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Left-Libertarianism: A Review Essay

I. Introduction

Peter Vallentyne and Hillel Steiner's two-volume collection of historical and contemporary works on left-libertarianism formally marks the emergence over the past two decades of a theory of distributive justice that seeks to harness the premises of the libertarian right to the political agenda of the egalitarian left. Its proponents and sympathetic fellow travelers include (in addition to Vallentyne and Steiner) Philippe Van Parijs, Allan Gibbard, Michael Otsuka, Baruch Brody, and James Grunebaum, among others.

Vallentyne and Steiner draw together a wealth of interesting material, intelligently situated in the excellent introductory essays and summaries provided by the editors. The first volume, *The Origins of Left-Libertarianism*, contains writings from a number of historical figures whom Vallentyne and Steiner correctly identify as intellectual forebears. In this group are John Locke, early agrarian radicals Thomas Paine and William Ogilvie, liberal socialists of the mid-nineteenth century including Hippolyte Colins, Leon Walras and Francois Huet, and left-liberal radical land reformers including J. S. Mill, (the early) Herbert Spencer, and, most famously, Henry George. The volume brings to the fore a long

This article considers *The Origins of Left-Libertarianism: An Anthology of Historical Writings* and *Left-Libertarianism and its Critics: The Contemporary Debate* both edited by Peter Vallentyne and Hillel Steiner (New York: Palgrave, 2000), hereinafter V&S or V&SII. Earlier versions were presented at faculty workshops at Boston University, University of Michigan, Stanford University and New York University law schools. I am grateful to participants in those workshops, as well as to Elizabeth Anderson, Joseph Bankman, Hugh Baxter, Thomas Grey, Don Herzog, Mark Kelman, Gary Lawson, Debra Satz, Bill Simon and the Editors of *Philosophy & Public Affairs* for their very helpful comments.

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and fascinating tradition of what one might term left Lockeanism—a defense of a limited form of capitalism, which entitles people to keep that portion of the value of their product added by their own labor, but no more.

The second volume, *Left-Libertarianism and Its Critics*, collects a number of contemporary writings by left-libertarians, sympathizers, and critics. Many of these pieces are already well known in political philosophy circles. All are of interest in their own right, and take on an added interest in being presented here as different faces of a growing contemporary movement to reconceive distributive justice along left Lockean lines.

At the risk of obscuring important differences between proponents, the basic commitments of left-libertarianism can be stated fairly simply. Its proponents have staked out a middle ground between the two dominant strains of contemporary political philosophy: the conventional libertarianism of those such as Robert Nozick on the right, and the egalitarianism of those such as Rawls, Dworkin, and Sen on the left. Both the right and the left, in this oversimplified political topography, refuse to distinguish sharply in their distributive schemes between internal endowments (for which I shall use "talents" as a placeholder) and external resources. The libertarian right permits individuals to assert strong ownership rights over both; the egalitarian left permits individuals to assert strong ownership rights over neither. Left-libertarians have, in effect, split the difference between the two. They side with the libertarian right in favor of a strong ("universal") right of self-ownership. Like traditional (Lockean) libertarians on the right, they take self-ownership to mean, among other things, that individuals own the products of their labor, and (at least at first cut) by extension own the differential incomes those products can command. But they side with the egalitarian left in holding that individuals have no right to a disproportionate share of the external resources of the world—a view (borrowing further from the right) that they house in Locke's famous proviso that each may appropriate only so much as leaves others with "enough, and as good" a share.[1] That middle way represents, for left-libertarians, the "road not taken" by libertarianism when it veered off into radical individualism in

1. John Locke, *The Second Treatise of Government*, secs. 27, 33, in *Locke: Two Treatises of Government*, ed. Peter Laslett (Cambridge University Press, 1967).

the late nineteenth century, led (in an abrupt about-face) by Spencer himself.[2]

This marriage of self-ownership of one's talents with an egalitarian sharing rule for the external resources necessary to exploit them has led many left-libertarians to quite egalitarian outcomes. Exactly how egalitarian varies dramatically, depending on precisely what is included in "external resources" subject to an egalitarian sharing rule; how much of the value of those external resources is subject to redistribution; and in what fashion that value is to be redistributed. On the narrowest view—basically a Georgian land tax, with compensation paid to existing landowners and the net tax revenues distributed equally among all fellow citizens—left-libertarianism probably implies little change from the existing distribution of resources in the United States and many other developed countries. On the broadest view, it implies a distributive scheme at least as egalitarian as (say) Rawls's, and, for those endorsing a global obligation to share equally in external resources, quite possibly more so.

Notwithstanding (or perhaps because of) the egalitarian conclusions to which they have been led, left-libertarians have taken great pains to stress that that outcome does not reflect any attachment to broad-based egalitarianism per se, but simply follows from their libertarian commitments as "a matter of contingent fact."[3] Thus we have a program for distributive justice that ostentaciously declares itself to be, in Baruch Brody's words, "redistribution without egalitarianism" (or more precisely, equality without egalitarianism).[4]

It is hardly surprising that the redistributive proposals that have surfaced in the current political climate are ones that self-consciously fly under a libertarian banner. The last significant strain of left Lockeanism in British and American political thought arose during a period (the 1880s through the 1930s) in which economic laissez faire enjoyed wide-

2. Steiner, "Original Rights and Just Redistribution," in V&S(II), p. 110. For an account of Spencer's conversion from left-libertarianism to radical individualism, see Michael W. Taylor, *Men Versus the State: Herbert Spencer and Late Victorian Individualism*, pp. 246–52 (New York: Oxford University Press, 1992); David Wiltshire, *The Social and Political Thought of Herbert Spencer*, pp. 119–31 (New York: Oxford University Press, 1978).

3. Michael Otsuka, "Self-Ownership and Equality: A Lockean Reconciliation," in V&SII, p. 150.

4. Baruch Brody, "Redistribution Without Egalitarianism," in V&S(II), pp. 31–47.

spread support in both countries.[5] Our own times are more hospitable to laissez faire, and less to egalitarianism, than any since that period. In this political climate, strategic motives surely counsel rewrapping the aims of equality in libertarian garb, and it is not hard to detect such motives at work in left-libertarianism. Yet self-ownership, the "libertarian" part of left-libertarianism, clearly holds a genuine allure for many on the left. The question is, why? G. A. Cohen suggests one answer: the embrace of self-ownership reflects adaptive preference formation for the "politically bereaved."[6] Faced with a world turning increasingly to the right, many on the left may have been driven to rethink whether there might not be something they can live with in resurgent libertarian premises. For many others on the left, however, the allure of self-ownership is clearly heartfelt, as Cohen himself poignantly demonstrates in *Self-Ownership, Freedom and Equality*, his Bunyanesque chronicle of his own, ultimately victorious, struggle to free himself from the grip of the self-ownership thesis.

The left-libertarians represented in volume II all stand firm on the moral centrality of self-ownership. They are not indifferent to Cohen's concern that self-ownership may legitimate huge inequalities in welfare. But they have persuaded themselves that they can fashion a version of self-ownership that will not ineluctably lead to that consequence.

