THE SELF-OWNERSHIP PROVISO:  
A NEW AND IMPROVED LOCKEAN PROVISO* 

By Eric Mack 

I. THE NATURE OF THE SELF-OWNERSHIP PROVISO  
AND THE TASK OF ITS ADVOCATE 

In this essay I propose to explicate and defend a new and improved version of a Lockean proviso—the self-ownership proviso (SOP). I shall presume here that individuals possess robust rights of self-ownership. I shall take it that each individual has strong moral claims over the elements which constitute her person, e.g., her body parts, her talents, and her energies. However, in the course of the essay, I shall be challenging what I take to be the standard conception of self-ownership and proposing an enrichment of that conception. The SOP is presented and in part justified as an implication of the right of self-ownership as it is more richly conceived—hence its designation as the self-ownership proviso. As an implication of the right of self-ownership which is also compatible, in theory and practice, with extensive and robust private property rights, the SOP is offered as an integral element of classical-liberal political theory. 

The ideas that underlie the proviso are these: A person’s rights over herself include rights over her talents and energies. Talents and energies are at least largely “world-interactive powers,” i.e., capacities to affect her extra-personal environment in accord with her purposes. But such world-interactive powers are essentially relational. The presence of an extra-personal environment open to being affected by those powers is an essential element of their existence. For this reason, an agent’s rightfully held world-interactive powers can be negated by noninvasive means as well as by invasive ones. By invasive means, e.g., by assaults upon the agent, an individual’s powers can be destroyed or appropriated; but an agent’s world-interactive powers can be comparably negated—I shall speak of nullification and disablement—by noninvasive means. This can be done by negating (to a sufficient extent) the presence of an extra-personal environment open to being affected by that agent’s powers. 

Imagine that Adam, who along with Zelda inhabits a bountiful pre-property state of nature, possesses a device that causes any physical object he designates to disappear. Imagine further that, for whatever reason, he continually designates precisely those objects toward which Zelda begins to direct her talents and energies. Zelda reaches for this branch, Adam designates it, and it disappears. Zelda snatches at that apple, Adam designates it, and it disappears. And so on. The intuition which I offer is that this would be a form of disablement of Zelda morally comparable to Adam’s operation of a different device which (painlessly) induced paralysis in Zelda whenever she began purposively to bring her powers to bear on extra-personal objects in her environment. If Zelda’s rights over her talents and energies morally constrain Adam’s use of the paralyzing device, they also constrain his use of the disappearing device. 

I maintain that recognition of persons’ rights over their world-interactive powers, and of the essentially relational character of these powers, supports an “anti-disablement constraint” according to which individuals may not deploy themselves or their licit or illicit holdings in ways that severely, albeit noninvasively, nullify any other agent’s capacity to bring her talents and energies purposively to bear on the world. The SOP is a special case of this anti-disablement constraint. The SOP requires that persons not deploy their legitimate holdings, i.e., their extra-personal property, in ways that severely, albeit noninvasively, disable any person’s world-interactive powers. As the essay proceeds, I will explain in what sense it is severe disablement which is proscribed by the SOP. As will emerge in the course of the discussion, what is essential to an individual’s suffering noninvasive disablement is others’ bringing about a (severe) reduction in the receptivity of her environment to her world-interactive powers. Thus, the SOP requires that persons not deploy their legitimate holdings in ways that on net severely reduce the receptivity of an agent’s environment to that agent’s world-interactive powers; the (so to speak) organic effect of persons’ respective dispositions of property may not damagingly nullify any agent’s powers. 

The core intuition which any proviso advocate seeks to systematize is that Zelda has a just complaint in situations like:

Case 1 (Adam’s island). Since his arrival at a previously unowned and uninhabited island, Adam has engaged in actions that, according to liberal entitlement theory, confer upon him sole dominion over all of this island. Now the innocent, shipwrecked Zelda struggles toward

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the island’s coast. But Adam, in what purports to be a legitimate exercise of his property right, refuses to allow Zelda to come ashore.

While standard Lockean provisos seek to account for Zelda’s just complaint against Adam in terms of Adam’s failure to leave enough and as good for Zelda, the SOP accounts for Zelda’s just complaint in terms of Adam’s severe, albeit noninvasive, nullification of Zelda’s world-interactive powers.

Although both top-down recognition of the rights of self-ownership and bottom-up intuitions about particular cases support a general anti-disenfranchisment constraint, this essay concentrates on the more specific SOP. This focus allows me to explore the intersection of the underlying ideas I have mentioned with classic and contemporary attempts to explicate and justify some Lockean proviso. In his Second Treatise, John Locke maintains that an individual in the state of nature will have a just complaint against others should their private appropriation of materials out of the commons result in there no longer being “enough, and as good” 3 left for that individual. Nevertheless, Locke does not take his “enough, and as good” proviso to be incompatible with the emergence of extensive and robust private property rights. Similarly, when Robert Nozick takes up the task of clarifying the demand that enough and as good be left for each in his neo-Lockean Anarchy, State, and Utopia, he has two connected goals. The first is to define a proviso which accounts for just complaints which may be triggered by the extension of private ownership of the extra-personal environment. This proviso will articulate some sort of moral limit upon property rights or their exercise. The second goal is to arrive at a proviso which is compatible, in theory and practice, with an extensive regime of sturdy property rights. 4 The SOP achieves both of these goals.

There are two main ways in which a proviso may turn out not to be compatible with robust private property. First, the proviso may, in the final analysis, rest upon doctrines of the original ownership of nature or principles of distributive justice which are theoretically incompatible with the classical liberal’s entitlement theory of property rights. 5 This theoretical incompatibility will undercut the type of justification which the lib-

6 For the sake of brevity, I shall often refer to the classical-liberal position simply as the liberal position. I also use phrases like “private property regime” and “liberal market order” interchangeably to refer to the sort of economic arrangements that warm the libertarian heart.

7 The hard-line opponent of provisos will maintain that the only substance to Zelda’s complaint consists in politically irrelevant grievances about Adam’s personal moral shortcomings, e.g., about his lack of fellow-feeling or his mean-spiritedness.


favors, and in normal circumstances does not contravene a regime of comprehensive and rugged property rights.9

This last feature of the SOP is dependent upon the baseline the SOP employs for determining whether an individual has been subjected to a (severe) reduction in the receptivity of her environment to her world-accessible powers. Since the SOP protects individuals against wrongs made possible by the emergence of property regimes, it is natural to set the baseline as the level of receptivity which would obtain for this or that individual in a pre-property state of nature—one characterized by people’s compliance with Lockean norms forbidding invasive behavior. It is often charged that such a baseline is too low, that asking property regimes to sustain this level of receptivity is asking too little of them. I reject this charge in Section V of this essay. Nevertheless, there are two genuine problems with this common appeal to a pre-property state of nature baseline. The first is the tendency to specify some relatively concrete condition C (e.g., a specific number of buffalo to hunt, a specific number of acres of acorns to gather) enjoyed by individuals in some pre-property state of nature and to maintain that individuals have a just complaint against any later property regime in which this condition is not preserved. The second is the tendency to think that, with regard to each present individual, there must be some specifiable pre-property state of nature which fixes, for that individual, the magnitude of C she can demand of subsequent property regimes. I argue that, contrary to the first tendency, what matters is the more abstract condition of receptivity to an individual’s world-accessible powers. And I maintain, contrary to the second tendency, that we must and can sidestep the attempt to specify for each individual a privileged, baseline-fixing, pre-property state of nature. We can do this by supporting, as a reasonable albeit defeasible presumption, the proposition that the development of liberal private property regimes, by introducing new and expanded forms of receptivity to human powers, are on net enabling of those powers. Only when, because of special circumstances, an individual fails to enjoy this characteristic boon of market orders, can the presumption that the SOP is satisfied be plausibly challenged.

Although the SOP is a Lockean proviso, it is important to take explicit note of one respect in which it differs from the provisos suggested by Locke and Nozick. Each of these theorists sees his favored proviso as part of his theory of extra-personal property—in particular, as part of his doctrine of entitlement acquisition. According to each of them, for Adam to acquire a genuine moral title to some object it must be true both that

9 Aside from Locke and Nozick, liberal defenders of a proviso are not easy to find. Two defenders, each of whom understands “enough and as good” being left as no one’s suffering a net loss of utility, are Carol Rose, “Enough, and as Good of What?” Northwestern University Law Review, vol. 81, no. 3, pp. 417–42; and David Schmidtz, “When Is Original Acquisition Required?” The Monist, vol. 73, no. 4 (October 1990), pp. 504–18.

