SELF-OWNERSHIP AND HISTORICAL ENTITLEMENT: AN EXAMINATION OF
G.A. COHEN'S CRITIQUE

A DISSERTATION
SUBMITTED ON THE TWENTY-FOURTH DAY OF AUGUST 2013
TO THE DEPARTMENT OF PHILOSOPHY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
OF THE SCHOOL OF LIBERAL ARTS
OF TULANE UNIVERSITY
FOR THE DEGREE
OF
DOCTOR OF PHILOSOPHY

BY
Lamont David Rodgers

APPROVED
Eric Mack, Ph.D.
Director
Bruce W. Brower, Ph.D.
David Shoemaker, Ph.D.
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Abstract

This dissertation is a presentation and defense of the doctrines of historical entitlement and self-ownership, largely as those doctrines appear in Robert Nozick’s *Anarchy, State, and Utopia*. The doctrine of historical entitlement holds that the fundamental issue to determining whether a hold is just is the question of how the possessor came to have the holding in question. Just holdings must be traceable from a just starting point through justice preserving, or unjust but rectified, steps. Justice in holdings is not fundamentally an issue of matching favored patterns or achieving particular results. Self-ownership holds that it is the individual himself who enjoys moral jurisdiction over his own faculties and talents. Importantly, others do not have non-contractual rights to use the talents of the individual. The dissertation defends these doctrines against the influential criticisms raised by G.A. Cohen’s *Self-ownership, Freedom, and Equality*.

The fundamental claim of this dissertation is that Cohen’s famous criticisms fail. The doctrines of historical entitlement and self-ownership withstand Cohen’s arguments. What is more, these doctrines are far more plausible and defensible than opponents tend to believe.
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CHAPTER 1

Introduction

This dissertation is a defense of the doctrines of historical entitlement and the self-ownership roughly as they appear in Robert Nozick’s *Anarchy, State, and Utopia*.¹ Specifically, the dissertation assesses a series of challenges to those doctrines raised by G.A. Cohen in his work *Self-Ownership, Freedom, and Equality*.² The twofold thesis defended here is that the doctrines of historical entitlement and self-ownership withstand Cohen’s famous criticisms and that Nozick’s arguments against views like Cohen’s are even better than is commonly believed.

The way to get at the objections against which I defend Nozick is to look briefly at *Anarchy, State, and Utopia* and how it challenges John Rawls’s enormously influential *A Theory of Justice*.³ Looking at Rawls is instructive for two reasons. First, Nozick’s alternative means of looking at the justification of individual rights and the nature of justice sets the stage for Cohen’s criticism of Nozick. Second, Cohen’s Marxist leanings

¹ *Anarchy, State, and Utopia* (New York: Basic Books, 1974). I refer to this work as *ASU* in this dissertation.

² *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1999). I refer to this work as *SFE* in this dissertation.

³ *A Theory of Justice* (Cambridge, MA: Presidents and Fellows of Harvard College, 1971). I say “in part” because Nozick himself tells the reader that *ASU* is the result of early conversations with individualist anarchists and libertarians. See pages xv to xvi. Nozick thought through those positions and initially formed a desire to refute them. The first 120 pages of *ASU* argue against the anarchist, but the remainder of the text defends a libertarian view.
yielded a kinship with Nozick: both Nozick and Cohen are (or were, since Cohen changed his mind about this) averse to forcibly extracting products from any individuals.

As Cohen himself puts it, “if...you take appropriation of labour time ... as a paradigm of injustice, then you cannot eschew affirmation of something like the self-ownership principle.”

Justice is a matter of what happens on the level of the transfer, whether it is a transaction or a forced transfer, not the basic structure of the system in which the transfer occurs. So Cohen is interested in assessing Nozick’s conception of justice in a way that Rawls is not.

Rawls constructs an apparatus for thinking about the justification of individual liberties and the nature of justice in holdings. This apparatus is designed to yield the conclusion that appropriately situated and mutually disinterested individuals would select a system of justice consisting of two principles. First, there is a principle that grants to each other the most extensive set of liberties possible, provided that set is compatible with everyone’s enjoying those liberties. Second, the apparatus is to yield the judgment that a just set of holdings would be one that maximized the position of the worst off group in society. It is important to see that, for Rawls, it is precisely because individuals who lack certain bits of knowledge about their own situation would choose these principles that they are justified. Placing individuals in a position where they cannot tailor principles to their own advantages is to be a fair way of selecting principles. Justice, as

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4 SFE 149.

