships, and of the incentives and distinctive creative
skills associated with market orders characteristically on net expand what is
available for use by individuals who participate in those orders. It was because,
in this sense, so much more was continually being made available for use in
Hong Kong in the 1980s and 1990s under a regime of private property and
markets (and almost no ‘raw worldly resources’) that people were a lot more
eager to get to Hong Kong than they were, say, to get to the charmingly
undeveloped corners of Xinjiang province. Of course, the contention about the
propensities of free-market regimes is a complex and controversial empirical
claim, the truth of which cannot be assessed here.20 Nor can I say much here
about the crucial question of what level of access, what degree of receptivity to
her bringing her powers to bear on the world, is the baseline for judging whether
others’ disposition of their holdings on net worsens Sally’s level of access.

Nevertheless, something can be said. In a world in which nothing has yet been
privatized, the baseline for Sally is how much would be available for her (non-
costless) productive use during her lifetime were privatization not to take place.
If the whole process of privatization leaves at least as much for Sally to use (at
comparable cost), then others’ private possession and their disposition of their
holdings will not share any of the moral defect present in Harry's using his plastic to encase all the materials that Sally might otherwise have utilized. This is to say that, if the whole process of privatization leaves Sally with 'enough and as good' to use as she would have enjoyed (at a comparable cost) had all extra-personal resources remained in common, Sally will have no complaint under the SOP.

Unfortunately, it is unclear what the baseline should be for a Sally who inhabits a world with a long history of private property (and other forms of property) and who herself is one of many existing persons who would not even exist except for that (or a similar) history. One might suggest that each six billion of us can justly demand access only to as much to use during our respective lifetimes as each of us would have access to in the form of raw worldly resources were all of us inhabitants of an earth in which privatization had never begun. This, however, argues against the 'implied' baseline implausibly low. After all, what is under scrutiny here are present holders' entitlements (to deploy at will) currently existing resources, not their entitlements over raw materials in a world that currently existing individuals have never inhabited. So perhaps present non-property owners can demand that the deployment of currently existing extra-personal resources by their present holders not render the extra-personal world that these individuals inhabit less receptive to their world-interactive powers than the world would be were all these currently existing (raw and non-raw) resources to become unowned. This suggests that each of us should have during our respective lifetimes as much access to worldly resources (not just raw worldly resources) as each of us would have were all currently existing extra-personal objects permanently returned to the common. However, this higher baseline is questionable. If Sally is a member of any reasonably productive society, it is very likely that the amount of resources that would be available to Sally for her use were all currently existing resources in that society to become unowned would be greater than (if one can make sense of this counterfactual) the amount of resources that would be available for Sally's use were she back in a much less populated world of unowned raw resources. The proposed higher baseline ascribes to Sally a claim to this enhanced access to resources (for her use) — an enhancement that is produced by the labor of others and goes beyond their replacement with made resources of raw materials that they have withdrawn from the common. This baseline, then, seems to institute for everyone a lien on the labor of the persons who have contributed to the net gain in per capita total resources — a lien that seems to contravene the self-ownership thesis.
is not worsened in this way'. This statement is sweetly reasonable for two reasons. First, it acknowledges (as Nozick does) that the proviso can be violated within an otherwise pristine system. (Anything is possible!) Second, it invites those who believe that various types of market failure are more common and more significant than the friends of markets think to show that the SOP is more frequently violated.

In effect, this discussion of the SOP envisons a threefold distinction between: (a) interferences by way of interventions against persons; (b) interferences by way of blockages against persons; and (c) failures to provide resources to persons. The gravamen of the analysis is that the first and a duly circumscribed set of the second interferences contravene self-ownership. The intuitively plausible addition of certain interferences by way of blockages (for example, unprovoked imprisonments) within our understanding of what counts as an infringement of self-ownership enriches the conception of self-ownership just enough to account for both Able having a just complaint against Infirm and worker Z having a just complaint against the capitalist. The proviso that codifies these and like complaints is internal to the theory of self-ownership and not, as Nozick believes, to the theory of (extra-personal) property. Crucial to the due circumscription of blockages is the proposition that the most that an individual can in general demand vis-a-vis original (raw) or current (not necessarily raw) resources is that she not be precluded from as much access to those resources as she would have were those resources unowned. Uncertainty about whether current individuals may properly demand as much access as would obtain for them were all current extra-personal resources returned to the common leads me to focus on the specified gauge for whether the SOP is violated vis-a-vis a given individual — rather than a definition of the SOP’s baseline: The gauge is whether markets are generally working for that individual and she is not subject to significant and countervailing monopolistic encounters.

It is possible for the SOP to be violated within an otherwise pristine libertarian regime. If such violations actually occur, the injured parties must be compensated. If such violations are in prospect, at least some of the parties whose behavior would add up to a violation of the proviso may be required to act differently.26 If violations of the SOP are anything like as non-systemic within a regime of private property and market relationships as the friends of markets believe, these violations can as readily be dealt with within such a regime as are other non-systemic intrusions upon self-ownership rights. But, while the crucial monopolistic element might obtain with respect to particular individuals within an (otherwise) libertarian regime, that monopolistic element is essential to the JO regime. For, in that regime, the collective is the owner of all extra-personal resources.27 Every individual living under a JO regime (or at least every individual with personal resources worth exploiting) is confronted with the threat of being denied access to all extra-personal resources. The world-owning collective’s stance toward each individual (or at least toward each able individual)

will be ‘accept our terms or be fatally excluded from access to all resources through which you might employ your powers in the service of your ends’. The JO regime will necessarily treat each person (or at least each able person) as the capitalist has been depicted as treating worker Z. What is objectionable about that possible state of affairs is built into the very nature of the JO regime. Therefore, the account that the SOP provides of the just complaint of worker Z against the capitalist (and of Able against Infirm) does not lead us on to the conclusion that a libertarian regime is in the same moral boat as a JO regime. The further implication is that Cohen’s first argument for the rejection of the self-ownership thesis fails. For, according to that argument, there is no conception of self-ownership that is substantial enough to generate a just complaint against the capitalist in the case of worker Z and the JO regime and yet is not so substantial as to generate a just complaint against the libertarian regime as such. The articulation of the SOP shows that this argument is mistaken.

4. Self-ownership and the anti-egalitarian conclusion

We have seen in the second section Cohen’s claim that the egalitarian must reject even left-wing (ED) libertarian regimes because of the inequality of outcomes that are almost certain to arise under them. According to Cohen, within a left-wing libertarian regime, these income inequalities cannot be nullified through state redistribution. This is because any such redistributive measures would contravene the self-ownership component of left-wing libertarianism. Here, then, is the crux of the conflict between self-ownership and equality. According to Cohen (C: 12), ‘The libertarian principle of self-ownership says that each person enjoys over herself and her powers, full and exclusive rights of control and use, and therefore owes no service or product to anyone else that she has not contracted to supply’.28 Indeed, according to Cohen, ‘The polemically crucial right of self-ownership is the right not to (be forced to) supply service or product to anyone’. And it would be implausible not to include this polemically crucial right within the rights of self-ownership. This is because:

Failing to help another person cannot be construed as interfering with his right to use himself as he wishes, and not being required to help others leaves everyone with more rights over their own powers than they would otherwise have. Accordingly, the right not to supply service or product forms part of any plausible reading of the self-ownership principle. (C: 215)

How does the proposition that, absent the voluntary acquisition of special obligations, each has a right not to (be forced to) supply service or product to anyone yield the conclusion that all state redistributive schemes are morally illicit? Cohen moves a bit quickly here in his eagerness to show that self-ownership must be rejected. Cohen moves quickly by describing redistributive schemes as requiring self-owners to supply their services or products. Self-owners are repre-
sented as being required directly to exercise their respective talents on behalf of the state or its chosen beneficiaries as conscripts are required to serve the state's military apparatus. Or, at least, self-owners are represented as being required to serve by delivering their products into the hands of the state or its chosen beneficiaries. Either requirement involves the imposition of forced labor and that violates self-ownership as much as anything does.29

However, it seems that somewhat more nuanced redistributive schemes could avoid the imposition of forced labor. Such a scheme would have paid, non-conscription agents of the state non-violently take some portion of the fruits of the labor of some individuals. The companies that these individuals work for would be paid (not required) to garnish a portion of their wages. The institutions that these individuals invest with would be paid (not required) to hand over a share of the investor's profits to the state. And so on. No one would ever be made to supply services or deliver their products. Of course, even the non-violent taking of portions of the fruits of an individual's labor would violate that individual's rights if individuals have rights over the fruits of their labor. But that, to individuals, even self-owning individuals, have rights over the fruits of their labor cannot be a premise of the present argument. For the promise of the present argument is that it will get us from self-ownership to the impossibility of the redistributive state without having to go through an independently established entitlement to the fruits of one's labor.