The political times being what they are, it seems churlish for any left-leaning social welfarist to turn her back on an invitation to wrap the case for economic equality in the mantle of individual liberty. But I think it should be resisted. Before doing so—and in part because doing so—I want to underscore how much there is to admire in this collective effort, both in its intellectual seriousness and particular substantive contributions. Among the latter should be included the recognition (foundational to left-libertarianism) that the Lockean proviso, if read broadly, may prove the Trojan Horse of right-libertarianism: a concession to egalitarianism, the implications of which are difficult to contain. The trenchant critiques offered by Vallentyne, Steiner, van Parijs, Christman, Brody, and others of attempts on the right to neutralize the proviso without repudiating it are themselves a substantial contribution to political philosophy. But also

5. Barbara H. Fried, *The Progressive Assault on Laissez Faire*, chs. 1 and 4 (Cambridge, Mass.: Harvard University Press, 1998).

6. G. A. Cohen, *Self-Ownership, Freedom and Equality* (Cambridge: Cambridge University Press, 1995), hereinafter *SFE*, at pp. 253–57.

notable are the two warring intuitions that ground left-libertarianism: that each of us would be nothing without society; and that there are limits to what society may do to each of us in the name of the collective good. In its broad outlines, left-libertarianism reminds us that any theory of distributive justice that fails to honor both of those intuitions in some form probably is (and probably should be) a nonstarter.

Why then resist the invitation? The main reason is that I am not persuaded the left-libertarian program can succeed. I will focus here on two problems. First, "self-ownership" may not be able to do the work that left-libertarians assign it, any more than it can do the cognate work assigned by the (libertarian) right. Second, the robust interpretation of the Lockean proviso that left-libertarians embrace to distance themselves from the right assumes a view of fairness that threatens to eliminate the distinction between left-libertarianism and more conventional strains of egalitarianism. I end by suggesting that left-libertarians' choice to justify equality by reference to liberty may raise some strategic concerns as well.

II. Self-Ownership

The locus classicus for the libertarian concept of self-ownership is of course the famous passage in Locke's *Second Treatise on Government*: "Though the Earth and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself."[7] What practical conclusions follow from this moral imperative has been subject to endless discussion. The conventional right-libertarian view is concisely set forth by Vallentyne, paraphrasing G. A. Cohen:

> The core idea is that agents own themselves in just the same way that they can have maximal private ownership in a thing. This maximal private ownership is typically taken to include the right to fully manage (to use, and to allow or prohibit others from using); the right to the full income; the right to transfer fully any of these rights through market exchange, inter vivos gift, or bequest; and the right to recover damages if someone violates any of these rights. Redistributive taxa-

7. Locke, *Second Treatise*, sec. 27, p. 287.

> tion (e.g., of income or wealth) is incompatible with these rights of maximal private ownership.[8]

For our purposes, the critical point is the last: from the cardinal "principle that each person is the legitimate owner of his own powers," it follows that redistributive taxation is theft.[9]

In the hands of right-libertarians, this absolutist view of self-ownership, coupled with the belief that logical deduction can take us from the general principle of self-ownership to detailed legal arrangements, has led to conclusions that will strike most people, for good reason, as absurd. Take, for example, Samuel Wheeler's argument that taxation is morally akin to physical violence: "No significant moral difference in kind exists between eliminating my ability to play softball by taking my knees away and eliminating my ability to play the market by taking my money away. . . . Theft, taxation, and disembowelment are different forms of the same kind of violation of rights."[10] Rather than engaging all the moral difficulties inherent in asserting that disemboweling someone and levying an eight percent sales tax on his luxury purchases is "the same kind of rights violation," Wheeler simply relocates these difficulties in the concession that they are "different forms" of that same kind. In this hermetically sealed world of formal analogic reasoning, such questions as "But might there be some reasons why we would condemn forcibly removing someone's kidney or sticking a knife in someone's back that don't necessarily carry over to the state's imposing an ad valorem property tax?" are treated simply as longwinded rhetorical questions, to which the only possible answer is "no."

While left-libertarians whittle down the requirements of "universal maximal self-ownership" very substantially from the robust version embraced by the right, most seem to share with the right the conviction that self-ownership implies a "determinate, complete and consistent"

8. Vallentyne, "Critical Notice of G. A. Cohen, 'Self-Ownership, Freedom and Equality'," *Canadian Journal of Philosophy* 28(1998): 611.

9. *SFE*, pp. 216, 222.

10. "Natural Property Rights as Body Rights," V&SII, p. 242. This is, if anything, the more plausible half of Wheeler's two-step argument that self-ownership implies that taxation is theft. The first, more dubious, step seeks to establish that if the right of self-ownership exists, it must be absolute, because "no moral justification exists for drawing the line anywhere." Idem at pp. 241–42.

set of legal rights that can be derived conceptually by starting with certain core rights over one's body, and radiating out to ownership of the things one produces with one's labor;[11] and that its content at least casts doubt in the first instance on the state's right to tax labor income except to pay for public goods.[12]

To most contemporary lawyers, this way of thinking about ownership is mystifying, a relic of the conceptualism that was the chief casualty of the Legal Realist revolution in the first half of the twentieth century. The story of that revolution and the resulting "disintegration of property," in Thomas Grey's now famous phrase, is familiar to academic lawyers but perhaps not to others. After recounting the story in brief, I want to turn to its implications for the concept of self-ownership.

A. The Realist (Functional) Reformulation of Property

Oliver Wendell Holmes prefigured the Realist revolution in legal conceptions of property in a formative 1894 article, decomposing abstract legal concepts like "the right to compete" or the "duty to keep a contractual promise" into the complicated functional relations they embodied.[13] In two important articles published in 1913 and 1917, Wesley Hohfeld formalized Holmes's basic insight, offering a more systematic and precise vocabulary for the range of functional relations created by legal rights, especially property rights.[14] By "functional relations," Hohfeld and other Realists meant the power (or inability) to act in certain concrete fashions with respect to property. What are loosely described as "rights," Hohfeld argued, in fact comprehend a number of distinct legal entitlements conferred on the holders. The scope of each entitlement is defined by correlative legal duties placed on all others (the universe of nonrights holders). The details of Hohfeld's typology for those reciprocal rights and duties need not detain us here. What is important for present purposes is that Hohfeld's scheme reoriented the legal analysis of property relations in two significant and lasting respects.

11. James Grunebaum, "Autonomous Ownership," V&SII, p. 68.
12. Otsuka, "Self-Ownership and Equality," p. 155; Steiner, "Original Rights," pp. 75–77.
13. O. W. Holmes, "Privilege, Malice and Intent," *Harvard Law Review* 8(1894): 1.
14. "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 23(1913): 16; "Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 26(1917): 710.