Rawls puts it, is fairness.⁶ For reasons that need not be addressed here, Rawls applies these principles of justice, not to the features of specific interactions, but to the "basic structure of society... the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation."⁷

Nozick rejects Rawls’s justification for individual liberties, and he offers a different means of thinking about justice in holdings. Certainly, the latter project is motivated in part by a deep skepticism about our ability to generate a satisfactory conception of fairness – one to which all reasonable individuals would or should consent. Nozick’s alternative project holds that people have natural rights – rights people have because of what they are, and not because they would agree to grant rights to each other, if appropriately situated. Nozick also endorses a historical conception of justice. On this view, justice is a matter of what actually happens. By looking at the features of acquisitions and transfers, we can determine whether those acquisitions and transfers are justice creating or preserving. We do not need to look far afield and see what pattern is constituted by the distribution of goods in a particular society in order to see if the holdings are just. Nozick’s view allows, among other things, for the justice of significant inequalities in holdings. These inequalities need not maximize the well-being of the worst off group in order to be just. The best-known argument to establish this conclusion centers around Nozick’s Wilt Chamberlain example.

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⁶ This, of course, is the title of his later tinkering with *A Theory of Justice*, the text *Justice as Fairness: A Restatement* (Cambridge, MA: Presidents and Fellows of Harvard College, 2001).

The Chamberlain example begins by inviting proponents of end-result theories of justice to assume that their favorite pattern is achieved. Then, they are to imagine individuals pay Chamberlain to watch him play basketball. Chamberlain comes to have significantly more money than other members of the society. Nozick’s challenge to the end-state advocate is to explain how the favored end-result was just, given that any innocent move away from that end-result will require rectificatory redistribution. The idea is that a set of just holdings should grant individuals entitlements to employ their holdings in certain ways, but end-result theories of justice cannot satisfy that requirement.

The argument centered around the Chamberlain example poses a challenge for end-state and pattern theory of justice in holdings. These rivals must explain how individuals who are presumably entitled to their holdings can introduce injustice into the world by engaging in activities that their entitlements would presumably have granted them the right to do. As an egalitarian and one-time Marxist, G.A. Cohen finds the Chamberlain example particularly unsettling. On the one hand, he can find no unacceptable features in the Chamberlain transactions. The transfers seem free of coercion and other factors that might render the transfers unjust. So the resulting holdings should be just. On the other, his egalitarian commitments require him to see the inequalities resulting from the transfers as unjust. Thus, unlike Rawls, Cohen must evaluate the Chamberlain transfers and, if he finds the resulting holdings unjust, explain how this came to be. The dissertation tracks Nozick’s exposition of his own position, Cohen’s criticism and, in the end, offers a critical assessment of Cohen.

The first chapter of this dissertation constructs the entitlement theory and the primary argument it generates against alternative theories of justice. The entitlement
theory claims that just holdings arise if and only if they can be traced through just transfers, or unjust but rectified transfers, back to an initial just acquisition or an initial unjust but rectified acquisition. Any holding that has such a history is necessarily just according to this theory. The theory thus consists of a principle of justice in acquisition of unowned resources, a principle of justice in transfer, and a principle of rectification of unjust transfers and acquisitions. The theory is historical because it focuses on how just holdings arise rather than how the holdings of some compare in magnitude to the holdings of others, how happy those holdings make people, or any other end result. I present Nozick’s Wilt Chamberlain example – a scenario in which some favored pattern is met and people then apparently innocently employ their holdings in a way that moves away from the favored pattern. I claim that Nozick intends this example to show that it is only the historical entitlement theory that grants individuals entitlements to use their holdings as they see fit.

The self-ownership thesis – the claim that individuals have moral authority over their bodies and world-interactive powers – underpins the entitlement theory. Accordingly, I devote chapter 2 to sketching an explanation both of what the self-ownership thesis says and why it leads to entitlements to things in the world. Questions of why individuals can generate entitlements and why they have claims only to the entitlements they have generated, unless they receive those holdings as gifts or the like, are answered by the self-ownership thesis. If individuals own their world-interactive powers, they can use those powers to become owners of portions of the world. Similarly, individuals cannot be entitled to more than they acquire by exercising those powers unless the further holdings are gifts from individuals who have generated entitlements to
offer such gifts. Here I explain that the self-ownership thesis claims individuals own their bodies and world-interactive powers. I then construct the link between this sort of ownership and the ability to generate entitlements to objects in the world. The second chapter concludes by illustrating why the link between self-ownership and entitlements requires a historical view of justice.