If we had on hand the premise that self-owners have rights to the fruits of their labors, we would not need the argument that the redistributive state is illicit because it contravenes self-ownership. We could simply say, as neither Nozick nor Cohen do say, that the redistributive state is illicit because it violates demonstrable property rights. When Nozick argues from self-ownership to the illegitimacy of the redistributive state and when Cohen follows Nozick in more explicit pursuit of such an argument, they are attempting an end-run around the more traditional classical liberal strategy of going from self-ownership (or a right of equal liberty) to property rights and then from property rights to the illegitimacy of imposed redistribution. That one might be able to make this end-run is an extremely interesting idea (which was probably not fully explicit in the minds of either Nozick or Cohen). But we have seen that Cohen's particular version of the end-run strategy is faulty because he relies on the supposition that the redistributive state must require individuals to perform services or, at least, to deliver their products to it.30

Is there some other and, perhaps, more persuasive version of the end-run strategy? One other version that can be ascribed to Nozick turns on the judgment that to institute any redistributive principle that deprives some people of the fruits of their labor without their genuine consent is to institute (partial) ownership by others of [those] people and their actions and labor (N: 172). The non-consensual institution of any such principle will institute (partial) ownership by some individuals of others and, thereby, contravene universal self-ownership because it will involve appropriating the actions of other persons (N: 172). 'Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities' (N: 172). According to this argument, redistributive principles are not problematic because they call for infringements upon independently defensible property rights; rather, they are problematic because they involve a shift from the classical liberal notion of self-ownership to a notion of (partial) property rights in other people' (N: 172). This is a version of the end-run argument as long as it relies upon the intuitive judgment that state redistributive schemes (whether non-nuanced or nuanced) institute (partial) ownership of people (by way of seizing people's actions, labor, or hours) and this judgment itself does not rest on the independent claim that people have property rights to the fruits of their actions, labor, or hours.31

Of course, one would like to have an explanation of why schemes that take the fruits of people's actions and labor are correctly described as schemes that take people's actions and labor. From this explanation, if we had it, and the premise that people have rights to their actions and labor, we might well be able to infer, via the more traditional liberal line of reasoning, that people have rights to the fruits of their actions and labor. Nevertheless, if in the absence of such an explanation, one (still) finds plausible the judgment that taking the products of persons' actions and labor is a matter of taking their actions and labor, one will be in position to make this end-run argument against the redistributive state.

There is a stronger version of the end-run strategy for moving from self-ownership to the rejection of state redistribution. This version really amounts to a rejoinder to my suggestion (against Cohen) that the redistributive state could proceed to acquire a portion of the fruits of people's labor without ever having to conscript people into providing services to it or delivering their products to it. Against Cohen's assumption that the redistributive state would have to force people to provide services or deliver products, I raised the possibility that, at least in highly developed economies, this forcing might not be necessary. The state, I suggested, might simply pay employers to withhold a portion of their employees' earnings or pay investment institutions to convey to it a share of its clients' profits or so on. However, a bit of reflection reveals that no redistributive scheme that eschews the use and threat of initiated force against everyone will work. For employers who refuse the state's invitation to participate in income-withholding arrangements will have strong competitive advantages in attracting employees over employers who agree to participate. Investment institutions that refuse the invitation to participate in profit-withholding arrangements will have strong competitive advantages in attracting clients over institutions who agree to participate. And so on.

The fact that, in the envisioned scheme, such institutions will be encouraged to participate in income-withholding schemes by the state offering to pay them to do so does not solve the problem — even if we ignore the further problem of how the state would get the seed money for these payments. For whatever the state
is willing to pay the employers or institutions to withhold wages, salaries, or profits. The employer or clients will be willing to pay as much or more for the employers or institutions not to withhold those wages, salaries, or profits. If the state offers to pay my employer US$100 to withhold US$500 of ‘my’ earnings and transfer it to the state, I will counter with an offer of US$110. But, of course, then the state offers US$120. To the extent that this bidding war is not checked by my switching to an employer who refuses to participate in such arrangements, either I will pay my employer (nearly) US$5000 not to transfer my US$5000 to the state or the state will pay my employer (nearly) US$5000 for that transfer. In either case, the state nets (nearly) nothing. (The employer will thrive as a tax farmer unless there is significant free competition among employers for employees. This employer and other participating employers will lobby against any employers being allowed not to participate. They will explain that allowing such non-participation will hurt the poor.) Whether I end up outbidding the state or end up not having to outbid the state because I can migrate to a non-participating employer, the state will be able to raise little if any revenue for its redistributive purposes. The state will be able to raise very little revenue unless it forgives nuances and forces all employers, investment institutions, and so on to withhold wages, salaries, or profits in accord with its dictates or forces all employees or investment clients to affiliate only with withholding organizations. If one agrees (as one should) that subjecting people to such force contravenes self-ownership, then one has to conclude that any functioning redistributive state will run afoul of self-ownership.

The redistributive state need not directly force individuals to provide services for or deliver their products to it or its designees. However, if it does not engage in this coercion, it must forbid people ‘on pain of coercive penalty’ (C: 117) from migrating from and facilitating others’ migration from affiliation with organizations that are participating in the redistributive scheme. The redistributive state cannot be nuanced all the way down. It must forbid people from arranging their affairs and from facilitating others’ arranging their affairs in ways that allow them to escape the state’s non-violent taking of the fruits of their labor. It must forbid the heroes of Atlas Shrugged from withdrawing to Galt’s Gulch where they only transact with others who have declined to serve as collection agencies for the state. But self-owners do have the right to migrate from one set of affiliations to another — as long as the affiliations migrated to do not infringe upon any libertarian rights.32 Self-owners do have the right to arrange their affairs and help other people arrange their affairs in ways that remove their exposure to the state’s non-violent taxing of the products of their time, talent, and labor. The heroes of Atlas Shrugged are merely exercising their self-ownership rights when they go on strike against the interventionist and redistributive state by withdrawing to Galt’s Gulch.