First, by disaggregating such supposedly unitary concepts as "property" into their functional parts, Hohfeld implicitly revealed how intricate and changeable a thing ownership really is. Thus, party A could retain nominal ownership of Tara, but give away to B the right to live on the land during A's lifetime, to C the right to farm the land, to D the right to mine it, to E the right to use it as a right of way to reach E's own property, and to F the right to inherit the estate in its entirety upon A's death. Picking up where Hohfeld left off, his fellow Realists showed that even as nominal owner of an undivided interest in Tara, Scarlett's rights to use her property as she wished and to prevent others from using it were encumbered by law in a variety of ways. She could not, for example, use her land for a variety of purposes that might harm her neighbors, nor could she prevent the state from taxing the value of her land to pay for public services. That one could, as a matter of customary legal practice in liberal societies, be the nominal owner of property and yet be stripped of many of the rights of economic value in that property does not prove that there are no essential rights that *ought* to come with ownership. But it does strongly suggest that it will be no easy matter to identify what they are.

Second, and more importantly here, by redescribing rights as a network of reciprocal powers and incapacities, Hohfeld showed that in enlarging any one party's formal powers, we necessarily diminish everyone else's. Thus, when we say that Scarlett has the absolute right to operate a meat-rendering plant on Tara, what we are really saying is that her neighbors are legally powerless to stop her from doing so, even if her actions will make their own property less usable to them, at the extreme destroying all its value. Fifty years after Hohfeld, Ronald Coase made essentially the same point in economic terms in his famous article, "The Problem of Social Cost."[15] All social costs generated by activities, argued Coase, are really the joint costs of conflicting desires in a world of scarce resources. Thus, Scarlett's use of Tara as a meat-rendering plant is a social problem (that is, imposes costs on society) only because her neighbors don't want to smell the effects of it and cannot costlessly avoid doing so. Details aside, a seditious message about rights lurks just below the surface of Coase's (and Hohfeld's) analysis. Coase's morally neutral description of the social problem of (for example) smell pollution as a

15. *Journal of Law and Economics* 3(1960): 1.

joint cost of Scarlett's and her neighbors' conflicting desires strips away the usual veneer of rights talk plastered over such problems, revealing two aspects usually obscured from view.

First, wherever we put the entitlement, we will sacrifice one party's interests for the other's. The recognition that an individual's exercise of her rights might well infringe another's interests was hardly new with the Realists or Coase. It was in the air long before then, and captured eloquently by Mill's discussion in *On Liberty*, to which Holmes's own analysis was undoubtedly indebted. But, in the context of property relations, the Realists sharpened that analysis by careful attention to the myriad legal disabilities imposed on third parties through the creation of any ownership right. More significantly here, they showed that such conflicts were not occasional but universal: All property rights necessarily infringe the liberties of others, as all entail reciprocal burdens on others, and in a world of scarcity, such burdens are often substantial.

Second, Realist and Coasean analysis underscored the uncertainty, in many cases, as to which of the conflicting interests should be preferred as a matter of right. The traditional liberal criterion for adjudicating such conflicts was the anti-harm principle. In the language of the common-law maxim, each person should use his property so as not to harm others (*sic utere tuo ut alienum non laedas*). Classical liberals and their contemporary libertarian heirs generally treat the identification of "harm" for these purposes as a factual problem.[16] That is, they assume that the anti-harm principle requires that we proscribe all uses of property that, *in fact*, compromise the interests of others, leaving only one question: Which uses, in fact, do so? Holmes and the Realists after him showed that operationalizing this maxim was always and only a normative problem.

16. For a discussion of the tendency among contemporary libertarians to tie legal or moral culpability to factual causation of harm, see Mark Kelman, "The Necessary Myth of Objective Causation Judgments in Liberal Political Theory," *Chicago–Kent Law Review* 63(1987) p. 579; Kelman, "Taking 'Takings' Seriously: An Essay for Centrists," *California Law Review* 74(1986): 1829. Mill himself is a more complicated case. As befits the author of *Utilitarianism* and an heir to the Benthamite analytic jurisprudence tradition, Mill generally qualified references to the anti-harm principle in *On Liberty* by acknowledging that the existence of factual harm merely gives society "jurisdiction" over the conduct that caused it (i.e., is a necessary but not sufficient condition for prohibiting it). The decision whether or not to prohibit it must be made by reference to whether "the general welfare will or will not be promoted by interfering with it." *On Liberty*, E. Rapaport ed. (Indianapolis, Indiana: Hackett Publishing, 1978), p. 73.

Since virtually all uses of property infringed the interests of others *in fact*, the only question for society was a policy question: Should we nonetheless permit a given use, because it promotes social welfare, individual autonomy, or some other desired end?

The lessons of the functionalist revolution in property rights have not been entirely lost on libertarians, right or left. Right libertarians, and even more those on the left, will often pay verbal obeisance to the Realist insight, often with a nod to Hohfeld himself, about the divisible nature of ownership, the reciprocity of legal rights and legal burdens, and the clash among different individuals' claims of self-ownership to which such reciprocity inevitably leads.[17] But when it comes to cashing out the concept of "self-ownership" in concrete legal rights, most libertarians (right and left) have dealt with the challenge posed by the Realist / functionalist reconception of property rights by paying verbal obeisance to it and then ignoring it entirely, in favor of the optimistic view that one can derive from the abstract principle of "self-ownership" a detailed regime of unqualified rights over one's self and one's product. As James Grunebaum put it, "[A]ll the rules of autonomous ownership follow logically from the principles of autonomy."[18]

B. Self-Ownership Viewed Through a Functional Lens

The basic libertarian argument, proceeding from the premise of self-ownership to the ultimate conclusion that taxation is theft, goes as follows: (1) Self-ownership implies, uncontroversially, that each of us has "full liberal ownership" of our own bodies. "Full liberal ownership" means that each of us has right "to control that body free of coercive interference." (2) That right logically implies the right to control the expenditure of energy and talent housed in that body (i.e., ownership of one's labor). (3) Ownership of one's labor logically implies ownership of the fruits of one's labor, as a kind of lesser-included offense.[19] Thus, to take Steiner's

17. For respectful invocations of the Hohfeldian analysis, see Steiner, "Original Rights," pp. 91–92; Steiner, "Capitalism, Justice and Equal Starts," p. 52; Nozick, *Anarchy, State, and Utopia*, reprinted at V&SII, pp. 178–79; Cohen, *SFE*, p. 222, n.29; Christman, "Self-Ownership, Equality, and the Structure of Property Rights," V&SII, p. 361, n.5; Brody, "Redistribution without Egalitarianism," pp. 32–33.

18. Grunebaum, "Autonomous Ownership," pp. 68, 70.

19. Murray Rothbard, "Property and Exchange," in V&SII, p. 219. See also Steiner, "Original Rights," pp. 76–77.

example, if someone makes a bench out of his labor (which he owns) and lumber and tools (which we presume arguendo that he owns as well), he "unproblematical[ly]" must, by some method of inference akin to the mathematical principle of additivity, own the bench as well.[20]

Starting from that same basic argument, left-libertarians have reached radically divergent conclusions from the right and from each other about the precise regime of rights thereby implied. There is, of course, a short list of acts that all libertarians, left or right, agree are prohibited by self-ownership. All think it wrong for the state to permit others to forcibly extract one of your eyeballs to transplant to the blind; to permit others to torture or kill you (without justification, presumably—that great verbal equivocation) or enslave you; or (in Van Parijs's example of motiveless meddling) to require you to get the collectivity's permission to scratch your own nose.[21] Once we get beyond these easy cases—which, of course, are easy for virtually everyone, whatever their other convictions about justice—there is little agreement on any other core rights implied by self-ownership.