An account of Cohen’s critique of the entitlement theory comprises chapter 3 of this dissertation. Cohen challenges Nozick on two fronts. First, he challenges to Nozick’s account of justice in initial acquisition. He argues that Nozick arbitrarily selects the hypothesis that the world is naturally unowned. What is more, there are more stringent principles of justice in acquisition that Nozick might employ. Cohen’s view is that there is no non-arbitrary baseline for assessing justice in acquisition. Second, Cohen argues that the Chamberlain example fails to generate a successful argument against egalitarianism; and patterned theories in general. Specifically, there are reasons to believe that injustices might arise from transfers that are not themselves unjust. One reason to believe that injustices might arise from such transfers is the effects those transfers can have on third parties.

Cohen recognizes that self-ownership enjoys a great deal of pre-philosophical appeal. Since he encourages Marxists to give up their belief in self-ownership, Cohen recognizes that he must explain why they should do so, given that self-ownership is attractive. So chapter 4 takes up Cohen’s attempt to reduce the appeal of the self-ownership thesis. Cohen claims that the apparent appeal of self-ownership is grounded ultimately in three false claims about self-ownership. Those claims are (a) that rejecting self-ownership licenses slavery; (b) that rejecting self-ownership licenses forced organ
donations; and (c) that self-ownership preserves autonomy. Cohen argues that all three of these claims are false; and since rejecting self-ownership is not as costly as is often suggested, Cohen believes that self-ownership does not warrant its apparent appeal.

Chapter 5 marks the beginning of my assessment of Cohen’s critique. In this chapter I take up Cohen’s critique of the Nozickian view of justice in acquisition that I sketched in chapters 1. The specific question I investigate is whether Cohen establishes that there is no non-arbitrary baseline from which to determine whether an acquisition is just. Does Nozick have a good reason to believe the world is naturally unowned? Does Nozick have a good reason to believe that acquisitions must not prevent others from having the opportunity to bring their world interactive powers to bear, or should he place more stringent requirements on acquisitions? I show that Nozick himself has good reasons to endorse exactly the baseline he does. There are reasons internal to Nozick’s theory that require him to endorse the position he does. What is more, there are good reasons for any theory to avoid employing the very stringent strictures on acquisitions that Cohen suggests, but does not endorse.

The sixth chapter is an assessment of Cohen’s critique of the historical conception of justice in transfer. Cohen urges two lines of argument to show that we should reject the notion that all just transfers are justice-preserving transfers. The first focuses on externalities. Transfers that seem justice-preserving can bear negatively on the situation of non-participants – those who do not engage in or receive something in the transfer. When transfers have this sort of effect on non-participants, we can rightly expect the results of those transfers not to be just. I show that Cohen’s argument here is a confession that Nozick is correct: patterned theories in general - and egalitarianism in particular - do
not give us the sorts of entitlements we believe we should have as a matter of justice. What is more, Cohen does not give us good reason to expect non-participants to enjoy positive externalities as a result of the Chamberlain example. Even the scenarios Cohen employs to illustrate the potential for some to suffer negative externalities can reasonably be expected to carry positive externalities. Given that it is fairly standard to believe that market interactions generate lots of positive externalities, Cohen’s externalities argument does not do enough to undermine Nozick’s argument.

Cohen’s second line of argument is appeal to rationality. In assessing Cohen’s appeal to rationality, I point out that Cohen himself claims that we do not care about egalitarian outcomes. This poses an obstacle Cohen must overcome: he must show that our lack of concern does not reflect a commitment to living in a non-egalitarian society. He must overcome this obstacle while explaining why a theory of rationality requires the willingness to expose all of one’s holdings to a redistributive procedure; he must show why we would be rational to give up the ability to protect our holdings against the risky actions of others. But the prospects of developing such a theory of rationality are dim. Of course, Cohen’s primary argument is that committed egalitarians would be irrational to move away from egalitarian distributions. Here I observe that Nozick does not need to deny this. Instead, Nozick needs merely to show that those who do not have a preoccupation with equality have no reasons to hope their transfers maximize or preserve equality. So I think Cohen’s appeal to rationality fails to stave off Nozick’s criticism.