Note that the crucial premise here is the end-run strategy’s claim that self-owners have a right not to be forced to abstain from such arrangements, rather than the classical strategy’s claim that self-owners have rights to the products of their time, talent, and labor. Since self-owners have these rights of migration and freedom of affiliation, if one endorses the self-ownership thesis, one must reject state redistributive schemes — even ones that do not directly force individuals to provide their (non-collection) services for or deliver their products to the state or its designees.33 We can see that the present argument does not depend upon the premise that individuals possess rights to the fruits of their actions, labor, or hours by noting that the objectionable force used by the redistributive state is not the force that is employed in its seizing people’s holdings. Rather, the objectionable force may simply be the force that makes the individuals who belong to certain institutions act as the state’s collection agents. These individuals are forced to deliver other people’s income or holdings. What makes the overall scheme objectionable is not that those other people have entitlements to that income or those holdings, but, rather, that these individuals have rights not to be forced to withhold and hand over to the state other people’s income or holdings.34 Relying solely upon the self-ownership thesis and not (in addition) upon any independent theory of private property rights or historical entitlement, we can conclude that state-sponsored nullification of the normal egalitarian outcomes of people’s exercise of their rights of self-ownership is unjust. Justice requires that these normal egalitarian outcomes be allowed to stand — except in so far as all consent to their nullification. This, of course, is the anti-egalitarian conclusion that significantly egalitarian outcomes can readily be justified. More strikingly, we have seen that Cohen is correct in his special contention that the anti-egalitarian conclusion can be inferred from the self-ownership thesis without the aid of additional controversial premises — in particular, without appeal to any distinct doctrine of property rights or historical entitlement. Thus, Cohen’s special contribution to libertarian theory is secure.35

5. Exploitation and inequality

According to Cohen, the Marxist justice critique of capitalism and of capitalism’s tendency to yield significantly unequal outcomes is deeply infected with the self-ownership thesis. This Marxist critique says that capitalists steal labor time from working people (C: 146). Its ‘central justice objection to capitalism is the labour theft objection’ (C: 145). And, this labor theft objection entails the self-ownership thesis:

you can steal from someone only that which properly belongs to him. The Marxist critique of capitalist injustice therefore implies that the worker is the proper owner of his own labour time; he, no one else, has the right to decide what will be done with it. ... The Marxist contention that the capitalist exploits the worker depends on the proposition that people are the rightful owners of their own powers. That proposition is the thesis of self-ownership. ... The underlying idea is that a person should be sovereign with respect to what he will do with his energies. (C: 146–7)
Another way to see the self-ownership infection within this Marxist critique is to see that this critique is entirely producer oriented. The workers have demands in justice to what the capitalists possess precisely because the workers are the truly productive class, while the capitalists are fundamentally parasitic. Justice is on the side of the workers because they are productive, not because they are needy. The moral core of this critique is that people are not subjected to unjust or exploitative extractions. If only the productive workers had the resources to go on (general) strike, they could bring the parasitic capitalists to heel just as the productive heroes of Atlas Shrugged bring the parasitic social democrats to heel by means of their strike. This is a fundamentally different approach than one that focuses on people's needs and advocates a principle of assistance, for example, a principle that people's needs be equally tendered to. Social democratic advocates of an egalitarian principle of assistance do not hold that the needy must be assisted because of what has been done to them. Rather, the needy ought to be assisted simply because they are needy (and, perhaps, because it is not their fault that they are needy). That certain people's need for assistance is the result of their being aggressed against or exploited plays no essential role in the social democrat's belief in the justice of their being assisted. In this section, I highlight the conflict between, on the one hand, self-ownership-infected Marxism and its demands and, on the other hand, egalitarianism and its demands. I want to argue that, conscious as he is of this conflict, Cohen does not fully face up to it. For, although he calls for right-thinking people to purge themselves of the infection of self-ownership, he does not want to purge himself of a symptom of that infection, namely, concern about exploitation.

The vast philosophical gulf between belief in entitlement on the basis of productive action and belief in assistance on the basis of need may not be obvious as long as the people one takes to be victims of unjust extraction and the people one takes to be in substantial need are the very same people. But, under modern, reasonably successful capitalist arrangements, the people one will, as a Marxist, want to say are being exploited may be doing quite well indeed, while the people in substantial need will be the most marginalized members of society—people whose marginalization consists precisely in their not getting to be exploited. Because these latter people (especially as they are envisioned by the advocates of principles of assistance) have nothing of value to withhold, they cannot bring those who withhold assistance to heel by going on strike. That is why what these people need is class struggle resulting in the expropriation of their exploiters, but rather philosophical argument.) What occurs under modern, reasonably successful capitalist arrangements is 'the coming apart of the exploitation and need features'. This, in Cohen's words:

forces a choice between a principle of self-ownership, embedded in the doctrine of exploitation and a principle of equality of benefits and burdens that negates the self-ownership principle and that is required to defend support for very needy people, who are not producers and who are, a fortiori, not exploited. (C: 155)

Indeed, that principle of equality may very well require extraction from the exploited of some of the (remaining) fruits of their labor in order to provide adequate support for the needy. Notice that it is 'self-ownership, embedded in the doctrine of exploitation' that clashes with the egalitarian principle of assistance. It is the Marxist critique's 'unreflected doctrine of exploitation' that commits its advocate to a principle of self-ownership that 'contradicts the idea that there should be an equality of benefits and burdens among people' (C: 151). This clash between opposing exploitation and opposing inequality is nicely highlighted by an example provided by Cohen:

Think of a worker who very much enjoys both his work and the wages it brings him and who works for a wholly infirm neighbor who leads a miserable life but who, unlike the worker, has managed to possess himself of a stock of capital. This infirm capitalist lops off just enough of the worker's product so that he, the capitalist, can stay alive. We can suppose that, if something like the stated capitalist imbalance did not obtain, then the worker would produce for himself alone and callously let his infirm neighbor die.

(C: 149)

The anti-exploitation Marxist will have to consider this transaction to be a matter of unjust exploitation. The egalitarian social democrat will have to consider it to be a matter of just redistribution. It certainly looks as though anyone who both opposes exploitation and opposes inequality is going to have to make a hard theoretical choice. Given the apparently intrinsic ties between the self-ownership and anti-exploitation intuitions and the conflict between each of these egalitarian aspirations, it looks as though anyone who is seriously egalitarian should give up both self-ownership and opposition to exploitation. This is the choice that, I believe, Cohen does not fully face.

Rather, what he does in the case of the joyful worker and the infirm capitalist is to redefine exploitation as unfair extraction—where unfairness in extraction is a matter of increasing (or sustaining) inequality. 'Exploiting a person is taking unfair advantage of him. The infirm capitalist takes advantage of the joyful worker, but not an unfair one' (C: 151). This redefinition seems to allow Cohen to enjoy his egalitarianism without the cost of giving up opposition to exploitation. (And, thus, he may continue to think of himself as more Marxist than are standard, egalitarian social democrats.) But the problem is that the resulting anti-exploitation stance seems to consist merely of a resolve to label as 'exploitative' those and only those transactions that tend to yield or sustain unacceptable inequalities.

Two things should be noted here. First, someone who takes the egalitarian fork in the road may, of course, endorse the transaction between the joyful worker and the infirm capitalist as just or fair. My complaint here is not with the egalitarian's endorsement of the transaction, but, rather, with the insistence that it is not an instance of exploitation. If one is going to affirm that, for the sake of equality, some 'people have to have claims on the fruits of the powers of other people' (C:
dirty prehistory and a dirty history. Doubly left-wing libertarianism is nothing but squeaky clean capitalism. As such, it sanctions all the income inequalities that arise from inequalities among people's natural endowments, talents, and luck that are sanctioned by the singly left-wing libertarian — except for those inequalities that arise through exploitative transfers.

According to Cohen, it is manifest that singly left-wing libertarianism is unacceptably inegalitarian. But, if so, it seems likely that doubly left-wing libertarianism will also be unacceptably inegalitarian. For, there are sure to be lots of inequality-promoting, yet non-exploitative transfers — as long as 'non-exploitative transfers' is not unhelpfully redefined as transfers that preserve or promote equality. For instance, there will be all those transfers between Nozick's Chamberlain and his fans, which were referred to in the second section of Part I. In addition, the exclusion of exploitative transfers within doubly left-wing libertarianism is sure to preclude interactions that promote equality, for instance, the interaction between the joyful worker and the infirm capitalist. Or, if you think (with me) that this interaction is not really exploitative so that it would not be excluded by doubly left-wing libertarianism, we can modify the case a bit to get one that fits your (and my) intuitions about exploitation. For instance, we can add that the worker has a very strong desire to exercise his powers productively, that the infirm capitalist knows this, and through this knowledge is able to get the worker to agree to deliver to the capitalist a very high percentage of the fruits of his labor. Surely with these modifications we have an interaction that should count as exploitative if any transaction (which does not manifest physical force or fraud) should. Interactions such as this would be excluded by the doubly left-wing restriction against exploitative exchanges. But the consequences of such exchanges are too egalitarian for Cohen to want them (or more general institutional counterparts of them) to be excluded from his favored regime.