Consider first the key one in dispute between right and left as a political matter: the right to the market value of one's goods or services. Here, right-libertarians are pretty much of one mind: self-ownership means you get to keep it all (although they cannot agree on why), subject at most to a modest "benefits" tax to finance the minimal state. But among all others who take seriously the self-ownership principle in some form, views range all over the board. At one extreme is G. A. Cohen, who has signed on to the right-libertarian line that taxation amounts to "part-ownership of others" (complete with an epigraph from Nozick to this effect), thus forcing him to the hard choice of renouncing self-ownership to preserve equality.[22] Most left-libertarians, not surprisingly, cluster near the other extreme. Thus, Christman, Van Parijs, and Vallentyne conclude that self-ownership is consistent with even a confiscatory level of ex post taxation of earnings.[23] Otsuka concludes that his "robust" version

20. "Original Rights," p. 77.

21. Cohen, *SFE*, pp. 70, 243–44; Van Parijs, *Real Freedom for All*, p. 8.

22. *SFE*, pp. 229, 214, 216.

23. Van Parijs, *Real Freedom for All*, p. 9; Christman, "Self-Ownership," p. 357; Vallentyne, Introduction, V&SII, pp. 9–10. Vallentyne adds the condition that the producer must make at least minimal use of external (scarce) resources, a condition that will virtually always be met in a market economy. "Critical Notice," p. 622.

of self-ownership permits any tax on the talented, provided only that they, like everyone else, are not "forced, on pain of starvation, to work for the badly off,"[24] a qualification that, redolent as it is of Marxist exploitation theory, will cause libertarians to suspect that "self-ownership" has been hijacked by the enemy. That suspicion will not be allayed by the arguments from Grunebaum, Van Parijs, Kymlicka, and others, to the effect that self-ownership not only imposes almost no limits on the state's right to tax the rich to aid the poor, but it also affirmatively requires such redistribution.[25]

Turning from rights to one's marginal product free of taxation to other rights, one finds little more agreement about what self-ownership implies. Among the many areas of internal disagreement are whether self-ownership implies a right to bequeath one's property to one's heirs;[26] a right to transfer one's property inter vivos;[27] a right to sell one's self into slavery;[28] and collective or private ownership of property.[29]

Some of these disagreements derive from fundamental disagreements about what ends self-ownership is meant to vindicate. The libertarian literature, both right and left, moves seamlessly between the formalist, "negative liberty" definition of self-ownership as equivalent to formal legal rights against interference by others with self and one's possessions, and the functional, "positive liberty" view that it is equivalent to substantive power to effect one's desires. That ambivalence / ambiguity is perfectly captured by Van Parijs's name for his own version of left-libertarianism, "real libertarianism." This, like Grunebaum's statement that forms of ownership should be judged by how well they promote the "well-being needed for autonomy" and Kymlicka's statement that

24. "Self-Ownership and Equality," p. 161.

25. Grunebaum, "Autonomous Ownership," p. 72; Van Parijs, *Real Freedom for All*, p. 25.

26. For Vallentyne's helpful summary of various positions libertarians (left and right) have taken on this question, as well as a statement of his own position, see Introduction, pp. 14–15. See also Richard Arneson, "Lockean Self-Ownership: Towards a Demolition," V&SII, at pp. 330–31; Grunebaum, "Autonomous Ownership," p. 70. Van Parijs, *Real Freedom for All*, pp. 100–101; Bruce Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven: Yale University Press, 1999) pp. 81–84, 89–93; Steiner, "Original Rights," pp. 90–97; Steiner, "Three Just Taxes," in *Arguing for Basic Income*, ed. Van Parijs pp. 83–86 (New York: Verso, 1992).

27. Van Parijs, *Real Freedom for All*, p. 101 (no); Vallentyne, (yes).

28. Steiner, "Original Rights," p. 77 (yes); Grunebaum, "Autonomous Ownership," p. 50 (no).

29. Grunebaum, "Autonomous Ownership," pp. 53–56 (advocating collective ownership); Cohen, cited at Vallentyne, "Critical Notice," at p. 615 (advocating private ownership).

"substantive self-ownership" requires an "equal claim to the[] resources and liberties" necessary for each of us to act "according to [our] conception of [our]selves," tilts strongly toward "positive liberty."[30] Others, like Steiner and Vallentyne, tilt more to the "negative liberty" notion of self-ownership that dominates libertarian theory on the right. Given their foundational disagreement about the meaning of self-ownership, it is hardly surprising that left-libertarians cannot agree on how self-ownership gets cashed out at the level of property rights. That failure does not prove that self-ownership is contentless. It does, however, suggest that the label "left-libertarianism" houses disparate moral intuitions that share little but a name.

Not all disagreements at the level of policy can be traced back to different specifications of self-ownership at the level of broad principle, however. Even where libertarians agree on the goals a commitment to self-ownership is meant to vindicate, they have read out of that commitment vastly different policy implications. That fact casts doubt on the strong claim, suggested by Steiner and others, that any particular regime of property rights is logically entailed in the concept of self-ownership. More generally, it raises the concern that left-libertarians, like those on the right, are pulling some very thick conclusions out of some very thin premises, giving them the latitude to find in "self-ownership" whatever they were looking for.

I want to suggest that it could hardly be otherwise, given the inherent indeterminacy and malleability of "ownership" as it is used to flesh out each of the three propositions on which the left-libertarian argument is built. Consider first proposition (1): that self-ownership implies "full liberal ownership" over one's body, which in turn implies a right "to control [one's] body free of coercive interference." What exactly does this mean operationally? Suppose I stand two feet from you and blow smoke in your face. Or suppose I imitate your voice in a commercial, passing myself off as you. Have I coercively interfered with your right to control your body?

Obviously, such examples serve to pose the central Coasean difficulty with operationalizing the principle that each of us has "full liberal own-

30. Grunebaum, "Autonomous Ownership," pp. 53, 71; Will Kymlicka, "Property Rights and the Self-Ownership Argument," p. 317. I read Van Parijs as (deliberately) ambiguous rather than ambivalent. His true allegiance seems pretty clearly to the "positive liberty" version of self-ownership. See, e.g., *Real Freedom for All*, pp. 21–24.

ership" of our bodies: A decision to enlarge your rights over your body in the foregoing situations necessarily constricts my rights, often including rights over the use of my own body. Rather than confronting that difficulty head on, libertarians (and fellow travelers) typically deflect it with examples of unmotivated intrusions that trade on uncontroversial resolutions of the Coasean problem. Consider, as Exhibit A, Cohen's assertion that the principle of "universal maximal self-ownership ensures that my right to use my fist as I please stops at the tip of your nose, because of your rights, under universal maximal self-ownership, over your nose."[31] Well, maybe. But even this apparently uncontroversial statement skirts a host of difficulties lurking in the war of fist and nose. Suppose my fist grazes your nose by accident on a crowded street. Or suppose I use my fist to hit you, because you have used yours first to hit me, or because you have verbally threatened to attack me. Whose right to control his or her own person should win in these cases may be intuitively obvious to most readers. But I doubt that the concept of "self-ownership" will help get one to that intuition.