The seventh chapter assesses part of Cohen’s attempt to reduce the appeal of the self-ownership thesis. Here the focus is on Cohen’s attempt to show that the rejection of self-ownership does not license slavery. I first assess Cohen’s discussion of what slavery
is. However, since I do not think Nozick endorses the argument Cohen attributes to him, I reformulate the argument to show that Nozick’s primary objection is to one individual’s having non-contractual claim rights over the products of others. I show that nothing Cohen says challenges this argument.

Chapter 8, the final chapter of this dissertation, addresses Cohen’s discussion of self-ownership and autonomy. Cohen’s defines autonomy as “a matter of the quantity and quality of options that a person has.”8 His basic claim is that its proponents of self-ownership overstate the relation between self-ownership and autonomy. As Cohen puts it, proponents of self-ownership “say that people control their own lives, or enjoy autonomy, if and only if they possess the rights constitutive of self-ownership.”9 The overstatement of the link between self-ownership and autonomy actually accounts for some of the appeal of self-ownership, Cohen says. Since autonomy is attractive, self-ownership benefits from being tied to it. Cohen holds that self-ownership is not necessary and sufficient for autonomy; nor does self-ownership maximize autonomy. What is more, he claims, self-ownership cannot explain why autonomy is desirable.

My assessment takes the follow form. First, I consider whether Nozick commits himself to the claim that respect for self-ownership maximizes autonomy. Cohen claims Nozick says this, or at least strongly implies it. I argue that Nozick cannot make this claim. Specifically, since Nozick allows individuals to abdicate their autonomy, and he cannot believe that having the right to abdicate one’s autonomy maximizes autonomy, Nozick cannot be endorsing the maximization of autonomy. The second line of

8 SFE 236.

9 SFE 236.
discussion takes up Cohen’s claim that self-ownership cannot explain why autonomy, as Cohen defines it, is desirable. I claim that, while self-ownership itself may not offer such an explanation, the reasons that lead Nozick to endorse self-ownership explain the value of autonomy. Beyond this, I argue that there are good moral reasons to believe that autonomy should not be maximized. I claim that self-ownership explains why we should not seek to maximize autonomy as Cohen defines it.

The upshot of this dissertation is that one of the most influential criticisms of Nozick fails. The doctrines of historical entitlement and self-ownership withstand Cohen’s criticisms. The entitlement theory and self-ownership emerge as eminently plausible; and self-ownership retains, say post-philosophically, the pre-philosophical appeal Cohen himself recognizes it to have.
CHAPTER 2

The Entitlement Theory

This chapter offers an exposition of the entitlement theory. I construct the theory, clarify some of its often misinterpreted aspects and then present the challenges the entitlement theory poses for rival theories of justice. I focus on the challenge it poses to egalitarianism in particular, because Cohen defends egalitarianism. In the first section of this chapter I explain the three principles that the theory tells us an adequate theory will have. Individuals can acquire unowned portions of the natural world, transfer their holdings, and they may do so justly or unjustly. Accordingly, the theory gestures towards how principles of justice in acquisition, transfer, and rectification should look. In the first section I also explain Nozick’s commitments as he presents the theory; and I pay particular attention to Nozick’s formulation of the Lockean proviso, which limits how the effects acquisitions may legitimately have on the situation of others. The proviso receives extra treatment because I suggest Nozick’s theory is tidier if his proviso is replaced with a broader proviso covering property use in general, rather than focusing on acquisitions, as Nozick does. I sketch the alternative proviso in chapter 2 of this dissertation.

In section 2 of this first chapter I distinguish the entitlement theory’s historical conception of justice from patterned and end-state theories of justice. This portion of the discussion sets the stage for Nozick’s rebuttal of patterned and end-state conceptions of justice. Thus, I conclude in section 3 by presenting Nozick’s famous Wilt Chamberlain
argument against patterned and end-state theories. In that section I present Nozick’s own remarks regarding end-state theories and offer an interpretation of the challenge the Chamberlain example poses to end-state and patterned theories of justice. Working from that fundamental challenge, I then bring to light the practical and theoretical concerns that Nozick’s Chamberlain example raises for end-state and patterned theories.