10 Nozick says that his Lockean proviso “introduces an additional bit of complexity into the structure of the entitlement theory” (Anarchy, State, and Utopia, p. 174).
gled from Nozick's provocative, but twisted, discussion. I join in Nozick's rejection of what I call the "appropriation" proviso, criticize what I call the "Hohfeldian" and "use" provisos, and reject Nozick's attenuation of provisos by way of attaching compensation clauses to them. Throughout I emphasize the importance of breaking free of a fixation upon some relatively concrete condition C obtaining in the pre-property state of nature as the crucial condition which must be preserved in each subsequent economic regime for these regimes to be morally acceptable. This section also contains the obligatory paean to the vast gains in economic productivity attendant to the rise of private property rights.

In Section IV, I construe these gains as an ongoing "enabling transformation" of the environment in and through which we each define and live our lives. The particular form of receptivity to persons' world-interactive powers enjoyed in the pre-property state of nature (e.g., each agent's having the opportunity to hunt and/or gather n units of natural stuff) is unlikely to be preserved within successive phases of the market order. However, the rise of the market order is not disabling of persons' world-interactive powers because the developing property regime is hospitable in new and more extensive ways to persons' talents and energies. At least, this is the case insofar as the market order develops and operates as its firm friends expect it will. Insofar as an individual's economic environment is the product of such a liberal market order, the SOP is satisfied with respect to that individual. However, it is consistent with this position that there be local violations of the SOP violations that may occur within special situations that are akin to Adam's Island and like cases. Finally, in Section V, I address one important source of the charge that provisos like the SOP incorporate too low a baseline.

II. Toward Enriched Self-Ownership

In this section, I propose: (a) to clarify further the task of the SOP advocate; (b) to provide a series of further cases which point to the SOP as reflective of an enriched conception of self-ownership; and (c) to describe, albeit very briefly, the independent background support for this enriched conception.

A. Proviso violation as a wrong done to the person

The intuitions-up case for the SOP begins with the judgment that Zelda has a just complaint against Adam in Adam's Island. But this complaint is not construed as a matter of Adam's violating any positive right of Zelda's to some share of the extra-personal world or any positive right of Zelda's to be rescued. In Adam's Island, Adam does some evil to Zelda; he engages in some form of worsening of her condition; and this worsening does not consist in a failure to benefit Zelda in accord with some supposed positive obligation. But, then, in what can this evil-doing consist—since, as the hard-liner is quick to point out, Adam does not intrude upon Zelda's person or property?

To identify the wrong that Adam does to Zelda in Adam's Island, it is helpful to note two other cases in which, although poor Zelda will again end up at sea, the proviso advocate will not judge her to have a just complaint against Adam. The first of these is:

**Case 2 (Adam's Unreachable Island).** Since his arrival at the previously unowned and uninhabited island, Adam has engaged in actions that, according to liberal entitlement theory, confer upon him sole dominion over all of the island. Now the innocent, shipwrecked Zelda struggles toward the island's coast. But Adam has no need to assert his property rights. For Zelda does not have the strength to make it to shore and she is, eventually, swept back out to sea.

The second is:

**Case 3 (Adam's Made Island).** Since his arrival at the previously unowned and uninhabited island, Adam has engaged in actions that, according to liberal theory, confer upon him sole dominion over all of the island. Indeed, he has so labored on the island—by building retaining walls, planting protective trees and grasses, and on—so that he has prevented the island from disappearing entirely into the sea. Now the innocent, shipwrecked Zelda struggles toward the island's coast. But Adam refuses to allow Zelda to come ashore.

In these two cases, Adam's action and character leave much to be desired. Nevertheless, I begin with the judgment that in neither of these cases does he wrong Zelda as he does in Adam's Island. Part of the task of the elucidation and defense of the SOP is to account for, and thereby fortify, this judgment.

An initial explanation for the difference between case 1 and cases 2 and 3 is that in the former, Adam does worsen Zelda's situation, whereas in the latter two cases, Zelda ends up no worse off than she would have been had Adam never existed or had he never shared this particular stage with Zelda. However, Adam's wrongdoing of Zelda in Adam's Island

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11 This claim masks complications. Perhaps Adam's existence or presence on the scene has motivated others—good folk who cannot abide such people as Adam—not to be in the vicinity of Adam. Yet if they had been in the vicinity, they would have rescued Zelda. In this case, Adam's displeasing existence is a factor contributing to some third party's not being in a position to rescue Zelda. Even if we allow that this is a case of Adam's bringing it about that Zelda is worse off than she would have been had Adam not existed, this case is similar to case 4 (Unrequited Love), in which Zelda's condition is worsened by Adam, but not in a way that gives Zelda a complaint in justice against Adam.
does not consist simply in his bringing it about that Zelda enjoys a lesser degree of welfare than she would have, had Adam not existed. Adam can, in certain ways, bring it about that Zelda enjoys a lesser degree of welfare without thereby treating her unjustly. For instance, consider:

Case 4 (Unrequited Love). Adam, the proprietor of the island, allows the able-bodied Zelda ashore but then refuses to reciprocate Zelda's budding romantic passion for him—a fate which Zelda experiences as worse than death. (“Far better had he never allowed me to come under his cruel sway.”)

Perhaps, insofar as Zelda's passion was predictable, Adam's conduct should be condemned as shabby. (Should he instead have driven her back out to sea?) But, in case 4, unlike case 1, Zelda has no complaint in justice against Adam. Nor is Adam's bringing it about that Zelda enjoys less welfare than she would have had he not existed necessary for his treating her unjustly. For instance, consider:

Case 5 (Paternalist Caging). Adam, the proprietor of the island, refuses to allow Zelda to come ashore. However, Zelda inadvertently enters an offshore cage which Adam has constructed to catch (large) sea mammals. Rather than releasing her, Adam proceeds to furnish her with far more life-sustaining and satisfying conditions than she would have enjoyed had she been allowed ashore and otherwise been treated justly by Adam. (Had she not entered the cage, he would not have been able to effectively bestow his paternalist largesse.)

What these cases suggest is that there is a type of unjust treatment of Zelda which typically, but not necessarily, worsens Zelda's condition. This unjust treatment is present in cases 1 and 5, but not in cases 2, 3, or 4. All that's needed (I) is to identify this form of unjust treatment and explain its unjustice in a way that coheres with classical-liberal theory.

B. Imprisonment and disablement as wrongs done to the person

A series of additional cases reveals the moral similarity between (a) trespasses upon self-ownership as it is standardly and narrowly construed, and (b) impingements which it is natural to condemn as violations of a Lockeonian proviso. This moral continuum suggests that an appropriate pro-

visor which codifies these improprieties will itself be founded upon an enriched conception of self-ownership.

Case 6 (Active Knuckle-Scrappers). In a pre-property state of nature some member of a gang of knuckle-scrappers draws a circle around the ground on which Zelda is sleeping. After she awakes, every time Zelda steps outside this circle one member or another of this gang quickly snaps her up and deposits her back within the circle.

This severe restriction on Zelda involves a series of acts each of which transgresses her self-ownership even understood narrowly as a claim against others' physical control of the domain defined by Zelda's outer surface. While Zelda is not subjected to literally invasive behavior, she is grasped and forcibly controlled in a way that would be justified only if she were, in the relevant respects, bereft of moral jurisdiction over herself.

However, there are also cases of impingements upon Zelda that are not so obviously proscribed by a narrowly construed doctrine of self-ownership. Yet these are also cases of what we pre-analytically take to be wrongful encroachments against a self-owning agent. They are morally on a par with assaults upon and direct manipulations of the victim, even though they do not involve direct intrusions or acts of forcible control.

Case 7 (Knuckle-Scraper Barrier). In our pre-property state of nature our gang of knuckle-scrappers merely link their tattooed arms to form a human circle around Zelda (equal in size to the drawn circle of case 6). Zelda is simply unable to scale the resulting human wall so as to escape imprisonment within that circle. When she tries to climb that human wall, she is accused of assault upon the peacefully cooperative individuals who surround her.

Case 8 (Disabling Property Barrier). While Zelda sleeps, Adam employs some of his rightfully held plastic (the only property yet to be established) to construct a porous shell around her. Upon waking, she discovers that she is unable to break through this shell. When she attempts to free herself, Adam accuses her of trespassing upon his plastic.

Cases 6, 7, and 8 each can readily be construed as unprovoked imprisonments. Since our understanding of self-ownership should support the judgment that unprovoked imprisonment violates self-ownership, self-ownership should be construed broadly enough to forbid imprisonments. Self-ownership ought to condemn, not only the active knuckle-scrappers of case 6, but also the passive, nonintrusive knuckle-scrappers of case 7,
and even Adam of case 8, who nonintrusively deploys his extra-personal property.