A doubly left-wing libertarian regime sets itself in every possible way against exploitation. Hence, it even sets itself against equality-promoting exploitation. For this reason, a doubly left-wing libertarian regime will be insufficiently exploitative for Cohen. It is insufficiently exploitative precisely because it is a squeaky clean version of capitalism — a version of capitalism that incorporates all the sorts of concern about exploitation to which a primal belief in self-ownership could imaginably give rise. But, of course, it remains merely a cleaner yet version of capitalism with its capitalistic propensity, arising from its acceptance of self-ownership, to generate unequal outcomes. Since all Marxists qua egalitarians should reject any regime with this capitalistic propensity, all Marxists qua egalitarians should reject the regime that qua enemies of exploitation all Marxists should endorse. It looks as though if one is going to take the egalitarian fork in the road, whether one calls this a Marxist journey or not, one must consign opposition to exploitation to the dustbin of history along with people's rights over the fruits of their labor and over themselves.
6. Self-ownership unscathed

The self-ownership thesis articulates a pretty fundamental norm. To refute such a fundamental norm, it is necessary (but perhaps not sufficient) to ground some equally fundamental norm and to show that, if the grounded norm is sound, the norm under attack cannot be sound. For the egalitarian to refute the advocate of self-ownership, the egalitarian would need to ground his egalitarian principle and show that, if it is sound, the self-ownership thesis cannot be. Cohen quite properly recognizes that he has provided no grounding for his own deep commitment to egalitarianism — at least no grounding that would be recognized as such by a moderately sophisticated believer in self-ownership’ (C: 229). He recognizes that to proceed against self-ownership by merely invoking some fundamental egalitarian norm and pointing to the clash between that norm and self-ownership would simply beg the question against self-ownership. For example, it would be question begging merely to invoke the conviction that ‘no one should fare worse than others do because of bad brute luck’ (C: 229). So, absent a potent grounding of egalitarianism, how is the egalitarian opponent of the self-ownership thesis to proceed? Cohen’s reasonable suggestion is that the attractiveness of self-ownership depends significantly upon its advocate’s account of the philosophical costs of rejecting self-ownership. If it can be shown that the rejection of self-ownership does not have the alleged costs, the thesis of self-ownership will be rendered significantly less attractive. According to Cohen, advocates of self-ownership characteristically claim that ‘if you reject the thesis of self-ownership, then you license slavery, you restrict autonomy, and you endorse the use of people as mere means’ (C: 229). So Cohen believes that, if he can show that the rejection of self-ownership does not have these philosophical costs, he can deprive the self-ownership thesis of much of its allure. In addition, Cohen proposes to address another alleged cost of rejecting self-ownership. This is the cost of ending up endorsing forced eyeball redistribution. I will briefly consider Cohen’s treatment of each of these four alleged costs after a word of clarification about the libertarian’s cost thesis.

Cohen suggests that the libertarian’s claim is that adherence to self-ownership is necessary to avoid each of the costs the libertarian wishes to avoid. But the libertarian’s overall claim is not so bold. Instead, the libertarian maintains that the self-ownership thesis provides a justifying explanation for the wrongfulness of slavery — though, without further argument, it cannot be said to be the only possible explanation for the wrongfulness of slavery. Similarly, the libertarian maintains that this thesis provides a justifying explanation for treating people as ends and not means and a justifying explanation for condemning (unchosen) eyeball redistribution — though, without further argument, it cannot be said that the thesis provides the only possible explanation for these judgments. In each case, the libertarian believes that his self-ownership explanation is particularly attractive and he believes that part of the explanatory virtue of the self-ownership thesis is that it provides explanations across all of these cases. It is this stance of the libertarian that I will defend rather than the much bolder stance that the self-ownership thesis is necessary to avoid each of the costs that the libertarian wishes to avoid.

The cost of licensing slavery

Libertarian theorists are indeed often eager to exploit the idea that taking another person’s life either by destroying that person or by enslaving her is the paradigmatic wrong that one agent can inflict upon another. If the taking of another’s life is paradigmatic of wrongful treatment, then the libertarian reasons, there must be some sound fundamental moral principle that is deeply in opposition to the taking of another’s life either by way of destruction or enslavement. The principle that stands in opposition to the taking of another’s life must not make the wrongfulness of the action contingent upon the particular circumstances that surround such conduct. The principle must focus on some core and, presumably, readily observable feature of taking a person’s life either by destruction or enslavement, rather than on some feature that will be present in some cases and absent in others and will often not be readily observable. Most obviously, the principle must not make the wrongfulness contingent upon the inexpediency of the killing or the enslavement in terms of some general social outcome (such as maximizing aggregate utility or equality). For then, it will not be the taking of someone’s life that is the paradigmatic wrong, but, rather, acting inexpediently. And, in some cases at least, expediency will call upon us to engage in what we originally and confidently take to be paradigmatic wrongs. Moreover, whether any given instance of killing or enslavement is to be taken as expedient or inexpedient and, hence, is to be taken as rightful or wrongful, will depend upon a complex assessment of the circumstances and the contingencies. This will make almost all of our judgments about the wrongfulness of killings or enslavements much more tentative and subject to reversal than we originally take them to be. So, for example, the judgment that this particular institution of slavery is wrong will have to wait upon a complex assessment of whether this institution, in its specific time and place, is expedient or not. And, even if the judgment is that this particular institution is wrong, that judgment will have to remain tentative — subject to reversal upon a reassessment of its actual consequences.

Besides not making the wrong of paradigmatically wrongful acts contingent upon their surrounding (and difficult to ascertain) circumstances, the principle that condemns these wrongful acts should also allow us to condemn (indeed, should help explain why we also should condemn) what appears to be lesser instances of taking a person’s life by destruction or by enslavement. For example, the principle should allow us to condemn (indeed, should help explain why we also should condemn) destroying a part of another’s body or kidnapping another for ransom. For the libertarian, a major virtue of the thesis of self-
ownership is that it offers an explanation for why, at its very core, taking the lives of others is wrong and why lesser instances of destruction and imposed constraint are also essentially wrong. So, as the libertarian sees it, a significant part of the philosophical cost of rejecting the thesis of self-ownership would be the loss of a deep and unifying explanation for why all these sorts of actions ought to be condemned. I begin with this point because Cohen's own discussion of the slavery issue does not even contemplate the prospect of this systemic cost.

As Cohen construes the issue, the cost that the libertarian ascribes to rejecting self-ownership is that the slavery of being required to supply services to or deliver one's products to others will be allowed. Cohen offers a brief and a more extended response to this ascription. The brief response is the bullet-biting response: what's wrong with allowing a little bit of slavery (if it serves a good egalitarian cause)? Allowing a little bit of slavery is very different from allowing a lot of slavery. Even if forced labor is 'slavery-like', a limited dose of forced labor is massively different, normatively, from the life-long forced labor that characterizes a slave (C: 231). So, the idea seems to be, if the cost of giving up the self-ownership thesis is only to countenance 'small doses' of slavery, there really is no serious cost. And the cost will only be the countenancing of small doses of slavery because one's alternative moral scheme will, for its own reasons, exclude (or tend to exclude?) large doses of slavery.

In a number of respects, however, the costs are greater than Cohen here acknowledges. For one thing, the licensed doses of slavery may not be so small. After all, according to Cohen's alternative moral scheme, there ought to be more in the way of imposed egalitarian redistribution than is currently enforced by the welfare state (C: 152). If forcing one to deliver the products of one's talents and labor is a 'slavery-like' relationship and one is forced to deliver a significant fraction of one's product, is that a small dose of slavery? For another thing, there is the cost of only having as much protection against larger yet doses of slavery as the alternative moral scheme will provide to one. That cost may be very high because alternative moral standpoints may very well endorse larger yet doses of slavery when, due to the contingencies of time and place, the imposition of those doses will effectively satisfy 'temporary needs of social order' (C: 231).