"Self-ownership" doesn't fare much better as a generative principle when we turn from the first core right of self-ownership, housed in proposition (1)—full liberal ownership over one's body—to those housed in propositions (2) and (3): the right to one's labor; and to the fruits of one's labor. Without any functional content given to "ownership," the move from propositions (1) to (2) to (3) seems driven solely by an empty pun on the word "ownership": Because (1) we "own" our body, (2) we must therefore "own" our labor; and Because we "own" our labor, (3) we must therefore "own" the fruits of our labor. Even a cursory survey of the practical issues in operationalizing the terms "owning one's own labor" and "owning the fruits of one's own labor" suggests (not surprisingly) that the practical rights implied by each are hard to derive from the general notion of self-ownership; that the two propositions have little in

31. *SFE*, pp. 214–15. Cohen thinks that the two rights in conflict—over nose and fist—can be distinguished on the grounds that the right over one's own nose is a right of self-ownership over one's own body, while the right to move one's fist in such a way that it lands on someone else's nose is a right of a different sort. But it is hard to see how he could get that distinction out of self-ownership, rather than simply put it in. For Nozick's and Mack's parallel examples, using a knife instead of a fist, see *Anarchy, State and Utopia*, p. 171; Eric Mack, "Self-Ownership, Marxism, and Egalitarianism (Part II): Challenges to Self-Ownership," *Philosophy, Politics and Economics*, 1(2002): 237–76.

common; and that the latter is in no obvious sense entailed by the former.

First, proposition (2): that people "own their own labor." In so arguing, libertarians (and others) seem primarily concerned with preserving each person's right to control her labor decisions (whether to work, how much to work, at what job to work) without coercive interference. Almost all libertarians (right and left) would agree that this right rules out the state's "[a]uthoritatively assigning people to jobs."[32] But, aside from the singular case of military conscription, no one is seriously proposing such a policy. The real dispute between left and right is over taxation.

Nozick and others on the right have argued, famously, that taxation amounts to a form of slavery (in clear violation of self-ownership), because by commandeering the fruits of our labor, the state indirectly commandeers the labor itself.[33] As critics have noted, the Nozickean argument seizes on one formal likeness between taxation and slavery, disregarding all the differences in the degree and kind of constraints imposed by the two that do not merely weaken the analogy but may defeat it entirely, that is, that may make taxation not merely a lesser slavery, but in fact not "the sort of thing" that slavery is at all.[34] It also, curiously, ignores entirely other distortive effects of taxation on labor choices that cannot, even by a stretch, be characterized as being like "forced labor," but might nonetheless arguably compromise autonomy interests over one's own labor.[35]

32. See, e.g., Grunebaum,"Autonomous Ownership," pp. 50–51, suggesting this is the only form of collective action that his "autonomy principle" (his version of self-ownership) precludes.

33. *Anarchy, State and Utopia*, p. 172.

34. Cohen, *SFE*, p. 231; Scanlon, "Liberty, Contract, and Contribution," in Dworkin et al., *Markets and Morals*, p. 66, n.8.

35. I have in mind the fact that virtually any form of taxation distorts taxpayer choices about how much to work (and at the extreme whether to work at all). A taxpayer who, facing (let us suppose) a 70 percent tax on income, opts out of the labor market entirely in favor of untaxed leisure, will thereby avoid being forced to work directly or indirectly for the government, thereby avoiding Nozick's concern about forced labor. But she will nonetheless have her life plans altered (to her detriment) by government action in a fashion one would imagine most libertarians would regard as troubling on self-ownership grounds. My point, obviously, is not to argue that right-libertarians have not gone far enough in their hostility to taxation. It is rather to suggest that the ostensible basis for their hostility, reflected in the "taxation is slavery" argument, is ill-thought-out, and unlikely to survive their own scrutiny.

While most left-libertarians reject the right-libertarian categorical position against income taxation, many simply redraw the line between permissible and impermissible forms of taxation at another point that is equally perplexing from a functional perspective: between an income tax or other ex post tax on exchange value (acceptable) and an ex ante tax on the value of endowments (unacceptable). Christman defends the distinction this way: An endowments tax, by taxing people according to their earning capacity, pushes them into higher-earning occupations in order to pay their tax bill, raising frequently expressed concerns about "slavery of the talented."[36] In contrast, a tax on exchange value, even at confiscatory rates, doesn't force the talented to produce anything or prohibit them from doing so. "All it does is redistribute what is produced." Thus, concludes Christman, agents' self-ownership is not violated, because they are still "fully able to plan strategies, construct projects, and pursue goals."[37]

From a functional perspective, however, the categorical distinction Christman and others draw between ex ante and ex post taxation may be pretty thin. Decisions about what to produce to begin with, that is, how much to work and at what occupation, are made in light of the (ex post) tax liability that will attach to earnings, and are affected in various ways by that impending liability. For many people—full-time workers who work at jobs that maximize their earning potential—an (ex post) income tax will have the identical effect as an (ex ante) endowments tax. For others, the distortive effects may differ under the two taxes (although not all the differences necessarily favor an endowments tax). Some of these distortions may be more disturbing than others on functional, autonomy grounds. But it is attention to precisely these functional material differences that gets derailed by Christman's and others' erroneous (or at least misleading) assertion that an ex post tax on earnings does not "force" anyone to do anything.

More generally, all of these arguments, on right and left, miss the boat. All government interventions in the economy, through taxation or other means, alter the relative attractiveness of various work options, and of work in any form versus leisure, and to that extent distort ("coercively

36. Eric Rakowski, *Equal Justice*; Van Parijs, *Real Freedom for All*, pp. 63–64 (the parable of the peepshow).

37. "Self-Ownership, Equality, and Property Rights," pp. 356–57.

interfere with," if you will) labor choices. To decide which of those distortions is acceptable and which not in terms of personal autonomy, one needs to decide what sorts of autonomy in the work sphere one ultimately cares most about (e.g., maximizing choices among jobs, maximizing choices about work effort, minimizing involuntary contributions to the government) and how to rank different constraints on autonomy so defined (e.g., by what people subjectively value, by what seems most critical to self-determination in some perfectionist sense). "Self-ownership" cannot produce answers to these questions, since its operative meaning is ultimately supplied by those very answers.

Turning from proposition (2), that we "own our own labor," to proposition (3), that we therefore "own the fruits of our labor," one encounters equally serious problems in fleshing out what this broad principle implies about concrete rights. But the problems, as well as the underlying autonomy interests implicated, are so different that they call into question whether the two propositions have anything in common. That Herman Melville may "own" his own body and mind, in the sense that no one can force him to think up *Moby Dick*, or force him not to, and may own the paper on which he writes it down, in the sense that someone who takes it without permission has committed theft, sheds no light on the myriad questions that arise in defining Melville's rights over the resulting novel that he voluntarily forged in his imagination and committed to his own paper. To name just a few: May others, without Melville's permission, publish the story and sell it for profit? The year after it was written? Two hundred years after? Lend a copy to one hundred friends via the internet? May others, without his permission, write a parody of it, or a sequel, or name their rock band "Moby Dick"?