2.1 Justice in Acquisition

The entitlement theory consists of three principles. First, there is an account of justice in acquisition. There are two basic questions about justice in acquisition: The first considers how one can generate entitlements to unowned portions of the external world. The second deals with how those acquisitions may legitimately bear on the condition of others. In this section I present Nozick’s position on both of these issues.

In regards to the first question there is confusion about Nozick’s view. Cohen, for example, claims “it is not at all points clear whether (Nozick) is engaged in expounding John Locke or developing his own position.”¹ The cause of Cohen’s confusion is probably a series of questions Nozick asks after presenting part of Locke’s account. Still, I suggest that Nozick endorses John Locke’s conclusion that by mixing one’s labor with the unowned world, one can generate property rights in the physical world.² I claim, though, that Nozick does not accept the argument commonly attributed to Locke for that conclusion. Instead, I think we find Nozick holding that the reasons that lead us to endorse self-ownership should also lead us to believe that individuals are entitled to the

¹ SFE 74.

² I say ‘can’ because the acquisition cannot relevantly harm others.
fruits of our labor. I read Nozick as endorsing, in the end, a conclusion identical to
Locke’s, though Nozick rejects one version of the labor-mixing account. In what follows
I attempt to justify my reading of Nozick on these matters. Here is the portion of Locke’s argument that Nozick cites:

(T)he labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.  

On the heels of presenting this argument, Nozick asks “Why does mixing one’s labor with something make one the owner of it? Perhaps because one owns one’s labor, and so one comes to own a previously unowned thing that becomes permeated with what one owns.” He goes on to ask why mixing one’s labor, which one owns, with something one does not own, does not amount to relinquishing what one owns. There are two ways of taking Nozick’s questions here. Nozick could simply take Locke’s argument to be that, by mixing what is owned with what is unowned, one comes to own the previously unowned thing. This is how people usually read Locke. If that is how Nozick reads Locke, then Nozick’s questions suggest the argument is inconclusive. Alternatively, Nozick might just be hinting that the argument found in the cited passage is incomplete.

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4 ASU 174.

5 ASU 174.
and that Locke has answers to the questions Nozick has asked. So what does Nozick take to be the answer, or answers, to his series of questions?

I believe Nozick’s complete account draws from two sections of *ASU*. In one section of *ASU* that contains the entitlement theory, Nozick presents his theory of justice and distinguishes it from patterned and end-result theories. Then he argues against those views. He concludes by showing that the entitlement theory does not face the same problem as its rivals. Among those problems, Nozick claims that those theories allow some individuals to have partial ownership over others.

In the section of *ASU* entitled “Redistribution and Property Rights,” Nozick argues against redistributive taxation of holdings.⁶ In that section he famously claims taxation is on par with forced labor.⁷ Nozick is critical of taxation because it allows some individuals to have partial ownership over others which does not arise through any consent on the part of those others.⁸ This is chief among the difficulties rival theories face, but the entitlement theory does not. If individuals are allowed to take portions of the earnings of others, it must be because the takers, as it were, have some sort of claim to the products of the laborers; or, it must be that the laborers don’t have claims to the products of their own labor. Nozick writes:

The central core of a property right in X… is a right to determine what shall be done with X. [And] this notion of a property leads us to understand why earlier theorists spoke of people as having property in themselves and their labor. They viewed each person as having a right to decide what would become of himself and what he would do.⁹

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⁶ *ASU* 172.

⁷ *ASU* 169.

⁸ *ASU* 171.
If laboring does not give an individual a title to the things he has produced and others can take what he has produced, it is hard to see what the individual’s ownership of his labor ultimately amounts to. If laboring does not give an individual a title to the things he has produced and nobody, not even he, has a title to what he has produced, he loses at least some of the ability to decide what will become of himself. If the fruits of an individual’s labor are systematically seized, his right to decide what will become of himself is, as Cohen puts it, “rendered nugatory.”\(^9\) The idea that I attribute to Nozick, then, is that if one believes having (partial) and unconsensual ownership of others is mistaken or if one believes individuals some have a right to determine what will become of themselves, one must believe that individuals have rights to the fruits of their labor. Otherwise, it is difficult to see what the liberty to determine what becomes of oneself amounts to, given that it is licit for others to take the results of what one does with oneself.

To justify this reading of Nozick, let me offer two observations. First, he seems to question the labor-mixing account if that account says that mixing what one owns with what is unowned is sufficient for generating a property right. Nozick challenges the link between labor mixing and property rights when he asks the following: “If I own a can of tomato juice and spill it into the sea so that its molecules (made radioactive, so I can

\(^9\) *ASU* 171.