Cohen's more extended response to the licensing of slavery claim is an attempt to deny that to require individuals to provide services or deliver the products of their labor is to impose doses of slavery. Cohen's crucial move here seems to take a leaf out of the book of Rousseau. Servitude that is not servitude to the unconstrained will of another individual is not really servitude. Being required to provide services to or deliver products of one's labor to the redistributive state or its intended beneficiaries is not a matter of being under the discretionary control of another. If the state is acting in accord with proper egalitarian strictures in imposing these burdens on you, the state has no discretion in the matter. The state is obligated to act as it does; it has no right not to. Hence, the state is not exercising a right that it has over you. Or, if it is exercising a right over you, it is a different sort of right than slaveholders have over their slaves. Therefore, this imposition of burdens upon you is not a dose of slavery.

As Cohen puts it:

one might believe that the state has no right to absolve me from this obligation [to serve one's mother or the needy in general], that it has a duty to tax me, and consequently, no right to decide whether or not I should transfer income to the needy. The state therefore lacks the relevant right to dispose over my labour even if it has the right to direct this particular other-assisting use of it. Nor do my mother, or the needy, now have a slave-holder-like right over me, by virtue of the enforcement by the state of whatever rights they do have against me. (C: 234)

The entire weight of this argument rests on the claim that a putative slaveholder is not a slaveholder if she is obligated to impose on her putative slaves the burdens that she does impose. So let us imagine two neighboring plantations that, until this moment, everyone would have immediately described as slave plantations. On one plantation, Scarlett works her slaves as hard as will maximize a long-term economic return to Scarlett. Scarlett does this not because she is obligated to maximize a long-term return, but because she likes more rather than less. On the neighboring plantation, Melanie works her apparent slaves as hard as will maximize a long-term return to her. Melanie does this, however, because she has made a solemn promise to her mother to support her as best she can and Melanie fulfills this obligation by passing on maximal net returns to her mother. Being under this obligation, she 'lacks the relevant right to dispose over [the] labour [of her apparent slaves] even if she has the right to direct this particular other-assisting use [of that labor]'. Cohen's position seems to imply that, whereas Scarlett's is indeed a slave plantation, not a single slave can be found on Melanie's plantation!

Now the natural rejoinder on Cohen's part would be that Melanie could not really have obligated herself to work her (apparent) slaves good and hard because doing so contravenes good egalitarian morality. Melanie may have thought she was obligated to work the field-hands as hard as she did. But, since she really was not so obligated, the field-hands really remain slaves.47 I do not think this is a good rejoinder on Cohen's part. For I think that he is committed to the claim that lack of discretion on the part of the apparent slaveholder vis-a-vis the burdens she imposes on the apparent slaves (whatever the source of that lack of discretion) takes away the special feature of being a slaveholder, namely, having unconstrained disposal of the slave. I think Cohen is committed to the conclusion that if, out of concern that slaves were getting unruly and uppity, the legislature of a slave state legally obligates all slaveholders to work their slaves good and hard, the legislature will thereby emancipate every last one of them.

However, suppose we accept Cohen's natural rejoinder. If and only if the state is acting in accordance with its egalitarian duties, the burdens it imposes on individuals (no matter how onerous) are not doses of slavery. However, the very
same state-imposed burdens are doses of slavery if their imposition is not in accordance with the state’s egalitarian duties. This seems to me to be another instance of misleadingly useful redefinition. If we accept the rejoinder, Cohen’s position seems to be this: the adoption of egalitarianism may well lead to the imposition of serious burdens on individuals. These are burdens that, if not in the objective service of egalitarianism, would be doses of unjustified slavery. But, when the very same burdens are in the objective service of egalitarianism, we do not say that they are doses of justified slavery, because we have stipulated that, if and only if those burdens are in the service of egalitarianism, they cannot be doses of slavery. Servitude in the cause of equality is no more servitude than exploitation in the cause of equality is exploitation!

The cost of restricting autonomy

Cohen also represents the libertarian as holding that a philosophical cost of rejecting self-ownership is that the maximization of autonomy among individuals will not be achieved or that each person’s enjoying a reasonable degree of autonomy will not be achieved. Here, Cohen first characterizes autonomy as being ‘a matter of the quantity and quality of the options that a person has’ (C: 236–7). But, as his discussion proceeds, Cohen moves closer to autonomy as self-mastery. For instance, autonomy is said to be a matter of persons having ‘control of a substantial kind over their lives’ (C: 237) and a person’s life becoming ‘as it is through his choice’ (C: 238). Under either understanding of autonomy, however, it simply is not true that the self-ownership libertarian puts the sort of weight upon autonomy that Cohen claims he does.48 Such a libertarian may, as a secondary sort of consideration, assert that a regime of libertarian rights will facilitate individuals in achieving a desirable quantity and quality of options (compared to what those individuals are actually likely to receive under alternative regimes) and even will facilitate the donation of options to individuals who, through no fault of their own, cannot achieve them. Such a libertarian may also, as a secondary sort of consideration, think that in a variety of ways a regime of libertarian rights encourages individuals to take responsible control of their own lives. Such a libertarian is likely to put forward the claim that actual programs of state-imposed assistance tend to undermine people having ‘control of a substantial kind over their lives’. But, since people having a desirable range of options or a desirable sort of control over their lives is not an essential part of the libertarian political program, it will, of course, be true that alternative political programs will do better vis-a-vis everyone having options and self-mastery at least in terms of their self-understanding if not in terms of the reality of their application.

The self-ownership libertarian thinks that persons generally being situated so that they can achieve options in their lives and so that they will be encouraged to exercise control over their own lives is an enormous, positive, non-accidental externality of a regime of libertarian rights. Nevertheless, he does not promise that each person will, in fact, do better along these dimensions in an actual libertarian regime than competing theorists promise that person will do under their favorite regimes. This libertarian does not, therefore, make the thesis of self-ownership hostage to the claim that a regime of libertarian rights will (itself) guarantee maximum aggregate autonomy or reasonable autonomy for all. Since the libertarian does not hitch his wagon to the star of autonomy in the ways that Cohen represents, he is hardly bothered by its being pointed out that his favored regime does not include for each ‘creative artist’ a right ‘to an autonomous deployment of his talents in artistic creation’ where this right entails that ‘opportunities to pursue his art must be afforded to him’.49 The assertion that an adequatepolitical philosophy must accommodate such a right of autonomy is precisely the sort of question-begging argument Cohen had resolved to avoid.

The cost of licensing the use of people as means

Cohen represents the libertarian as holding that a cost of rejecting self-ownership is the licensing of the use of people as means. According to this representation by the libertarian, to adopt the self-ownership thesis is to recognize that people are ends and not merely means. By so linking the thesis of self-ownership with Kant’s slogan that individuals are to be treated as ends and not merely as means, ‘Nozick seeks to attach to self-ownership the prestige associated with the name of Kant’ (C: 238). Unlike Cohen’s representation regarding autonomy, I think this is a perfectly fair construal. The self-ownership libertarian does want to draw upon the power of this Kantian slogan just as he does want to draw upon the depth of our condemnation of slavery (and unprovoked killing).

Our question is whether the libertarian can legitimately hold that a cost of rejecting self-ownership is the disposavowal (or non-avowal) of Kant’s principle. Cohen arrives at a negative answer to this question by way of a fairly tortuous examination of what Kant might have meant by this principle, what Nozick might mean by the principle that ‘Individuals must not be sacrificed or used for the achieving of other ends without their consent’ (C: 239), and how these principles are related to one another and to the self-ownership thesis. The examination is tortuous because there are many different things that Kant might have meant and there are many different things that Nozick might mean, especially about the relationship of Kant’s principle, his consent principle, and self-ownership. Due to all this ambiguity, it is quite easy to show that what Kant meant by his principle might not be what Nozick means when he reiterates Kant’s principle or when he asserts the consent principle. It is quite easy to show that the relationship that Kant may have envisioned between his principle and individual rights might not be the relationship that Nozick envisions between either Kant’s principles and rights or between his (Nozick’s) consent principle and rights.