In the context of intellectual property, most people quickly recognize how arbitrary the answers to many of these questions seem, and how little guidance can be gleaned from the principle that "people own the fruits of their labors." But the difficulties in dividing use rights among nominal owners and all others are no less real in the case of tangible property. They are simply obscured by the existence of clear physical boundaries around such property, which invite observers to think that all use rights can somehow be derived by analogy to physical trespass; and by longstanding conventions about how to resolve conflicting claims among competing interests in the property, which lead many to confuse the customary with the logically or morally compelled.

Finally, take the central policy question raised by proposition (3): the state's right to tax the fruits of one's labor for redistribution. Libertarian objections to taxation in the context of "ownership of one's labor" (proposition 2) focused on the extent to which taxation compromises autonomy over labor decisions. Objections to taxation in the context of proposition (3), that one owns the fruit of one's labor, instead focus on whether (taking labor decisions as given) self-ownership implies that people have a right to the market return paid for their effort, and if so, whether, as the right has argued, the state's taking a portion of that return through taxation is theft.

It is at this point that left-libertarians have departed most sharply from the right. They have done so not by denying that people own the fruits of their labor, but instead by construing "fruits of one's labor" so narrowly as to render it close to a null set in any complex economy. Vallentyne would include only goods produced without any external (scarce) resources.[38] Otsuka would narrow it even further, including only goods produced autarchicly (that is, without any assistance from others) and for the producer's own consumption (thus not requiring external markets to realize their value). So, in Otsuka's fanciful example, if you weave your own hair into clothing for your own use, the state may not tax the use value in order to supply clothing to bald folks incompetent at weaving.[39] Others construe "fruits of one's own labor" more generously, but still far short of the full market value that is the starting point for the right. Brody, mirroring the traditional Georgian position, concludes that self-ownership gives each person an absolute right to that portion of market value created by her own labor. Van Parijs would limit it further, to that portion of labor income not attributable to scarcity rents on labor.[40]

All these efforts to limit the portion of one's marginal product attributed to "self-ownership" start from the broad intuition that without society (which generates demand for our product, a mechanism for exchange, co-workers, natural resources and other inputs, education, and the like) almost none of our marginal product would even exist. That intuition seems indisputable. But it has no logical stopping point, leaving the "libertarian" half of the left-libertarian project hostage to a

38. "Critical Notice," p. 622.

39. "Self Ownership and Equality," p. 155; see also Christman, "Self-Ownership," p. 346.

40. Baruch Brody, "Redistribution without Egalitarianism," p. 35; Van Parijs, *Real Freedom for All*. Van Parijs's argument is discussed further below.

broad interpretation of the "left" half, housed in the proviso. I turn to that now.

III. The Proviso

As stated earlier, left-libertarianism has two distinct commitments: to self-ownership, and to an egalitarian distribution of "natural resources." Until now, I have focused on "self-ownership." I want to turn briefly now to the egalitarian half, the historical warrant for which left-libertarians have located in Locke's proviso that each person may appropriate external resources by mixing his labor with them, provided that "there is enough, and as good [of such resources] left in common for others."[41] Like "self-ownership," Locke's proviso (as construed by the left) gestures toward an important moral intuition. Like self-ownership, however, it lacks any determinate operational implications, and has been construed so variously as to cast doubt on whether left-libertarianism is really a coherent or distinct philosophical approach.

The precise relationship intended between these two halves of the left-libertarian project is not always clear. In practice, most left-libertarians appear to interpret the two principles as virtual complements, so that whatever is not an incident of self-ownership becomes a social asset subject to the strongly egalitarian sharing rule left-libertarians read into the proviso. Given that fact, and the narrow reading most left-libertarians have given to self-ownership, it is hardly surprising that most read the proviso quite broadly, at the extreme construing it so as to obliterate the libertarian half of the project housed in "self-ownership."

Hence the doubt expressed earlier: whether the robust interpretation left-libertarians give the proviso can ultimately be walled off from more familiar strains of liberal egalitarianism. Producing a reading of the proviso that is distinct from liberal egalitarianism requires one, at a minimum, to (a) identify a discrete set of "scarce natural resources" subject to the proviso stopping somewhere short of the more comprehensive list of assets traditional egalitarians think must be equalized; and (b) devise a redistributive scheme correcting only inequalities in the distribution of those scarce resources, not inequality more generally. On

41. *Second Treatise*, sec. 27.

both scores, the record is unlikely to allay suspicions that left-libertarianism is just liberal egalitarianism in drag.

A. What "Natural" Resources are Subject to the Egalitarian Strictures of Locke's Proviso?

As Steiner notes, in any left-libertarian scheme, ultimately "everything . . . turns on the isolation of what counts as 'natural'."[42] Locke himself was preoccupied with land and the natural bounty it housed (wild animals, plant life, and the like). As documented in the interesting historical writings in volume I, that preoccupation was shared by left reformers well into the nineteenth century. These included J. S. Mill, (the early) Herbert Spencer, and (most notably) Henry George, whose "single tax" on land rents is probably the most famous example of left Lockeanism in action.[43]

Contemporary right-libertarians continue this singleminded focus on land and other natural, tangible resources, with some (like Israel Kirzner) trying to reduce the scope even further. But most contemporary left-libertarians and fellow travelers represented in volume II have signed on to a much broader view of nature, and with it a broader view of the state's obligations to equalize the fortunes of its citizens under the proviso.

At the minimalist end, Hillel Steiner (at least in early versions of his argument) and Nicolas Tideman adopt the traditional Georgian view that the proviso covers only natural, tangible resources, along with the traditional Georgian solution narrowly tailored to remedy the perceived wrong: a tax expropriating the market value of land and other (unimproved) natural resources.[44]

At the other extreme, we have Van Parijs's suggestion that the external resources subject to equitable division include "the whole set of exter-

42. "Original Rights," p. 107.

43. For further discussion of the "land rents" version of left-Lockeanism in the nineteenth century, and its gradual metamorphosis into a broader rent-theory Lockeanism by the end of the century, see Fried, *Progressive Assault*, ch. 4.

44. Steiner, "Original Rights," p. 108; Nicolas Tideman, "Commons and Commonwealths: A New Framework for the Justification of Territorial Claims," and "The Shape of a World Inspired by Henry George," cited at Vallentyne, Introduction, p. 8. Unlike Henry George, Steiner has read into the proviso obligations of international equality, leading him to argue that the proceeds of the tax should be contributed to a global fund to be redistributed internationally on an egalitarian basis.

nal means that affect people's capacity to pursue their conceptions of the good life, irrespective of whether they are natural or produced."[45] Among the external means various left-libertarians and fellow travelers include are gifts and bequests from the preceding generation; all traditional public goods (laws, police force, public works); the community's cultural heritage (language, art, science); the country's physical productive capacity; and well-functioning markets.[46]

Hillel Steiner goes even further in more recent work, suggesting that external assets subject to the proviso should include the "germ-line genetic information" contained in all living things, a view that, at a minimum, seems to turn all talents into a collective asset.[47] Van Parijs suggests the same with respect to effort, arguing that a culturally transmitted work ethic should be included among the "external means that affect people's capacity to pursue their conceptions of the good life."[48] At that point, when talents and propensity for hard work are both transported out of the self-ownership camp and into the collective resources subject to Locke's proviso, it is hard to see what is left for the self-ownership half of left-libertarianism to operate on.