As instances of unprovoked imprisonment, cases 6, 7, and 8 may seem quite different from case 1, in which Zelda remains free to paddle off in almost any direction as far as her fatigued arms and waterlogged life-jacket will take her. Yet the constraint on movement in cases 6, 7, and 8 is only one aspect—perhaps, on reflection, only a relatively minor aspect—of the objectionable impingement suffered by Zelda in these cases. To see this, consider another case which illustrates how Adam might choose to proceed were he to attempt to avoid the charge of imprisonment.

Case 9 (Disabling Property Barriers). While Zelda sleeps or dawdles, Adam encases each of the specific extra-personal objects which Zelda otherwise would put to use in the promotion of her ends in one of his many smaller, rightfully held, impregnable plastic shells. When Zelda seeks to penetrate any of these shells, she is charged with impinging upon Adam’s property.13

In this case, what we might call “movement disablement” is avoided. Zelda is left free to wander fruitlessly among the objects she could otherwise have employed in pursuit of her purposes. Yet, as in cases 6, 7, and 8, either some knuckle-scraper or Adam totally or almost totally nullifies Zelda’s capacity to bring her powers, her talents and energies, to bear on the world of extra-personal objects. Indeed, in case 9, despite Adam’s efforts, Zelda can readily be described as imprisoned. She is imprisoned within a much larger and more complexly shaped shell which precludes, not her movement, but her purposive interaction with extra-personal material. She is not subjected to movement disablement; but she is subjected to world-interactive disablement.14 Indeed, when one shifts one’s attention away from Zelda’s immediate, frustrated desire to break out of the circle or the shell that encloses her in cases 6, 7, or 8,

to Zelda’s overall predicament in these cases, one sees that a large component of her just complaint is a complaint against world-interactive disablement—against the total or near-total nullification of her capacity to bring her powers to bear on the world of extra-personal objects. Imagine that Adam or the knuckle-scraper, while inflicting movement disablement upon Zelda, also introduce into Zelda’s shell or circle precisely the materials she would otherwise (permissibly) be exercising her talents and energies on (at precisely the cost to Zelda in effort and adaptation that she would otherwise be incurring). By minimizing the world-interactive disablement associated with the movement disablement that Adam or the knuckle-scraper would be inflicting, he or they would thereby be radically mitigating the injustice being done to Zelda.

In cases 6 through 9, Zelda is subjected to movement and/or world-interactive disablement by other persons’ placing physical barriers between Zelda and extra-personal objects she otherwise would utilize. This is what makes it perfectly natural to characterize each case as an imprisonment. In contrast, consider:

Case 10 (Disabling Denial of Use without Barriers). In our pre-property state of nature, whenever Zelda is about to utilize any of the objects which in case 9 were enclosed within Adam’s plastic, Adam activates a device which propels that object beyond Zelda’s grasp.

Here there is no physical barrier between Zelda and these objects of prospective use, and for this reason, it is perhaps no longer appropriate to describe Zelda’s treatment as imprisonment. Nevertheless, in case 10, she surely can lodge precisely the same complaint against Adam as in case 9, namely, that he totally or almost totally nullifies her world-interactive capacities.

Only one obvious alteration of case 10 is needed to arrive at a complaint directed at Adam’s disposition of his property. This alteration gives us:

Case 11 (Disabling Denial of Use of Property). In what begins as a pre-property state of nature, Adam acquires titles to each of the objects enclosed in Adam’s plastic in case 9. Whenever Zelda is about to utilize any of these objects, Adam activates his device which propels that rightfully held object beyond Zelda’s grasp.

In cases 10 and 11, Adam’s treatment of Zelda, his mode of impact upon her, is identical. The only difference is that in case 11 this impact occurs through a particular disposition of Adam’s property.

Case 1 and cases 5 through 11 are instances of total or near-total disablement. Less extreme, though still severe, instances of disablement are possible. For instance, Zelda’s powers would still be damagingly nullified if Adam used his device to propel objects beyond her grasp whenever she
attempted to utilize them with her right hand, or whenever she attempted to utilize them without wearing a blindfold. Rather than having particular capacities or faculties nullified, Zelda could, it seems, also be subjected to partial disablement by a less comprehensive operation of Adam’s device, e.g., an operation which on a random basis propelled out of her grasp 50 percent of the objects she sought to utilize. But here matters are more complicated. For it is not so clear that such a device would severely or even significantly disable Zelda. Zelda would have to adjust in various ways to the operation of this random propulsion device just as we all must adopt new strategies involving the alternative deployments of our talents and efforts in the face of changing external circumstances and challenges.

Given the plasticity of our abilities, talents, projects, and commitments, given our capacity to adjust both the means and the ends of our endeavors, subjection to this random propulsion device is not so obviously disabling. Or, if it and similar challenges are categorized as disabling, it is not so obvious that all disablement—in contrast to severe or damaging disablement—should count as contravening its subject’s self-ownership. Certainly, changes in the availability of particular extra-personal objects which are brought about by others’ disposition of their property and which merely require that, with some increased attention or effort, we redirect the application of our world-interactive powers, ought not to count as instances of unjust disablement. I have formulated the SOP in terms of “severe” nullification to avoid counting as violations of the SOP those setbacks that are temporary or subsidiary within an agent’s broader field of opportunity, or which would be temporary or subsidiary were the agent herself to be duly adaptive. I take the cases so far presented to be indicative of each agent’s being subject to a moral constraint against severely, albeit noninvasively, disabling others’ powers and a fortiori of each agent’s being subject to the constraint, codified as the SOP, against severely nullifying those world-interactive powers through the disposition of her legitimate holdings.

C. The self-ownership of world-interactive agents

As an exercise within rights-based classical-liberal theory, this essay is not the place for me to defend the adequacy of arguments which purport to ground the natural rights of self-ownership. However, it is appropriate to examine whether the conception of self-ownership which best accords with those arguments, and which, therefore, the liberal should employ, supports the inclusion of a claim against severe, albeit noninvasive, disablement. According to those arguments, the ascription to each person of rights over himself is a fundamental interpersonal principle appropriate among individuals each of whom has ultimate (agent-relative) ends of his own and each of whom rationally devotes his person and life to his respective ends. One’s compliance with others’ purposive control over themselves is the practical expression of one’s recognition of other agents as beings with lives and ends of their own. It is the practical response to others’ status as moral ends-in-themselves, which is consistent with the fact that even their most reasonable ends need not be among the goals of one’s own rational endeavors. Others’ status as ends-in-themselves requires that one abide by side-constraints in one’s treatment of them, not that their ends be incorporated into one’s own goals.

What concerns us here is a particular feature of the standard account of self-ownership. The standard account, accepted by advocates and critics alike, in no way reflects or embodies the fact that human beings do not live their lives, do not pursue their projects and ideals, within the spaces defined by their respective skins. It seems blind to the fact that as human beings, even if not as pure noumenal selves, we live our lives within and through a world of all sorts of external objects upon which we bring to bear our talents and energies. A good statement of this standard conception is provided by G. A. Cohen—himself a critic of claims of self-ownership:

[The] thought is that each person is the morally rightful owner of himself. He possesses over himself, as a matter of right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way such a slaveholder is entitled, legally speaking, to dispose over his slave. Such a slaveholder may not direct his slave to harm other people, but he is not legally obligated to place him at his disposal to the slightest degree: he owes none of his slave’s services to anyone else. So, analogously, if I am the moral owner of myself, and therefore of this right arm, then, while others are entitled [in virtue of their self-ownership] to prevent it from hitting people, no one is entitled, without my consent, to press it into their own or anybody else’s service. . . .


To say that I own myself is to say that nobody but me has the right to dispose of me or to direct my actions. I have rights to do these things (though I must not harm others in doing so; that is, I must not exercise my self-ownership in a way which violates theirs), and those rights are exclusive of anyone else’s privilege in this regard, for they are correlative to others’ duties to refrain from interfering with what, in this sense, I own.
This construal of self-ownership is entirely consistent with human beings' requiring nothing for the feasible pursuit of their values other than materials that are internal to human beings, i.e., internal to the agent himself or to some other human being. The self-owner is morally secured in his possession of his body parts, faculties, talents, and so on. Everyone else is precluded from pressing those parts, talents, etc., into their own or some third party's service. The personal endowments of each warrant protection because personal endowments are of potential use to both their natural possessors and others. The strictly internal right of each over his own person seems, then, to take no cognizance of the equal indispensability of extra-personal objects in human goal-directed action. Under this understanding of self-ownership, the rights a self-owner has over himself are merely, so to speak, the rights that a totally passive, non-world-interactive entity (a piece of chattel) would have with respect to itself, were it to have rights with respect to itself.