None of this, however, clearly speaks to the issue at hand, which is whether the advocate of the self-ownership thesis can hold that a cost of rejecting self-ownership is the disposavowal (or non-avowal) of Kant’s principle. So, how can one
The cost of licensing the forced redistribution of eyeballs

Libertarians resist the egalitarian claim that ‘no one should fare worse than others do because of bad brute luck’ (C: 229) by asking the egalitarian whether he favors the forcible redistribution of eyeballs so as to achieve an equality of eyeball distribution among a group of people some of whom luckily have two good eyeballs and some of whom unluckily have none. This resistance is usually tactically successful because most egalitarians do not want to bite the bullet of endorsing forced eyeball redistribution. Libertarians then advance to the claim that it is the thesis of self-ownership that explains the wrongfulness of forced eyeball redistribution, along with the wrongfulness of taking persons’ lives by way of destruction or enslavement, and that one of the many costs of rejecting self-ownership would be the licensing of the forced redistribution of eyeballs.

I have some trouble discerning what Cohen’s primary response to this argument is. I am uncertain whether he is prepared to bite the bullet and endorse enforced eyeball redistribution or is instead that one can reject self-ownership and still condemn eyeball redistribution. (The latter would be more in tune with the theme that the philosophical costs of rejecting self-ownership are less than the advocate of self-ownership says.) So let us consider each possibility in turn. Cohen suggests that the advocate of self-ownership and the egalitarian who he manages to buffalo both fail to appreciate that whether one has two good eyeballs or none (say, at birth) is a matter of genetic lottery, the results of which are no more sacrosanct than the results of any other (unchosen) lottery. Cohen hopes that the advocate of self-ownership and the buffalooed egalitarian will be enlightened by the following scenario and Cohen’s gloss on it:

If, as Cohen hopes (but does not expect), believers in self-ownership cannot convince themselves that there is a difference between the eye-tree and the genetic draw cases and if they come to think that the forced redistribution of eyeballs in the eye-tree case would not be so bad, then they will have to conclude that the forced redistribution of our eyeballs would not be so bad. And, they will have to disavow their beloved self-ownership thesis. So, in this phase of his discussion, Cohen seems to be defending the forced redistribution of our eyeballs and agreeing with the advocate of self-ownership that the licensing of this redistribution requires the rejection of self-ownership. This would be a confirmation of the advocate’s claim about the cost of rejecting self-ownership rather than a challenge to it.

However, this reading may too quickly cast Cohen as a biter of the eyeball bullet. Cohen may, instead, be saying that due consideration of the raw luck involved in having two good eyeballs should undermine one’s belief that one is entitled to each of one’s eyeballs in a way that manifests self-ownership. Due consideration of this raw luck undermines this self-ownership account of the wrongfulness of forced eyeball redistribution. Nevertheless, forced eyeball redistribution may be impermissible for other reasons. This seems to be what Cohen means when he goes on to say that ‘the suggestion arises that our resistance to a
lottery for natural eyes shows not belief in self-ownership but hostility to severe interference in someone’s life (C: 244). The cost of rejecting self-ownership is merely that one cannot oppose forced eyeball redistribution on the grounds of self-ownership; but one can still oppose it on other grounds, including the grounds that we ought to be ‘hostile to severe interference in someone’s life’. Similarly, in an early discussion of forced eyeball redistribution, Cohen asserts that, even if one rejects self-ownership, one can oppose forced eyeball redistribution in the name of ‘the right to bodily integrity’ (C: 70).

This sounds very reassuring. But how much sense does it make within the context of the lottery argument? If I am persuaded that I do not have a general right over myself, over my body, talents, and labor because I possess these merely as a matter of brute luck and I can have no legitimate claim on what I have as a matter of brute luck, how can I turn around and assert a right of bodily integrity or a claim against severe interference with my body, my talents, my labor? After all, it is merely by brute luck that I have this body with two healthy eyeballs or with terrific hand-eye coordination or with an inventive brain some of the inventive tissues of which could be transplanted into someone else’s presently dull brain. How much interference can I have a claim against and how much interference should count as ‘severe’ if everything about me that is being interfered with is a matter of brute luck and I can have no legitimate claim on what I have as a matter of brute luck? Recall also that Cohen endorses a state that engages in lots of interference. For instance, it is to be licensed to force individuals to perform a significant fraction of their productive services for the state (or its designated beneficiaries) or to deliver a significant fraction of the products of their labor to the state (or its designated beneficiaries). So Cohen has his own reasons for not taking a claim against severe interference very seriously.53

The key problem here for Cohen is that the lottery argument cuts very deep. If one accepts that argument, one cannot easily say that, although self-ownership is rejected, there remains a comforting array of rights that can be invoked whenever it looks as though the rejection of self-ownership will be unacceptably costly. Of course, one might try to articulate some general right as an attractive alternative to the right of self-ownership — an alternative that would be attractive because it provides some sort of unifying explanation for our core judgments about wrongful action. Perhaps this would be some sort of right to autonomy. Unfortunately, if that right to autonomy is supposed to protect one’s possession and discretionary use of one’s eyeballs, energy, and brain tissue, it looks as though the acceptance of the lottery argument would cut as deeply into the right to autonomy as its acceptance would cut into the right of self-ownership. The prospects for containing the costs of the lottery argument look dim indeed. Thus, the costs of rejecting self-ownership on the grounds suggested by Cohen, namely, on the grounds of the lottery argument, are likely to be massive and to include the licensing of forced eyeball redistribution.54

I repeat that I have not argued that there can be no plausible explanation other than the self-ownership thesis for the wrongfulness of slavery (and unprovoked killing), or for the wrongfulness of treating people as means rather than ends, or for the wrongfulness of forced eyeball redistribution. I have argued that the self-ownership thesis does provide a synoptic account of the wrongfulness of each of these modes of conduct; that is why it has the intuitive force that Cohen begins by acknowledging. Moreover, the appeal to the lottery argument against self-ownership is dangerously close to the question-begging argumentation that Cohen pledges to avoid (C: 229). Lastly, the acceptance of the strongly egalitarian lottery argument against the self-ownership thesis would be a bit of philosophical overkill. For that acceptance would preclude alternative satisfying explanations (in terms, for instance, of rights to autonomy) for the wrongfulness of slavery (and unprovoked killing), treating persons as means rather than ends, and forced eyeball redistribution.