Most left-libertarians stop short of that point, explicitly excepting talents and effort from the proviso. But many then proceed to take away with the left hand what they have just given (the better-endowed) with the right, arguing that if individuals use any external means covered by the proviso to exploit their talents, the state is justified (under the proviso) in taxing all or part of the return to those talents and effort. Thus, Christman, picking up on an argument with a venerable history on the left, argues that because society is the but-for cause of all market incomes, it may treat them as a collective asset subject to the proviso—the complement of his view that self-ownership protects only use value.[49]

45. *Real Freedom for All*, p. 101.

46. Ackerman and Alstott, *The Stakeholder Society*, pp. 13–14, 32; Van Parijs, *Real Freedom for All*, p. 101; Rolf Sartorius, "Persons and Property" in *Utility and Rights*, ed. R. G. Frey, (Minneapolis, Minn.: University of Minnesota Press, 1984), p. 211.

47. "Original Rights," p. 105 and ff.

48. *Real Freedom for All*, p. 101.

49. "Self-Ownership," pp. 358; 66–68. See also Ackerman and Alstott, pp. 13–14, 32; Kenneth Arrow, "Nozick's Entitlement Theory of Justice," *Philosophia* 7 (June 1978): 265–80. For similar arguments from an earlier generation of political theorists on the left, see Fried, *The Progressive Assault*, chs. 1 and 4.

Vallentyne, Gibbard and others have reached the same conclusion by the somewhat different route of bargaining theory.[50]

Others have stopped short of collectivizing all market incomes, seeking a more exacting separation of individual and social contributions to exchange value. One possibility that has gotten some attention in recent years, prompted in part by David Gauthier's *Morals by Agreement*, is that we should collectivize only that portion of market price reflecting factor rents, that is, the return to labor or capital attributable to the scarcity of such factors rather than the costs of supply. The rationale here, also with a venerable history on the left, is that factor rents are a purely social product, because they result solely from the structure of the market, in which demand exceeds available supply at constant costs.[51]

In contemporary left-libertarian literature, Van Parijs develops this line of argument in a particularly interesting direction. Notwithstanding the very broad definition of assets he suggests might be included in "external assets" subject to the proviso, he singles out for taxation only one thing: the employment rents that arise in "a non–Walrasian economy—that is, an economy in which, for a variety of reasons, the labour market tends not to clear, resulting in some equally skilled people having jobs while others are unemployed, or some holding more desirable jobs at a non-market-clearing wage."[52] Instead of trying to tax such rents directly, Van Parijs would approximate the distributive result of such a tax scheme with the "grosser, . . . unoriginal[]" solution of an optimal progressive income tax, pursuant to which we would tax "wages

50. Vallentyne, Introduction, p. 9; Allan Gibbard, "Natural Property Rights," in V&SII, at pp. 24–28. In brief, both authors suggest that society may extract through taxation an amount equal to what it could have charged private parties for the use of natural resources, were those assets collectively owned. Given the state's monopoly position in such a hypothetical bargain, it could charge up to the "full benefit" private parties reap from the use of natural resources, equal (in the case of the vast majority of talents that are useless without such resources) to 100 percent of the market value of those talents. The effect of that hypothetical bargain is to price discriminate against the talented, charging them more than others for access to the same quantity of natural resources simply because they will (by virtue of their talents) derive greater value from use of those resources. Such price discrimination seems a strained interpretation, to put it mildly, of the "equal shares" notion of equality expressed in the proviso. The motivation for it, like the motivation for Christman's argument, seems to lie instead in some more sweeping egalitarianism.

51. Fried, *Progressive Assault*, ch. 4.

52. *Real Freedom for All*, p. 141.

. . . up to the point at which the tax yield, and hence the basic income financed by it, is maximized."[53] That solution, effectively operationalizing the Rawlsian leximin on the tax side, is the same one many contemporary egalitarians would gravitate to on straightforward egalitarian grounds.

Of course, this convergence on a shared solution hardly proves that left-libertarians are simply liberal egalitarians manque. When one turns to the transfer side of the left-libertarian program, i.e., the uses made of whatever tax revenues the state collects pursuant to the proviso however, that conclusion seems irresistible.

B. Redistribution of the Tax Base

As Steiner notes, left-libertarianism logically implies equal division of any taxes collected from resources subject to the proviso. (More precisely, it implies a combined tax and transfer scheme leaving all individuals, at the end of the day, with equal shares of such resources, in kind or in cash equivalents.) Van Parijs and others argue that such a tax and transfer scheme might, as a contingent empirical matter, generate a sizable basic income for everyone, at least in prosperous societies, thereby satisfying basic needs social welfarists. There may be room to move even further toward equality, without roaming off the Lockean reservation entirely, by interpreting "equal share" to permit the state to equalize the value individuals derive from mixing those assets with their talents (although I am somewhat skeptical). But the one thing Lockean libertarianism clearly seems to rule out is a combined tax and transfer scheme designed to compensate individuals for unchosen inequalities in personal endowments. At least it would seem to do so, if self-ownership is to be given any content, beyond the most minimal, universal prohibitions on forced labor, forced organ transplants, and similar incursions on bodily integrity. Yet, when it comes to redistribut-

53. *Real Freedom for All*, pp. 115–16. The more precise measure of employment rents, Van Parijs suggests, would equal the difference between actual wages and the (lower) amount each worker would receive were the market for their jobs to clear. That amount, in turn, should equal the difference between current earnings and the expected income during the year following employment termination. Idem, at pp. 108, 264, n.35. For similar proposals, using a similar measure of employment rents, see Schor and Bowles (1987); Hamminga (both cited at idem, p. 264, n.36).

ing the proceeds of a Lockean tax, this is precisely what many left-libertarian schemes propose, including many that scrupulously adhere to the Lockean program in designing the tax side.