\(^{10}\) *SFE* 98; Cohen says this in response to his own quest to determine whether self-ownership can be squared with joint world ownership. If we need the permission of others to use portions of the external world, our self-ownership is rendered useless. If we instead need the permission of others to keep the portions of the external world we extract, it still looks like self-ownership is rendered nugatory.
check) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?"\textsuperscript{11}

Nozick, as far as I can tell, never says anything that answers this question in a way that suggests he believes that mixing what is owned with what is unowned yields a property right in the previously unowned thing. Instead, he produces the alternative considerations I mentioned above.

Beyond this, consider that he objects to redistributive taxation (in part) because it implements partial ownership of some by others. While Nozick is there discussing holdings that arise after just transfers, the same point holds when we discuss initial acquisitions. It would be very strange to object to taking away an individual’s holdings arrived at via transfer on \textit{the grounds that doing so institutes partial ownership of him by others}, but having no problem with doing so when it comes to objects he has acquired via labor mixing.\textsuperscript{12} The important point to keep in mind here is that taking what one has acquired by labor-mixing is unacceptable for \textit{the same reasons} taxing what one has acquired via just transfer is unacceptable, viz. that somehow this negates or fails to recognize self-ownership. This, I believe, is the correct reading of Nozick.\textsuperscript{13}

\textsuperscript{11} \textit{ASU} 175.

\textsuperscript{12} Hillel Steiner does this, though he has a more sophisticated set of reasons for doing so. I discuss Steiner in chapter 2 of this dissertation.

\textsuperscript{13} I do not mean to suggest that the argument from self-ownership to entitlements to the fruits of one’s labor is the only, or even Nozick’s only, argument for why self-owners can become entitled to portions of the external world. Instead, I am claiming that this is Nozick’s argument for why laboring can yield such entitlements. I discuss further arguments that move from self-ownership to entitlements in chapter 2 of this dissertation.
For what it is worth, I also believe this idea is essentially Locke’s idea. In the *Second Treatise* Locke claims that we have a natural liberty to preserve ourselves.\(^{14}\) This natural liberty is joined with a natural property right in ourselves.\(^{15}\) Locke seems to say that the liberty to preserve ourselves by laboring and acquiring exists precisely because our property rights in ourselves would be rendered pointless otherwise. He presents a similar idea in the *First Treatise* when discussing the right to kill and eat animals. Locke claims that “man’s property in the creatures was founded upon the right he had to make use of those things that were necessary or useful to his being.”\(^{16}\) Locke’s emphasis on property in this passage is to call attention to the fact that he is explaining why individuals may rightly claim titles to the fruits of their labor. The property we have in ourselves requires the right not to be precluded from making use of portions of the unowned world.\(^{17}\)

Whether this reading of Locke is correct is not primarily important here. What matters is that, for Nozick, it is self-ownership that explains why individuals have a right to determine what will become of themselves and what they will do and, if individuals have this right, they must have rights over the fruits of their labor. Again, I do not wish to say that Nozick believes we must engage in actual physical labor to generate titles via acquisition or transfer.\(^{18}\) He clearly rejects this idea when it applies to transfers when he

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\(^{14}\) *Second Treatise* §25.

\(^{15}\) Ibid §28.

\(^{16}\) Locke, John *First Treatise of Civil Government* §86, emphasis original.

\(^{17}\) There are questions about why this right entails permanent and bequeath-able rights. Cohen himself asks such questions. I do not get into them here.
claims we can generate titles by receiving gifts. What matters for present purposes is that there are good reasons to attribute to individuals rights to the fruits of their labor. It is not that mixing what one owns with what nobody owns is somehow special. Instead, the idea is that the reasons to believe people own themselves also protect individuals in the acquisition of previously unowned materials.

Nozick seems to suggest another way of showing that mixing one’s labor with something unowned yields a property right in that thing. He writes, “Perhaps the idea, instead, is that laboring on something improves it and makes it more valuable; and anyone is entitled to own a thing whose value he has created.” As a result of this passage, some readers take Nozick to be rejecting the claim that mixing what is owned with what is unowned yields a property right, and holding instead that adding value to something is a way of making that thing one’s property. This is often called the “Value Added Argument.”