7. Conclusion of Part II

In Part I of this essay, ‘Challenges to Historical Entitlement’, I defended in two main ways the anti-egalitarian conclusion that substantial inequalities in economic outcomes can readily be just. First, I offered a reconstruction of Nozick’s ‘How Liberty Upsets Patterns’ argument against all end-state and pattern doctrines of distributive justice and defended that reconstruction against natural objections. Second, I criticized Cohen’s attacks upon the two crucial components of historical entitlement theory: the principle of just transfer and the principle of just initial acquisition. In the course of these criticisms, I introduced a revised understanding of a libertarian Lockean proviso: the self-ownership proviso. An important implication of Part I is that it is not profitable for the egalitarian to seek to undermine the anti-egalitarian conclusion by attacking the libertarian’s case against end-state and pattern principles or the libertarian’s case for historical entitlement theory. Cohen agrees with this, not because he acknowledges the failure of his attacks on the historical entitlement doctrine, but, rather, because he recognizes that the historical entitlement doctrine (and, especially, the principle of just initial acquisition) is not necessary for the anti-egalitarian conclusion. This is the point of his investigation of left-wing (ED) libertarianism. Left-wing (ED) libertarianism’s retention of self-ownership is sufficient for its sanctioning outcomes that are unacceptable to the egalitarian.55 (For which, see the second section of Part II.) Indeed, it is Cohen’s special contribution to libertarian theory to contend that state redistributive schemes (most prominently, egalitarian redistributive schemes) must infringe upon self-ownership. Hence, if the self-ownership thesis is accepted, all such schemes must be rejected as unjust. I reinforce Cohen’s contention by formulating a version of the ‘end-run’ argument according to which state redistributive schemes must infringe upon some people’s self-ownership rights — albeit not necessarily rights ascribed to the people who are deprived of the fruits of their labor. (For which, see the fourth
section of Part II.) Cohen’s contention is a contribution to libertarian theory if and only if the self-ownership thesis itself is affirmed. Cohen, in effect, offers two main arguments against affirming this thesis. The first argument is that there is no understanding of the rights of self-ownership that is robust enough to vindicate the complaints of Able against Infirn and worker Z against the capitalist and yet not also vindicate a general condemnation of capitalistic arrangements. This argument is rebutted through my articulation and defense of the self-ownership proviso. (For which, see the third section of Part II.) The second argument is that the libertarian is mistaken about the philosophical costs of rejecting the self-ownership thesis. I have argued, however, that the gross costs of rejecting this thesis would be considerable and that these would also be net costs. This is because the basis offered for rejecting the self-ownership thesis, namely, the lottery argument, would also require the rejection of claims to autonomy or to bodily integrity that might mitigate the costs of rejecting the self-ownership thesis. (For which, see the sixth section of Part II.) Thus, both of the key elements of self-ownership libertarianism (that is, the self-ownership thesis and the anti-egalitarian conclusion) are vindicated.

notes


2. The initial appeal for Cohen of a Marxist critique of capitalism is described briefly in the first section of Part I of this essay.

3. Cohen’s only argument for an original right to substantively equal shares seems to go from the premise that, if we have any original rights over nature, they are equal rights to the conclusion that we do have substantively equal rights. ‘It is reasonable to think, with respect to external resources that have not been acted upon by anyone, that no one has more right to them than anyone else, and that equal rights in them should therefore be instituted’ (C: 110, emphasis added).

4. For a recent anthology of essays exploring left-wing libertarianism, see Left-Libertarianism and its Critics, edited by Hillel Steiner and Peter Vallentyne (New York: St. Martin’s Press, 2000).


6. Do we need to add that their lives will end at the same time? If not, should the longer lived individuals get larger shares to deal with their more extensive needs? Or, should the shorter lived individuals get larger shares in compensation for the brevity of their days?

7. It would be nice to have a figure for what percentage of the annual income of those in the top income decile (or quintile) in the USA is due to their salaries, wages, and bonuses (and the earnings from passive investments of funds saved from their previous salaries, wages, and bonuses).

8. Must not they really be the only self-owners in the world — or even the universe?

9. I have simplified the story so as to eliminate the less interesting cases in which Able is not able enough to sustain the lives of both himself and Infirn or even to sustain his own life. I have also followed Cohen’s unstated assumption that both individuals need the same amount of produced goods to survive. Lastly, the predicted negotiated outcome depends on the parties not being strongly moved by prior convictions, for example, that productive labor itself ought to be rewarded.

10. In fact, it typically will not be useless to own a corkscrew even if one is forbidden access to bottles of wine. For one might well be able to rent out or sell the corkscrew or use it as a gardening tool. Things are worse for Able, almost all of whose purposive behavior is stymied by Infirn’s joint-ownership of all extra-personal resources. Still, Able’s self-ownership would still protect him against assault and enslavement by Infirn. It would also still protect him from Infirn’s moralist and paternalist interventions. So, contrary to Cohen’s suggestion, even without the enrichment provided by the SOP, the concept of self-ownership has considerable substance.

11. Cohen writes that ‘socialists should not favour joint world ownership. They must seek another way of achieving equality of condition, one that supports greater autonomy than joint world ownership allows’ (C: 101).


13. Cohen’s casting of Nozick’s discussion strongly suggests that Z must work for one specific capitalist or die, so that Z’s need to get the permission of that capitalist to bring his powers to bear on the extra-personal world is precisely like Able’s need to get the permission of Infirn. In fact, Nozick’s actual language does not particularly suggest that Z needs to work for some one capitalist. Quite the contrary. Nozick seems to be thinking that the issue is whether, when Z chooses one of his ‘various options about what job to take’ (N: 263), Z chooses involuntarily because he has to take some job or starve. Nozick does not, then, envision a capitalist with a monopoly on jobs to offer Z. That may be why he does not see the case as one in which his proviso is violated. Had he viewed the case as Cohen does, he might well have seen it as involving a violation of that proviso.

14. Nozick, for example, says that the proviso ‘focuses on a particular way that appropriate actions affect others’ (N: 181, emphasis added). But the just complaints that the proviso seeks to capture are not complaints against appropriate actions. Each complaint is against a specific deployment of some holding, while the appropriate acquisition of that holding is not itself being challenged.

15. For a more extended discussion, see Eric Mack, ‘The Self-Ownership Proviso: A New and Improved Lockean Proviso’, Social Philosophy and Policy 12(1) and Eric Mack, ‘Right-Wing Liberalism, Left-Wing Liberalism, and the Self-Ownership Proviso’. The fourth section of the latter essay explicitly takes up the dilemma posed by the cases of Able and worker Z.

16. It may be that there are a number of distinct dimensions to being a world-interactive being and that a well-formulated self-ownership proviso would articulate the distinct constraints appropriate to these different dimensions. For instance, while I focus on the dimension of productive interaction with extra-personal objects, one might
separately focus on the dimension of movement through the extra-personal world. Harry's imprisoning Sally in that cage worsens her situation along this movement dimension even if, while she is imprisoned, he brings to her enough and as good objects for her use.

17. Nozick construes the case of worker Z to be like this. The actions of the capitalists merely "did not provide him with a more palatable alternative" (N: 264). This ignores the possibility that, through their decisions, the capitalists render the world less receptive to Z's bringing his powers to bear than it would be were there no private holdings.

18. It is a great mistake to reason from my not being morally at liberty to use X (without A's permission, because it is A's property) to my not having the opportunity to use X. Often it will be precisely A's ownership of X that will focus someone's mind (for example, A's mind) on how to get others to use X — usually for a price, of course.

19. This point is developed most extensively in the writings of David Schmidtz. See David Schmidtz, The Limits of Government (Boulder: Westview Press, 1991), chapter 2. The basic view that private appropriation preserves and multiplies the 'means of subsistence' in a way that is at least likely to benefit all compared to maintaining common use is nicely expressed in James Wilson's Lectures on Law:

By exclusive property, the production of the earth and the means of subsistence are secured and preserved, as well as multiplied. What belongs to one no one is wasted by everyone. What belongs to one man in particular is the object of his economy and care.


20. Nozick (N: 177) cites "the various familiar social considerations favoring private property". Nozick correctly observes that "These considerations enter a Lockean theory to support the claim that appropriation of private property satisfies the intent behind the "enough and as good" proviso, not as a utilitarian justification of private property". Here, Nozick himself is pointing to the peripheral role played by the satisfaction of the proviso in the vindicating claims of entitlement. See the fifth section of Part I of this essay.


22. That instituting a lien on the labor of others contravenes the self-ownership thesis is the gravamen of the fourth section of Part II.

23. But an otherwise market-oriented order that includes pervasive occupational licensing restrictions and similar legal-constraints on people's freedom of employment may well press some individuals below a reasonable baseline. Perhaps those who favor a modest baseline and those who favor a higher baseline can agree that the first order of business is to eliminate governmental restrictions that press some people below the more modest baseline.

24. Reasonable friends of the market do not expect there to be 'perfect competition' that eliminates 'producer surpluses'. See, for example, F.A. Hayek, "The Meaning of


25. The claim is not, of course, that when Sally encounters competing waterhole owners she will receive water costlessly or that when Z confronts competing capitalists he will get costless access to their means of production. But costless access is never a reasonable baseline.