This understanding of self-ownership is too narrow. For each individual, more is included in the reasonable practical recognition of his status as a separate, embodied agent with rational ends of his own to be pursued in and through a world of external objects than one's abstention from trespasses into the domain delineated by that individual's skin. I submit that this practical recognition has two further components. I have argued elsewhere that one further component is according to each agent his natural right of property. This natural right of property complements the claims of self-ownership. It is a right against others to their compliance with a (justified) practice of private property (should such a practice arise) within which individuals may gain moral protection for their discretionary control over specific objects. A (justified) practice of private property articulates entitlement-conferring rules under which agents can attain rights over extra-personal objects comparable to the moral authority over themselves to which individuals are born. The second further component within the practical recognition of others as ends-in-themselves seems to be precisely the claim suggested by the cases previously surveyed, namely, the claim against damaging noninvasive annulment of one's powers.

17 Perhaps the only extra-personal "material" presupposed by such tales of self-ownership is the physical space occupied by each agent and the physical space through which one agent might move on the way to invading the moral (and physical) space occupied by another.

18 Cohen does say (in "Self-Ownership, World-Ownership, and Equality," p. 109) that the slaveholder is "entitled to dispose over" the slave; so the self-owner is "entitled to dispose over" himself. Perhaps this can be read as including within self-ownership enough to support Zelda's complaint in case 1 and cases 5 through 11. If so, my point is that there is a need to make this reading explicit and to ground it.

19 Mack, "Self-Ownership and the Right of Property" (supra note 5).

20 This right of property is not a principle of the sort feared by the hard-line critic of Lockean provisos. For it is not a claim to particular extra-personal objects or to any share of such objects; nor is it a right of joint ownership over any set of extra-personal objects.

The noninvasive confinement or isolation of Zelda is not strictly a matter of pressing her into use or disposing of her person as would be done if one were to harvest her transplantable organs or nail her to the wall as a room decoration. Nevertheless, when Zelda is confined by the knucklescrapers or by the impregnable plastic shell, she is treated in ways that would only be permissible were she to have forfeited or consensually surrendered aspects of her moral rights over her own person. It is a mark of lack of moral authority over oneself to be subject to the forms of disablement, to the forms of capacity annulment, illustrated in case 1 and cases 5 through 11.

To be a self-owner is to have moral rights over oneself as a purposive being whose faculties, talents, and energies can be brought to bear on the world in the pursuit of one's values. For this reason, the recognition that each person owes others as self-owners includes abstention from the disablement of their world-interactive faculties, talents, and energies. Acknowledgment of this component amounts to an enrichment of the concept of self-ownership so that violations of an individual's self-ownership are not limited to invasions of the physical space marked off by her outer surface. Any theory of property rights which accompanies a suitably comprehensive doctrine of self-sovereignty must recognize that dispositions of property which damagingly nullify others' world-interactive capacities are not legitimate exercises of those property rights.

It may be objected that this proposed enrichment of the concept of self-ownership commits me to an implausible general proposition about ownership, namely, that the ownership of X encompasses a claim for the owner of X to access to objects upon which X's "powers" may be directed. For instance, the ownership of a corkscrew might, on this view, encompass a claim for the owner of the corkscrew to access to wine bottles upon which the powers of the corkscrew may be directed. However, it is at least quite unclear why such a general commitment should arise. There are specific reasons for both affirming a claim against severe noninvasive disablement and for categorizing it among the claims of self-ownership. Aside from supporting intuitions deriving from cases like 1 and 5 through 11, a specific argument has been offered for including, among the fundamental claims of each individual, a claim not to suffer severe, albeit noninvasive, nullification of her world-interactive powers. That argument is that if an individual's status as a purposive being with rational ends of her own does provide a rationale for her claims against others' invasive behavior, then the fact that her pursuit of those ends necessarily is a matter of her bringing her world-interactive powers to bear on the world, also provides a rationale for her claim against the severe nullification of those powers—whether that nullification is achieved invasively or noninvasively. I have included this further claim against noninvasive confinement or isolation of Zelda is not strictly a matter of pressing her into use or disposing of her person as would be done if one were to harvest her transplantable organs or nail her to the wall as a room decoration. Nevertheless, when Zelda is confined by the knucklescrapers or by the impregnable plastic shell, she is treated in ways that would only be permissible were she to have forfeited or consensually surrendered aspects of her moral rights over her own person. It is a mark of lack of moral authority over oneself to be subject to the forms of disablement, to the forms of capacity annulment, illustrated in case 1 and cases 5 through 11.

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vasive disablement among the claims of self-ownership for a number of specific reasons. It is intuitively akin to claims against imprisonment which surely must be among the rights of self-ownership. It shares its underlying rationale with other, more standard claims of self-ownership. Its classification as a claim of self-ownership allows me sharply to contrast my strategy for delineating a plausible proviso with strategies that advance provisos as part of a theory of (extra-personal) property. And finally, of course, its classification among the claims of self-ownership allows me to employ the acronym SOP. But nothing essential hinges on categorizing the claim against severe noninvasive nullification as a claim of self-ownership. This categorization is certainly not required by the concept of ownership. Nor have I offered or committed myself to any comparable arguments for including within (or alongside) each entitlement to an extra-personal object a claim of access to that upon which the powers of that object may be directed.

III. ESCAPE FROM THE PRE-PROPERTY STATE OF NATURE

In this section, I provide indirect support for the SOP by displaying certain defects in Nozick's ambiguous advocacy of some Lockean proviso. I focus, first, on a misleading fixation within Nozick's discussion upon identifying some relatively concrete feature of the pre-property state of nature which must be preserved in all subsequent stages of the property regime if those stages are to be morally legitimate. I argue, second, that Nozick's discussion is also flawed by his weakening of his proposed proviso by attaching to it what I call a "welfare compensation" clause.

A. In search of a condition for a proviso to protect

Within a pre-property state of nature, no Lockean proviso can be violated. It is only the emergence or disposition of property which gives rise to the possibility of proviso violation. This strongly suggests that proviso violation consists in bringing about the loss of some condition C which some agent would have enjoyed had a pre-property state of nature persisted. A properly formulated proviso will require that neither the emergence nor the disposition of property deprive any agent of that condition C. There is nothing wrong with this line of thought except its tendency to search for condition C among the relatively concrete features of the pre-property state of nature and, in turn, to require the preservation of that relatively concrete feature within all subsequent property regimes. It is that feature, rather than some more abstract feature, which is taken to be a necessary condition of the justice of those regimes.

This search for a relatively concrete condition of the pre-property state of nature is encouraged by the sort of thought-experiments we engage in when thinking about provisos. In the typical cases—e.g., Adam's exclusion of Zelda from the island, or Adam's deployment of his plastic around Zelda—we can readily envision what Zelda's situation would have been in the absence of the emergence or disposition of the property under scrutiny. Zelda would have enjoyed greater access to extra-personal materials or a higher level of welfare. A duly formulated proviso should, we are led to believe, protect Zelda from the loss of that greater access or that higher level of welfare. Indeed, it should identify, for each individual, the point along the selected dimension below which that individual may not be pressed.

The search for a relatively concrete feature C which would obtain in the pre-property state of nature and which is to serve as a necessary condition for the legitimacy of economic regimes is reinforced by the idea that an appropriate proviso will be a component of the theory of justice in acquisition—especially justice in initial acquisition. This idea functions differently in Locke's and in Nozick's discussions. Locke is concerned with the preservation of "enough, and as good" in connection with the specific problem of how the fruits of nature can legitimately be appropriated from the commons without general agreement. He proceeds, quite plausibly, to argue that the initial phase of acquisition (which occurs prior to the existence of money) does preserve what was concretely enjoyed in the pre-property state of nature. For, he argues, this initial acquisition leaves enough and as good for others to use (and perhaps, according to Locke, even enough and as good for others to appropriate). For appropriators appropriate less than they otherwise would use, and this lessens the pressure on the commons and leaves more for those who are still mere users to use (and perhaps to appropriate themselves). So if condition C is one's state-of-nature level of opportunity to use the fruits of nature (or even to appropriate from nature), C is (or at least seems to be) preserved in the pre-monetary property stage. In contrast, Locke does not attempt to argue that the post-monetary regime preserves condition C and, thereby, satisfies his proviso. Rather, he maintains that when people enter this stage, this proviso is set aside by the tacit agreement (but not, he insists, a "compact") that gives rise to money and that sanctions the obvious C-violating consequences of the appearance of money.