Baruch Brody tries to defend that result as an instantiation of left-libertarianism, by assuming that the people cheated out of their fair share of external resources are the indigents of society.[54] Most left-libertarians, however, have not even tried to bring their redistributive programs into the left-libertarian fold. Instead, they typically concede their transfer schemes are designed (frankly) to compensate for unchosen inequalities in personal endowments, but argue that result is *consistent* with left-libertarianism (even if not motivated by it) because some relatively thin notion of self-ownership is preserved on the tax side.[55]

All these arguments depend on a sharp division of moral labor between the tax and spending side of fiscal policy, with taxes levied in accordance with Georgist left-libertarianism, but the proceeds of the tax redistributed, in whole or in part, on egalitarian criteria. Left-libertarians are hardly alone in maintaining that moral division of labor between the tax and transfer side of fiscal policy. Rawls, for example, adopts his own version, arguing that the highly egalitarian difference principle should govern redistributive transfers, but that fairness to individual taxpayers dictates that the revenues needed to finance such redistributive transfers be raised through a proportionate (flat-rate) consumption tax.[56] One can see the same schizophrenic impulse at work among political progressives in the late nineteenth century, who split the difference in the opposite direction: they supported (on welfarist grounds) a progressive-rate tax structure to raise the revenue necessary for the minimal state, but rejected as socialistic the state's using such tax revenues for redistributive spending to advance the same welfarist goals.[57] Many contemporary libertarians on the right continue to adhere

54. Brody, "Redistribution without Egalitarianism," p. 43.

55. Variants of this argument for bifurcating the tax and transfer side of things can be found in Van Parijs, *Real Freedom for All* (coupling a Lockean tax on employment rents with a guaranteed basic income that [among other things] compensates for "dominated diversity" in internal endowments); Ackerman and Alstott, *The Stakeholder Society*; Sartorius, "Persons and Property"; Brown, "Food as National Property"; Otsuka, "Self-Ownership and Equality," p. 162; Vallentyne, "Critical Notice," pp. 621–23.

56. *A Theory of Justice*, pp. 278–79.

57. Fried, *Progressive Assault*, at pp. 152–55 and 302, n.269.

to the same schizophrenic approach, albeit with a more modest commitment to welfarism on the tax side.[58]

There may well be pragmatic reasons to distinguish between the tax and transfer side of fiscal policy. Indeed, Vallentyne hints at one, arguing that by limiting redistributive transfers to the size of the social fund derived from a tax on natural resources, we "place[] clear—and arguably [politically???—BHF] plausible—limits on our duties to others."[59] But beyond such prudential considerations, it is hard to see what recommends it. The resulting schemes, which judge the tax and transfer sides of fiscal policy by wholly different distributive criteria, seem morally incoherent. If the just state may not take more from the talented by virtue of their unequal talents—the premise of left-libertarianism—why may it give more to the untalented by virtue of their unequal talents? Otsuka suggests one answer: distribution in inverse relation to talents is justified because "fair."[60] In a similar vein, Van Parijs defends differential transfers to compensate for extreme differences in internal endowments on the ground that without such transfers, the severely handicapped and others seriously disadvantaged would unfairly lose the opportunity for "real freedom."[61] But the intuitions of fairness on which Otsuka, Van Parijs and others draw here are the intuitions of liberal egalitarianism. If left-libertarians are free to help themselves to those intuitions on the redistributive end, why bother with left-libertarianism at all, and in

58. I have in mind various proposals for a so-called flat tax issuing from libertarian quarters, which are in reality progressive tax schemes, administered through a so-called degressive tax schedule: All incomes below a certain level (typically, around $24,000 for a family of four) are exempt from taxation entirely, and incomes above that level are taxed at a constant rate. As proponents concede, the only compelling justification for exempting a basic minimum from taxation is a social welfarist one. Indeed, it may well be that the only compelling argument for proportionate (rather than steeply regressive) tax rates above that basic minimum is a social welfarist one. See Barbara H. Fried, "Why Proportionate Taxation," in *Tax Justice*, ed. Joseph J. Thorndike and Denis J. Ventry (Washington, D.C.: Urban Institute Press, 2002). On the tendency of (right-) libertarians to treat questions of tax justice in isolation from all other aspects of government fiscal policy, see Liam Murphy and Thomas Nagel, *The Myth of Ownership* (Oxford: Oxford University Press, 2002).

59. "Critical Notice," p. 621. For an identical prudential argument for limiting the tax base to whatever is justified on Lockean grounds, see Peter G. Brown, "Food as National Property."

60. "Self-Ownership," p. 171, n.37.

61. *Real Freedom for All*, p. 101.

particular, with its very different claim of equality on the tax side: that the earth belongs in equal shares to all of us?

Many of the resulting schemes seem operationally incoherent as well. When the dust settles, egalitarian commitments on the transfer side will likely swamp any of the liberal/libertarian constraints placed on the tax side, leaving no visible trace of the latter. This is surely the result in Rawls's case, as I have argued elsewhere.[62] It is the likely result in most left-libertarian schemes as well, at least if the value of external resources is large (and under more expansive definitions of external resources, it surely will be), thereby generating a substantial tax base for redistribution.

IV. Conclusion

When one combines left-libertarians' typically thin reading of self-ownership and broad reading of proviso on the tax side, with their willingness to deploy that Lockean tax base for egalitarian ends on the transfer side, it is hardly surprising that most schemes cashing out left-libertarian premises look a lot like what issues from egalitarian quarters. Often, all that seems distinctly libertarian in the end is the rhetoric used to justify equality: that we, the fortunate, are obliged to help the less fortunate because society has helped us in myriad ways, all of which can be read into a broad construction of Locke's proviso. Given the political temper of the times, signing on to the right-libertarian program of self-ownership, subject to the proviso, and then proceeding to demonstrate why those twin premises inexorably lead (contra right-libertarianism) to substantial equality, may well seem a shrewd strategy. It is worth considering, however, that there may be some real costs to this strategy, at least where it is pursued in apparent sincerity, and not (as Roemer, Brown and others self-consciously do) simply as a demonstration arguendo of how far left the premises of right-libertarianism might take one.

Most versions of left-libertarianism start with the assumption that the same concept of self-ownership that explains why slavery and forced eyeball transplants are bad also explains, at first cut, why redistributive taxation may be bad. There are so many obvious, morally salient,

62. "Why Proportionate Taxation," at p. 173.

differences between these three phenomena that it is unclear why anyone with egalitarian/social welfarist instincts would sign on to a program that treats them as homologous. Maybe something is to be gained in disarming a handful of skeptics by conceding the moral power of self-ownership, before proceeding to demolish all the practical implications those skeptics ever thought the concept had. But there may be much more to be lost with those firmly on the right, who will correctly read left-libertarians' willingness even to take seriously the proposition that taxation is morally akin to slavery as a huge propagandistic triumph. That latter group includes not only respectable academics. It also includes their seamier fellow travelers in a much more disturbing subculture—tax protestors, off-the-grid survivalists, and so on—who, departing from the same dubious (rigid, inviolable rights-mongering) premises, come to rest in a place much harder to digest.

There is, of course, a long tradition of the left's coopting natural rights talk to its own political ends.[63] In the same spirit, left-libertarians may hope that, by coopting self-ownership to egalitarian ends, they can reclaim the moral high ground from right-libertarians. But in conceding that the libertarian notion of self-ownership *is* the moral high ground to begin with, they may well give up more than they bargain for in the public relations battle for the hearts and minds of those in the murky center of American politics, who harbor instincts of both liberty and equality (of the decent social minimum sort) that could be played to. At the very least, left-libertarians would do well to keep in mind the old adage: If you eat with the devil, bring a long spoon.

63. Fried, *Progressive Assault*; Daniel T. Rodgers, *Contested Truths* (Cambridge, Mass.: Harvard University Press, 1998), pp. 72–75, 122–30.