26. Who should be required to act differently may be a hard question to answer since, as in other cases of jointly generated ill-effects (such as many pollution cases), not everyone's behavior has to change for the ill-effect to be averted.

27. This ignores the possibility that somehow the collectivity (whatever it actually is) agrees to some people becoming the private owners of certain non-raw (or even raw?) resources. Such a process of privatization would undermine the pervasive monopolistic element of the JO regime. But, in doing so, it would also raise the specter of inegalitarian outcomes and, thus, defeat the egalitarian purpose of the JO regime.

28. According to the libertarian, contract is not the only way one can acquire an obligation to provide some service or product; for example, such an obligation might arise under a principle of rectification.

29. Cohen says that 'the content of self-ownership...is the right not to be forced to place what you own (that is, yourself) at the disposal of anyone else'. 'I am not fully mine. I do not own myself fully, if I am required, on pain of coercive penalty, and without my having contracted to do so, to lend my assistance to anyone else, or to transfer (part of) what I produce to anyone else' (C: 117, emphasis added).

30. Cohen himself may believe that, if we were self-owner, we would also be owners of the fruits of our labors. And, indeed, he says as much in one passage that is striking because of its mention of the fruits of labor. In that passage we are told "that every person is morally entitled to full private property in his own person and powers...means that each person has an extensive set of moral rights...over the use and fruits of his body and capacities" (C: 116–7, emphasis added). Still, Cohen's proposed argument from self-ownership to the impermissibility of the redistributive state never is presented as running through such property rights.

31. This Nozickian version of the end-run argument does not rely upon Cohen's questionable claim that redistributive schemes require that individuals supply their services or deliver their products. But some of Nozick's language (for example, talk of seizing the results of someone's labor being equivalent to 'directing him to carry on various activities' (N: 172)) converges with Cohen's version.

32. Thus, this version of the end-run strategy is, in effect, grounded in Nozick's claim that self-owners must have the right of internal emigration. The argument for this right is that merely 'surely self-owners have the right of external emigration — the right to opt out of a scheme of social provision by stepping over some border. But 'What rationale yields the result that the person be permitted to emigrate, yet forbidden to stay and opt out of the compulsory scheme of social provision?' (N: 173).

33. If we take the 'underground economy' to be the network of economic relationships among people who have not agreed to be collection agents for the state, we can say that the redistributive state must suppress the underground economy and this cannot
be done without infringing upon the self-ownership of at least some of the participants in the underground economy.

Alternatively, the objectionable force may be force that requires earners and holders to deal only with institutions that have chosen to be collection agencies for the state. On this alternative, also, the condemnation of the scheme does not rely upon any independent claim about people having rights to the fruits of their actions, labor, or hours.

35. Cohen’s special contention will, of course, escape being a contribution to libertarian theory if (and only if) he manages to provide us with good (non-question-begging) reasons for rejecting the self-ownership thesis. That is the topic of the sixth section of the present part of this essay.


37. So deeply historical (in Nozick’s sense) is our moral thinking that advocates of principles of assistance often appeal to the imagined historical injustice of people having been subject to an unchosen (and, hence, unfair) natural and social lottery. The demand for assistance is then cast as a demand that the outcome of this lottery be redressed, that the winners in this lottery compensate the losers. See, for instance, John Rawls, A Theory of Justice (Cambridge MA: Harvard University Press, 1971), pp. 100–101.

38. A friend of the Marxist justice critique may claim that the prosperity of even the exploited in capitalist societies depends upon the (more primitive) exploitation of people in peripheral societies. But, whatever the merits of this claim, it cannot provide a rationale congruent with that justice critique for assisting the non-exploited need of either the capitalist or peripheral societies.

39. Still, I was told recently that in France the unemployed have been on strike. My informant, Scott Arnold, speculates that the unemployed have been threatening to work and keep working until their unemployment benefits are raised.

40. I hope it is clear that, in talking about an intrinsic tie between the self-ownership and anti-exploitation intuitions, I am only saying that if one has to have a doctrine of exploitation that does not reduce merely to labeling as ‘exploitative’ those interactions that yield unacceptably unequal outcomes, one will have to develop it as a complement to a doctrine of self-ownership. I am not saying that friends of self-ownership must endorse any doctrine of exploitation or any doctrine that goes beyond labeling as exploitative those transactions that violate standard libertarian strictures.

41. Interestingly, there is no talk here (as there was in the analysis of the JO regime) of the worker’s loss of autonomous governance.

42. If we follow Cohen in saying that apparent exploitation that tends to needs that ought to be tended to from an egalitarian perspective is not really exploitation, then we cannot understand what he means when he talks about ‘the coming apart of the exploitation and need features’ (C: 155).

43. I myself do not know what this exclusion of exploitative feature excludes. Let us simply assume that people who are especially concerned about the exploitative character of some transactions that pass standard libertarian muster can specify to their own satisfaction what this exploitative feature of transactions is.

44. Counting himself among them, Cohen says that:

Analytical Marxists are concerned with exactly what a commitment to equality requires, and with exactly what sort of obligations productive and talented people have to people who are relatively unproductive, or handicapped, or in special need. We seek a precise definition of what exploitation is, and we want to know exactly why it is wrong. (C: 144)

Notice the disconnection between the program of the first sentence and the program of the second sentence.

45. Note my omission of the autonomy issue. As discussed below, the libertarian does not tie the attractiveness of self-ownership to the promotion of autonomy in the way that Cohen suggests.

46. In addition, this extends to other actions, such as paternalistic interventions, that also trench upon the subject’s self-ownership.

47. What if Melanie plans to distribute and does distribute the proceeds to yet more abject slaves?

48. Of course, different libertarians put things together differently. Something very much like a defense of libertarian rights on the grounds that such a system of rights maximizes autonomy, for example, see Horacio Specter, Autonomy and Rights (Oxford: Clarendon Press, 1992).

49. Cohen provides this example from Simon Green. The passages quoted in my text are in part from Green and in part from Cohen (C: 238).

50. Attempting to follow the twists and turns of Cohen on Nozick on Kant may simply lead us astray. For example, Cohen says that Nozick asserts that ‘self-ownership’ (C: 242) and the ‘rights of self-ownership’ (C: 243) reflect the principle that individuals may not be used for the achieving of other ends without their consent. But, in fact, Nozick says ‘Side constraints upon action’ reflect this principle (N: 30). The term ‘self-ownership’ does not occur in the crucial section of Anarchy, State and Utopia that is entitled ‘Why Side Constraints?’

51. Unfortunately, Kant would say that a person does not even exist for her own purposes.

52. Note, again, the static quality of Cohen’s analysis. If people really were in the situation described by Cohen, many would adjust by taking out insurance policies against no eyes dropping into their eye sockets. The payment for such a policy could be one’s agreement to surrender an eye should two eyes fall into one’s eye sockets.

53. In the paragraph preceding the eye-tree example, Cohen seems to countenance the coercive suppression of prostitution. That suppression, apparently, does not count as severe interference. According to Cohen, if one were to appeal to the principle of self-ownership to condemn rape, ‘prostitution would have to be regarded as just a particular use (by the prostitute) of her rights over her body’ (C: 264). This, I must confess, seems to me to be a reason in favor of condemning rape on the basis of the victim’s right of self-ownership, rather than a reason to reject the self-ownership explanation for the wrongness of rape.

54. The acceptance of the lottery argument seems to preclude a claim to autonomous governance that would be substantial enough to reject the JO regime that we discussed in the second section. Similarly, workers within capitalist regimes
(including worker Z) would not be able to appeal to a robust right of autonomous governance.

55. The fifth section argues that even doubly left-wing libertarianism's retention of self-ownership suffices to sanction outcomes that are unacceptable to the egalitarian.

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