Nozick agrees with Locke regarding the need to identify a condition C which people enjoy in the pre-property state, which may be lost to some by others' acts of initial acquisition, and the loss of which gives rise to a just complaint. Unlike Locke, however, Nozick cannot shelter later phases of the private property regime from complaints authorized by his

22 See Locke, Second Treatise, ch. 5, sections 48 and 49. Locke did not envision an increasing supply of appropriators within the pre-monetary phase leading to the eventual appropriation of the last patch of land. He did not envision Nozick's Z, whose loss of opportunity to appropriate zips back to taint the appropriation of A (see Nozick, Anarchy, State, and Utopia, p. 176).

23 Locke, Second Treatise, ch. 5, section 50.
proposed proviso. For Nozick cannot appeal to any agreement which sets that proviso aside after it fulfills its mission of vindicating the initial removal of material from the commons. After all, Nozick’s overall project is to reach (radicalized) Lockean conclusions without ever having to appeal to a social contract. Indeed, Nozick specifically attacks the view that money arises out of agreement as an inapt appeal to a visible-hand explanation.

Nozick is, therefore, in the difficult position of beginning, like Locke, fixed upon the pre-property state of nature as embodying some condition C which needs to be preserved in each phase of the property regime, while, unlike Locke, needing to provide a specification of C such that C is at least typically preserved in all subsequent phases. Perhaps because he is aware of this difficulty, Nozick opts for a weakened form of his proviso. An acceptable proviso need not require the actual preservation of condition C. Rather, it need only require that persons be compensated for their loss of C. I shall argue that classical-liberal theory is ill-served by this compensationist weakening of Lockean provisos. But I postpone discussion of the flaws of this attenuation until after an examination of the two specific candidates for C which can be extracted from Nozick’s discussion.

1. Hofhfeldian liberties. The first of these candidates is one’s being at liberty (in Wesley Hofhfeld’s sense) to use all the extra-personal objects that exist in the pre-property state of nature.24 Nozick repeatedly suggests that the morally worrisome feature of the emergence of property is that property “removes” others’ Hofhfeldian liberties:

It will be implausible to view improving an object as giving full ownership to it, if the stock of unowned objects that might be improved is limited [as, of course, it is]. For an object’s coming under one person’s ownership changes the situation of all others. Whereas previously they were at liberty (in Hofhfeld’s sense) to use the object, they now no longer are.25

Translated into a nonattenuated proviso, this candidate for C will yield the requirement that persons must not so dispose of their property as to render others benefic of Hofhfeldian liberties which they would have enjoyed in a pre-property state of nature. Such a proviso will be violated by any departure from the pre-property state. Or perhaps the translation of this condition will less stringently require that no one undergo a net loss in her array of Hofhfeldian liberties to use extra-personal material. No matter. This less stringent Hofhfeldian proviso will be violated in any system in which most extra-personal material is other people’s property. However, what is of interest here is not the all-too-easy violation of these Hofhfeldian provisos. Rather, it is the idea that the morally significant condition which obtains in the pre-property state of nature and is distinctively endangered by the emergence of private property is Hofhfeldian liberty.

Nozick’s view depends upon two connected propositions. The first is that there is something morally problematic in “removing” another’s Hofhfeldian liberty. The second is that rights in extra-personal objects distinctively bear this morally problematic trait.26 The truth of the matter, however, is that all rights “remove” others’ Hofhfeldian liberties and that no such removal in and of itself is the least bit morally problematic. To see this, consider the next several cases:

Case 12 (Removal of Archery Liberty). Adam crosses Zelda’s (unowned) archery practice field in hot pursuit of a rabbit. Previously, she was morally at liberty to fire away at will. Now, through Adam’s unilateral action, she is obligated not to fire during the period in which Adam is between her and the target.

Case 13 (Removal of Apple-Use Liberty). Eve picks an unowned apple and clutches it firmly to her breast. Through her unilateral action, for the period during which she clutches the apple, Eve deprives Zelda of the Hofhfeldian liberty of grasping the apple and using it for further archery practice.

Case 14 (Removal of Apple-Use Liberty: Property). Eve polishes a previously unowned apple, thereby rendering it her property. Through her

24 Or at least liberty to use all extra-personal objects except those which are currently being used by others (where your commencing to use those objects would interfere with their persons). Nozick does not include this qualification, because he does not recognize that nonproperty rights also “remove” Hofhfeldian liberties. For Hofhfeld’s treatment of liberty, see Wesley Hofhfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning,” Yale Law Review, vol. 23 (1913).

25 Nozick, Anarchy, State, and Utopia, p. 175. Nozick immediately suggests attenuation with the next sentence: “This change in the situation of others (by removing their liberty to act on a previously unowned object) need not worsen their situation.”

26 The theme of property rights being (distinctively) suspect because their appearance deprives people of their moral liberties is prominent in Allan Gibbard’s “Natural Property Rights,” in Robert Stewart, ed., Readings in Social and Political Philosophy (Oxford: Oxford University Press, 1986), pp. 237–38:

Within limits . . . a person has a right to consume things, and to transform one thing into another. Such acts change the position of others by changing the world physically, and thereby denying other people opportunities they would otherwise have. . . . I do not, though, invariably need another person’s consent to change the physical world in a way that reduces his opportunities. I do need his consent to bring him under new moral constraints: to make it cease to be morally permissible for him to do certain things. . . . A distinction must be made between depriving someone of opportunities and depriving him of rights. . . . What I am supposing is that it is morally permissible, in certain cases, to deprive someone else of an opportunity without his consent, but that it is impossible to deprive someone of a right unless he himself gives up or loses that right through a voluntary act. Surely, though, the assertion in the last sentence from Gibbard is much more plausible with respect to claim-rights than with respect to liberty-rights.
unilateral action, Eve permanently removes Zelda’s liberty of grasping the apple and using it for practice (absent Eve’s subsequent consent to that usage).

In case 12, Adam removes Zelda’s Hohfeldian liberty to fire away. Yet, as long as we take seriously the stipulation that the field was unowned, there is no intimation of any moral defect in Adam’s action. In case 13, Eve temporarily removes Zelda’s liberty to use an extra-personal object through Eve’s own use of it, and in case 14, Eve permanently removes this liberty (absent Eve’s subsequent consent) through her establishment of a property right. Yet in none of these cases does the removal of Zelda’s Hohfeldian liberty as such even begin to raise any moral concern. Zelda’s only complaint would have to be that she inhabits a world which, by hypothesis, is governed by certain moral proscriptions such that changing factual circumstances can result in her being subjected to (or being relieved of) particular negative duties. That she is not in a state of boundless Hobbesian liberty, and that therefore she may sometimes find herself required not to do what she has some inclination to do, is hardly grounds for legitimate grievance, or for any grievance at all. It is, in any case, a strange complaint against any proposed right, property or otherwise, that were such a right to exist someone somewhere would find herself subject to some moral constraint.

Since the removal of a Hohfeldian liberty in and of itself is not a matter of normative concern, there is no reason for political theory to incorporate a principle which protects people against the negation of their Hohfeldian liberties. Moreover, even if it were true that political theory ought to immunize people against the removal of their Hohfeldian liberties, there is no reason to think that this immunization would distinctively constrain property rights or their legitimate exercise.

2. Opportunities for use. Nozick’s other candidate for C is one’s enjoying the degree of opportunity to use extra-personal objects that one would have enjoyed in the pre-property state of nature. This candidate emerges from Nozick’s discussion of a more- and a less-stringent requirement upon acceptable initial acquisition: what we may call the more-demanding “appropriation proviso” and the less-demanding “use proviso.” The appropriation proviso (in its nonattenuated form) requires that persons not be subjected to losses of the opportunity to engage in original appropriation. The use proviso (in its nonattenuated form) merely requires that persons not be subjected to losses of the opportunity to use.

Nozick rejects the more-demanding appropriation proviso, and rightly so. For the appropriation proviso ascribes to agents rights that are essentially incomparable: it ascribes to all agents claim-rights to engage in original appropriation; yet the exercise of those very rights by some agents must infringe upon the like rights of others. Furthermore, invoking the appropriation proviso misidentifies the wrong done to Zelda in cases such as 1 (Adam’s Island) and 11 (Disabling Denial of Use of Property). Zelda has no natural claim to be a property holder.27 Her being precluded from engaging in original appropriation does not in and of itself give rise to any legitimate complaint. This is clear when she is precluded from original acquisition and yet there are many property-holders competing for her services as an employee and her patronage as a lessee or purchaser of capital and consumption goods. On the other hand, invoking the use proviso, i.e., citing the dramatic constriction of Zelda’s opportunity to use, does provide a relatively plausible explanation of her complaint in cases such as 1 and 11.

The crucial fact which gives substance to Nozick’s distinction between the appropriation proviso and the use proviso is that others’ ownership need not diminish Zelda’s opportunity to use. Sometimes “though person Z can no longer appropriate, there may remain some for him to use as before.”28 (Or, to better identify the crucial fact, others’ ownership need not nullify Z’s world-interactive powers.) Indeed, compared to the condition in which each is at liberty to use whatever extra-personal material is not currently within the grasp or under the feet of another, the emergence of private ownership across society greatly increases what is available for use (or, to put it better, greatly enhances and liberates persons’ world-interactive powers).

Let us pause here for some reverential remarks about the enrichment of economic life associated with the emergence and articulation of private property rights. By internalizing costs, the delineation and enforcement of private property rights discourages “socially” inefficient economic activities; it counteracts tragedy-of-the-commons processes. By internalizing benefits, property rights encourage the search for, the discovery of, and the performance of “socially” efficient activities. Private property rights

27 Her natural right of property is a claim to others’ compliance with the rules of a practice under which each may acquire property, by purchase or gift if not by original appropriation.

28 Nozick, Anarchy, State, and Utopia, p. 176. Once again, Nozick’s language is highly ambiguous. There is some basis in Nozick’s wording for thinking that he is not intending to distinguish between the loss of opportunity to appropriate and the loss of opportunity to use. Rather, he may be intending to distinguish between the welfare loss associated with Z’s loss of the opportunity to use and appropriate, and the welfare loss associated with his loss of the opportunity to use. The more stringent proviso would guarantee Z’s enjoyment of the former, larger package of welfare, while the less stringent proviso (which Nozick would be endorsing) would protect Z’s enjoyment of the latter, smaller package of welfare. On this understanding, what underlies Nozick’s proviso is the claim of each individual to the level of welfare he would have enjoyed had he lived in a pre-property state of nature (holding constant that individual’s degree of effort, ingenuity, and adaptation). On the other hand, Nozick always speaks of different ways a person’s situation may be worsened, not of different degrees of worsening (along the welfare dimension). Furthermore, Nozick’s constant talk of “compensation” contravenes the welfareist interpretation. For maintaining Z at, or returning him to, a certain level of welfare compensates him only if that welfare replaces something else, e.g., opportunities to use, to which he had a claim.
greatly increase people’s incentives to engage in cost-effective conservation, exploration, extraction, invention, entrepreneurial alertness, and the development of personal and extra-personal resources suitable for all these activities. The security of property (and contractual) rights, combined with the increasing diversity of economic activities and products (and the very idea and expectation of further increases), further encourages economic specialization and innovation and the exploitation of comparative advantages and of potential gains from trade. The very market prices made possible by secure private ownership and the enforcement of contracts, provide economic agents with otherwise unavailable information about the costs and benefits of diverse economic projects. Well-defined and secure property rights lead to a vast (but generally cost-effective) augmentation of what is too often viewed as fixed and given natural resources—increases achieved through the further location of previously recognized resources and through the new recognition of materials as resources for either previously known or newly created purposes. These rights engender a vast (but generally cost-effective) increase in human-made items, the value and usefulness of which tend, on the whole, more and more to exceed the value and usefulness of the natural materials employed in their production.  

I have said that citing the dramatic constriction of Zelda’s opportunity to use provides a relatively plausible explanation of her complaint in cases such as 1 and 11. But is a proviso that insists upon the preservation of Zelda’s pre-property state-of-nature level of opportunity to use extra-personal materials—if not natural materials, then some mix of natural and human-made objects—plausible enough? The use proviso gains credibility because it reminds us of a number of important ways in which the emergence of property rights— and hence the contraction of people’s Hohfeldian liberties to use and, perhaps, their opportunities for initial acquisition—enhances what is available for people’s purposive use. Focusing on the contrast between the immediate pre-property phase and the initial-acquisition phase, we are reminded that privatization forestalls tragedies of the commons. It prevents the massive erosion of materials available for use. In addition, Adam’s ownership of some material not only stabilizes his possession and use of it, but also stabilizes its possession and use by Zelda when she leases that material from Adam or is employed to labor upon it. (Adam’s right is what frees lessee or employee Zelda from the need continuously to grasp or occupy the material in order to ward off others’ legitimate uses.) And even in the transition from the pre-property phase to the initial-acquisition phase, there is likely to be a

significant increase in the number and kind of objects useful for human purposes.

Nevertheless, two main problems plague the use proviso. The first concerns the measure of equivalence between what Zelda has the opportunity to use in the pre-property state of nature and what she has the opportunity to use in later phases of the property regime. The sorts of things available for use in advanced stages of market economies are likely to be quite different from the things that were (or would be) available in some pre-property state of nature. How many microchips equal a hectare of rice paddy? How many cargo containers equal a fishing spear? Clearly there is no appropriate physical measure of comparison. Numbers of pounds or cubic feet of available material certainly won’t do. Any tendency we have to think that we can say how much would be as much (as the “enough” enjoyed in the pre-property state) derives from thinking that for any property regime being examined, there is an intellectually accessible pre-property state in which more or less of the same types of things are available for use. It derives from the mistaken idea (fostered by our standard examples and the focus on vindicating initial acquisition) that for any regime being examined, there is an identifiable pre-property state which allows a comparison like the comparison we make between Zelda’s exclusion and her nonexclusion from Adam’s Island.

Nor can one meaningfully apply an economic measure of comparison. Within the pre-property state of nature, materials available for use have no economic (i.e., market) value. So their value can hardly be compared with the value of other types of things now. Moreover, the economic (i.e., market) value now of the types of things available for use then is not an appropriate gauge of their usefulness then. Alternatively, if one measures opportunity for use according to welfare afforded by what is available, one will have effectively abandoned the use proviso for some species of welfare proviso (see below).

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The second problem concerns the terms under which access exists. Consider a variant on case 1:

*Case 15 (Adam's Island: Illicit Threat).* Adam threatens to refuse Zelda permission to come ashore (on his rightfully held island) unless she signs the slave contract he has quickly drawn up. Zelda signs and, in return, Adam provides her with lots to use. (This contract "released" for Zelda’s use lots of material which otherwise Adam would have found it needful to use himself.)

The counterpart within a more developed property regime would be Zelda’s having access to impressively large, expensive, and productive capital goods, but only by way of an employment contract which she signs in response to an effective threat (arising from others’ control of their property) of her having no opportunity to bring her powers to bear in pursuit of her ends. Even if we had an appropriate measure for comparing how much material was (or would have been) available to Zelda with how much is available to her in the present, and even if application of that measure yielded the conclusion that Zelda now has access to at least “as much,” we could not rule out a just complaint. For she will have a just complaint as long as she has been effectively threatened with denial of whatever a reasonable proviso requires.

**B. The weakness of attenuated provisos**

As noted, Nozick does not maintain that there is some condition $C$ which simply must be preserved. Rather, he retreats to the view that it is enough that anyone subjected to the loss of $C$ receive sufficient “compensation” in the form of “the benefits of civilization” to counterbalance the loss that triggers moral concern. Here is Nozick’s argument for provisos taking this attenuated form:

If I appropriate a grain of sand from Coney Island, no one else may now do as they will with that grain of sand. But there are plenty of other grains of sand left for them to do the same with. Or if not grains of sand, then other things. Alternatively, the things I do with the grain of sand I appropriate might improve the position of others, counterbalancing their loss of the liberty to use that grain. The crucial point is whether appropriation of an unowned object worsens the situation of others.

The argument seems to be: A reasonable proviso will allow a person to be precluded from use of an object of a given type if another object of that type, or even of some other types, is made available for that person’s use. Therefore, a reasonable proviso will (“alternatively”) allow a person to be precluded from use of an object of a given type (or all objects of all types?) if in some way that person’s position is subject to counterbalancing improvement. This is not a very compelling argument, and there are further problems for Nozick’s compensationist weakening of Lockean provisos.

Adoption of the compensation clause implies that Zelda has no legitimate complaint in paternalistic variants of cases 1, 8, 9, and 11. In these variants, Zelda suffers severe nullification of her world-interactive powers by way of Adam’s disposal of his property. But Adam arranges for Zelda to suffer no net loss in her welfare (as he so arranges things in case 5, Paternalist Caging). Under the compensationist construal, whatever renders Adam’s treatment of Zelda suspect—be it the negation of her Hohfeldian liberties, the constriction of her opportunities to use, or the noninvasive annulment of her world-interactive powers—that treatment is morally whitewashed by Zelda’s suffering no net loss of utility or welfare. The adoption of the compensation clause reduces Zelda’s right against the treatment she receives in case 1 and cases 5 through 11 to the claim that this treatment must not, on net, diminish her utility or welfare. She has, then, no complaint in justice against this treatment, but merely a complaint against remaining uncompensated for these ministrations.

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33 *Ibid.*, p. 175. In Locke, those who tacitly agree on money do so because they each anticipate net benefits from the enhanced incentives that money creates even while they anticipate the loss of condition $C$. Nozick’s compensationist attenuation of his proviso gives him everything that Locke gets by positing a general agreement on money (everything and more: for under Nozick’s weakened proviso, no phase of the property regime must actually preserve $C$). The question is, if we recognize that Locke’s general agreement on money *sets aside* his proviso, why shouldn’t we also view Nozick’s compensationist turn as actually an abandonment of proviso advocacy? Nozick’s answer would rely upon his interpreting Locke’s proviso as essentially insisting upon non-worsening, and hence as persisting through the general agreement on money. “Locke’s proviso that there be ‘enough and as good left in common for others’ (sect. 27) is meant to ensure that the situation of others is not worsened” (*Ibid.*, p. 175).

34 For the most part, Nozick seems to think of compensation in terms of utility or welfare, but sometimes he seems to have wealth in mind. This is suggested by his remark that it would be relevant to fixing the correct baseline to know how much current wealth is due to the value of “untransformed raw materials” (see *ibid.*, p. 177). The problems confronting the necessary trans-temporal comparisons of wealth are obvious.

35 Of course, if non-nullification of Zelda’s powers is essential to her welfare, she cannot be compensated for the treatment inflicted in these cases. But even then, the wrongfulness of the treatment will not consist in its reducing her welfare. That the treatment is wrongful can be recognized independently of the thesis that non-nullification is essential to welfare.
Attenuated provisos simply do not take seriously the forms of (mal)treatment which they themselves take to trigger moral concern.

The idea that, within a well-formulated proviso, "[t]he crucial point is whether [the noninvasive action under scrutiny] worsens the situation of others,"\textsuperscript{36} points all too directly to a "welfare proviso." This would be a proviso according to which any noninvasive action is acceptable if and only if it yields as much welfare for its recipient as would have been enjoyed by her in the pre-property state. Aside from vindicating the actions taken within the paternalist variants of case 1 and cases 5 through 11, the welfare proviso would also have the unfortunate consequence of endorsing Zelda's complaint in cases like 4 (Unrequited Love).\textsuperscript{37} Moreover, adoption of the compensation clause deprives the liberal's advocacy of a Lockean proviso of a significant part of its rhetorical force. Part of the purpose of delineating and endorsing a proviso is to respond to what may be called a Marxist concern about capitalist accumulation. This concern is that capitalist accumulation diminishes some (almost all!) persons' access to extra-personal materials in a way which thwarts their defining and exercising their world-interactive powers. This apprehension about the fate of persons as potentially productive, world-interactive agents is not addressed by a proviso which will allow severe diminutions of persons' world-interactive opportunities as long as the subject suffers no net loss of welfare.

IV. THE ENABLING TRANSFORMATION OF THE MARKET ORDER

The pre-property state of nature offers a particular form of hospitality to human world-interactive powers. It offers unowned objects for use—at least insofar as they are not currently being used by other agents. There is no reason to privilege (as they say) this form of hospitality, this particular mode of receptivity to world-interactive powers. There is no good reason to think that other sorts of environments will be less receptive to people's purposive exercise of their capacities and energies. We are disposed to think that there is something special about the availability of unowned things only by (i) the habitual focus on complaints that arise subsequent to initial acquisitions, (ii) the mistaken idea that the moral problem concerns departures from the pre-property state, and (iii) forgetfulness about the extent to which others' use of things even (or even especially) in the pre-property state of nature diminishes both an agent's Hobfeldian liberties and her opportunities for use.

The market order constitutes an alternative environment which is hospitable in its own ways to people's efforts to make their way in the extra-personal world. Within the market order, individuals proceed, for the most part, not by attaining the temporary use of unowned and currently unused things, but rather by entering into a variety of forms of complex economic relationships with others, some of whom are owners of extra-personal powers of production. There are, of course, many different sorts of wage and salaried employment, many different types and degrees of self-employment based on leased means of production or means purchased with borrowed funds, and many forms of endeavor based, in part at least, on acquisitions through exchange. The multiplicity of different modes of employment is matched by a vast increase in the range of powers for which modes of employment exist. Just as the property regime transforms noisome natural materials into valued extra-personal resources, it transforms idiosyncratic aptitudes into valued abilities. The vast diversity of ways in which people, with their capacities for adaptation, have available to them for making their way in highly developed and extended market orders defies manageable enumeration.

In effect, in the transition to an advanced private property regime, the employment market—the union of interconnecting domains of occupational opportunity—largely assumes the opportunity-generating role previously played by unowned and unused natural materials. There is a transfiguration of the environment's form of receptivity to people's purposive deployment of their powers. If one accepts the view that economic life is enriched (at least to some degree) by the transition to private property, it is plausible to view this transition as an enabling transformation, i.e., a transformation which in each (or most) of its successive phases enhances and liberates people's world-interactive powers. As long as we make no pretense of precision, we can compare the receptivity of pre-property states of nature and early and later phases of private property regimes. At least given the view that private property enriches economic life, the judgment from this comparison is that the development of liberal market orders presents people with at least "as much" (in transfigured form) for their "use" as does the pre-property state of nature. The transition is enabling, not disabling.

I have conspicuously avoided any more-particularized judgments about whether, e.g., the transition from some specific pre-property state to some specific market circumstances enriches rather than nullifies this or that individual's world-interactive powers. For the point here is not that for each individual Z, there is an identifiable pre-property state which defines a baseline level of receptivity to her world-interactive powers such that that baseline is surpassed in every (or almost every) private property environment in which she will find herself. Such particularized judgments will be deeply flawed by ambiguities about, e.g., which pre-property state should be chosen for the baseline, and how that state can provide a baseline for Z's current claims, even though Z would never have existed had the pre-property state continued. Rather, the point is that the enabling transformation wrought by the development of a liberal...
market order (should such an order ever develop) establishes a presumption that, for any individual participating in that order, the constraint against her (noninvasive) disablement through others’ deployments of their legitimate holdings is satisfied.

This is a defeasible presumption: it can be defeated if a specific case is made that an individual has suffered (severe) noninvasive disablement. In the absence of such a case, however, we can assume that the individual does not have a just complaint under the SOP, and we can do so without having to engage in the pretense of comparing her actual situation to some elusive, counterfactual pre-property situation. In effect, my claim is that a well-defined liberal market order, if it is operating as those friendly to such regimes expect, is a moral analogue to the pre-property state of nature. Of course, the market order may not always operate as fans of such regimes like to expect. When there are significant divergences from the anticipated enablement and liberation of human powers, the SOP may be violated.

What sorts of specific circumstances could support the judgment that the SOP is violated? With respect to any given agent, the presumption is that she has before her an array of occupational opportunities akin to what someone with her endowment of powers would enjoy if the market order, especially as it affects her occupational possibilities, were operating as friends of market regimes expect. Thus, the presumption can be defeated by showing that, especially as it affects her occupational opportunities, the market order is not operating in accord with those expectations. Central to those expectations is the absence of natural monopoly and cartelization. Thus, when natural monopoly or cartelization displaces the expected operation of the market, especially with respect to occupational opportunities, the SOP can be violated. Although no invasive acts are performed and no property or contractual rights are violated, some agent may have a just complaint under the SOP. From this perspective, the source of the problem in Adam’s Island is not that Adam owns all the extra-personal material and denies (or threatens to deny) Zelda all use of it, but rather that he has a natural monopoly on the supply of employment. Similar situations may arise within the physical boundaries of a market order when geographically isolated employment “markets” exist with monopolistic employers.38

Alternatively, individuals may not enjoy the bountiful occupational opportunities anticipated by market advocates if there is an effective cartel either unconditionally refusing to employ them or effectively threatening them with exclusion. How effective and how encompassing such a cartel (or coordinated set of cartels) would have to be for the SOP to be violated is unclear. I take it that a decision of the stockholders of all the

Fortune 500 companies never to hire a black person as CEO, or never to offer a prospective black CEO more than $50,000 per year, would not in and of itself violate the SOP. For this in itself would not diminish by much the overall complex of occupational possibilities available in the market to any given black individual. However, if all property-holders were to carry through on a decision never to hire any black person for a nonagricultural job, and never to enter into any leasing arrangements or sales which would enable any black person to engage in nonagricultural endeavors, the SOP would clearly be violated. Similarly, the SOP would be violated if these owners were to carry through on a decision never to enter economic relations with a black person that would enable her to engage in nonagricultural activities except on terms that would leave her a net income manifestly less than would accrue to her in the absence of this cartel. For such a situation manifestly contravenes the market advocates’ expectations about the enabling properties of the market order—expectations which have been invoked to put in place the presumption that, for any participant within the liberal market order, the SOP is satisfied.39

For the SOP to be satisfied with respect to Zelda, she must have before her an array of occupational opportunities that is not strikingly more narrow than what the fan of market processes would predict for someone of Zelda’s talents, energies, and adaptability. The “have before her” is important. In order that she not face an effective threat of (noninvasive) disablement, opportunities must be there “for the taking” in the sense that Zelda has assurance that offers to enter into economic relationships will be tendered in the marketplace upon her exercise of the degree of effort and adaptation expected of her by “the market.” The parallel is with materials being there for the taking (or, more precisely, for the using) in the pre-property state of nature upon Zelda’s exercise of the degree of effort and adaptation expected of her by “nature.” If opportunities (in the market case) or extra-personal materials (in the pre-property case) are not

38 Is the SOP violated if someone prepares herself for an academic career and, because of an oversupply of aspiring academicians, she cannot find a job? Certainly not. This is merely an occasion for some efficacious adaptation. It is, incidentally, far easier to identify violations of the SOP (or, more precisely, of the anti-disability provision) that are the result of government’s intrusion into the market. Prime examples would be minimum-wage laws (effectively constraining the number of jobs employers can offer to presently unskilled individuals) and licensing laws (effectively limiting the number of individuals who can enter various occupations). If our aspiring academic is one of many who cannot find jobs despite appropriate adaptation, and if that is the result of government policies, then the anti-disability constraint is violated—not by property-holders, but by government officials.

40 This point about the need for standing offers brings to mind Nozick’s assertion that the existence of public standing offers of employment would undercut any private employee’s charge of exploitation (Nozick, Anarchy, State, and Utopia, pp. 228–23). Lots of interesting questions arise. One is: Why do the standing offers have to be public? Another is: To what extent is the present SOP doctrine equivalent to, or better recast as, a (classical-liberal) theory of the conditions under which exploitation occurs?

38 Individuals who have been nonexploitively recruited for employment in such geographically isolated locales are a different story.
in this sense there for the taking or using, then Zelda is effectively threatened with the violation of the SOP and this itself violates the SOP. But it is crucial to see that Zelda can have this assurance about the availability of occupational offers without her having Hohfeldian liberties to seize those offers. She can know that her efforts and talents will "command" certain offers in the marketplace without her having Hohfeldian liberties to institute those economic relationships unilaterally. The private property regime does not offer Zelda an occupational counterpart to the pre-property Hohfeldian liberty that she (or, if not she, someone) would have enjoyed in a pre-property state of nature to use the extra-personal materials not currently being used by others. But this absence of Hohfeldian liberties unilaterally to procure particular economic relationships is no more morally problematic than the absence, due to the emergence of property, of Hohfeldian liberties unilaterally to use particular extra-personal objects. What matters in both sorts of cases is whether the overall level of receptivity in the economic environment to the agent's exercise of her world-interactive powers is damagingly diminished. Among the initial five cases, Adam wrongs Zelda in case 1 (Adam's Island) and case 5 (Paternalist Caging) because, even though he proceeds noninvasively, he severely diminishes the receptivity of Zelda's extra-personal environment to her exercise of her world-interactive powers. This is also the wrong that Adam does to Zelda in cases 8, 9, 10, and 11. In contrast, in case 2 (Adam's Unreachable Island), case 3 (Adam's Made Island), and case 4 (Unrequited Love), Adam does not subject Zelda to this form of treatment, and that is why, in these cases, she does not have a complaint in justice against him.

V. Deconstructing a Baseline Objection

Advocates of Lockean provisos are often accused of incorporating too low a baseline into their favorite proviso. In the case of the present proviso, that accusation would naturally be expressed in the rhetorical questions: Why should showing that Zelda gets to participate (perhaps as a member of the proletariat) in a nicely functioning market order justify that regime to Zelda? Why should a demonstration that Zelda gets this participation, and thus can be presumed to enjoy an acceptable level of hospitality for her world-interactive powers, legitimate the present regime? I want to challenge the rhetorical force of such questions by indicating briefly how these questions arise from a misidentification of the role of a satisfactory proviso. This misidentification construes a proviso as a statement of the necessary and sufficient conditions for persons' possessing valid entitlements to their extra-personal holdings.

Nozick fosters this misunderstanding by construing his proviso as a clause attached to the principles of just acquisition. From this it follows that to violate the proviso is to fail fully to carry out entitlement-conferring procedures. Thus, abiding by the proviso is a necessary condition of having valid entitlements to the relevant objects. For Nozick, it is also necessary that the procedures specified in the main clauses of the principles be carried out. However, skeptics about historical-entitlement principles will naturally see an attached proviso clause as the only plausible element in this schematic for valid entitlement. For the skeptic, if anything expresses the basis for property rights, it must be that proviso clause. Historical-entitlement principles themselves simply cannot do the trick. Thus, e.g., G. A. Cohen congratulates Nozick on his (supposed) concentration on the proviso clause:

For objection 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 harmless, ... then it will be difficult to criticize it, regardless of how it was effected, and even if no labor was expended in the course of it.... So I agree with Nozick that "the crucial point is whether an appropriation of an unowned object worsens the situation of others."41

By rejecting any role for historical-entitlement principles, critics such as Cohen shift the entire burden of justification to the proviso. But, the argument proceeds, if satisfaction of the proviso clause is to justify to Zelda the property rights of Adam (and Betty and Carl) and the obligations which those rights impose on Zelda, surely it is not enough that the recognition of these rights is merely harmless to Zelda. Or it is not enough that the recognition is harmless as measured against how well off Zelda was (would have been) in the pre-property state. The argument concludes that, unless the proviso demands more than mere harmlessness, or demands harmlessness relative to some higher baseline, the proviso will be "too lax."42

On the contrary, though, it is a mistake to think of any proposed proviso, especially the SOP, as stating a sufficient or even necessary condition of legitimacy in holdings. I have all along been construing a properly formulated proviso as a constraint on how individuals may ( singly or jointly) dispose of their legitimate holdings. I have argued that the claims

41 Cohen, "Self-Ownership, World-Ownership, and Equality," pp. 122-23. In footnote 21 on p. 123, Cohen acknowledges that Nozick takes the proviso to be "an additional bit of complexity" within the historical-entitlement theory. Yet Cohen insists that "the condition on appropriation...is Nozick's theory of appropriation, at least insofar as he has one."42 Ibid., p. 125. From this point the argument can proceed in diverse ways. Perhaps no sufficiently stringent proviso will be satisfactory for all persons. This would reveal the inappropriateness of the "Lockean test of economic systems" (see ibid., p. 134). Or perhaps the sufficiently stringent proviso incorporates a baseline defined by some end-state principles of distributive justice (see Arthur, "Resource Acquisition and Harm") (supra note 8). Then (as the hard-liner warned) regimes which the classical liberal will want to endorse will run afoul of the proviso.
of self-ownership include claims against noninvasive nullification of one's world-interactive powers (the anti-disablement constraint) and that a properly formulated proviso (the SOP) represents the application of this constraint to people's deployment of their property. This construal allows a sharp separation of questions about the legitimacy of a given holding from questions about whether the disposition of that holding violates the chosen proviso. The questions are distinct in the same way that questions about Adam's ownership of a given knife and questions about the moral acceptability of his plunging that knife into Zelda's chest are distinct.

The very project of formulating a proviso, i.e., a statement of constraints governing the noninvasive deployment of valid property, presupposes a distinct liberal theory of property rights. It is precisely because there is a presumption of an independent basis for identifying just holdings that the statement of these constraints is described as a proviso. One demands too much of a proviso—one seeks too demanding a proviso—if one seeks a proviso such that the conditions which satisfy it also ground the rightful possession of the holdings in question. A liberal theory of property should articulate a consistent, comprehensive, and practically applicable set of entitlement-conferring procedures and should account for the entitlement-conferring power of those procedures. Obviously, when produced, any such property doctrine is fair game for philosophical attack. However, one may not, absent an independent argument to show that the burden of legitimating holdings must be shifted away from historical-entitlement principles, demand that the liberal's proviso do the work which the liberal assigns to those entitlement principles, and then reject the liberal's proviso because it fails to accomplish that task.

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43 The anti-disablement constraint, of which the SOP is a special case, is relatively easily satisfied. It could well be satisfied, for all or almost all individuals, within certain well-functioning, quasi-capitalist social democracies. This itself should make it clear that, for the classical liberal, the SOP is not a statement of a necessary and sufficient condition for justice in holdings.