I will not attempt to analyze the Value Added Argument. Its success or failure is, I claim, irrelevant to Nozick’s view of acquisition, because Nozick never explicitly accepts it. In fact, Nozick himself says “no workable or coherent value-added property scheme has yet been devised, and any such scheme presumably would fall to objections… that fell the theory of Henry George.” I suspect the reason some think

18 ASU 174-175.

19 ASU 175.


21 ASU 175; In this same passage Nozick observes that laboring on something may diminish its value. He has us imagine an individual spraying pink paint on a beautiful piece of driftwood. Despite its diminished value, Nozick seems to take this as a means of appropriating the piece of wood.
Nozick is endorsing the value-added argument is that Nozick’s treatment of the argument appears in a section entitled “Locke’s Theory of Acquisition.” Since Nozick is a Lockean in many ways, it is natural to see that section as representing Nozick’s theory of acquisition. But the focus of his discussion of Locke in that section lies squarely on showing that some acquisitions do not relevantly worsen the condition of others. This is why Nozick offers the following remarks just after he concludes that the Value Added Argument will fail. He writes, “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 ….The crucial point is whether the appropriation of an unowned object worsens the condition of others.” The point of the section on Locke’s theory of acquisition is largely to deal with the second question of justice in acquisition, viz. how the acquisitions of some must not worsen the situation of others, and not what yields property rights in unowned objects.

The second question concerning justice in acquisition receives a more direct treatment from Nozick. In this portion of the discussion, Nozick’s focus lies almost entirely on explaining how acquisitions may not worsen the condition of others. Nozick points out that Locke’s bit about leaving “enough, and as good” is an early attempt to address this issue. This limitation on acquisitions is thus called the Lockean Proviso.

Before discussing the content of the proviso I should note that there is disagreement about the proviso amongst proponents of the entitlement theory; and this

22 ASU 174.

23 ASU 175.

24 See the above citation of Second Treatise §27.
disagreement deals with several distinct issues. There is disagreement about whether the proviso should be affirmed; and this disagreement is often associated with whether or not the theorist accepts the self-ownership thesis. Generally, but not always, those who accept the self-ownership thesis include the proviso in their theory of justice acquisition. Along these same lines, some theorists see the proviso as restricting only acquisitions, while others see the proviso as delimiting how individuals may both acquire and use property. It is important to note the disagreements above, because this dissertation focuses on Nozick’s version of the entitlement theory. There are other versions of the entitlement theory.

Part of the reason Nozick develops the proviso is to show that the acquisitions of some do not relevantly harm others. Why does it matter whether an individual’s acquisitions relevantly harm others? The strategy is to show that, if an acquisition does not relevantly harm others, those individuals have no legitimate complaint on the grounds of justice about the acquisition; and if others lack a legitimate complaint on those grounds, there is no justification (on those grounds) for taking away the acquired object or redistributing parts of it.

As Nozick discusses the proviso, he writes of limiting not only how much a particular individual may acquire via original acquisition. The proviso also limits how much individuals may acquire through transactions with others. Nozick makes this clear


when he says the following: “If my appropriating all of a certain substance violates the Lockean proviso, then so does my appropriating some and purchasing all the rest from others who obtained it without otherwise violating the proviso.” So Nozick’s proviso limits not just original acquisitions, but acquisitions via transfer. This is because the combined actions of different individuals can lead to a violation of the proviso.

In spelling out what the proviso entails, Nozick distinguishes between stronger and weaker renderings. A stronger version of the proviso precludes making a person worse off in each of two ways. An acquisition may not make others lose the opportunity to improve their situation by a particular appropriation or any; nor may an acquisition prevent others from using freely what they once could. The weaker version precludes preventing others from improving their situation; but it allows one to make an acquisition that prevents others from using freely what they once could.

The provisos break down as follows:

Stronger: Acquisitions may not make others lose the opportunity to improve their situation by a particular acquisition or by any one; and the acquisition cannot prevent others from using freely what they once could.

Weaker: Acquisitions may not prevent individuals from improving their situation. Each of these provisos carries a compensation clause. If a particular acquisition would otherwise violate the proviso, yet individuals provide adequate compensation to
those relevantly harmed, the initial acquisition is not unjust. As a matter of interpretation, it should be noted that Cohen does not read Nozick as applying the compensation clause to both provisos. While I think Nozick clearly does wish to do so, nothing of significance hinges on this matter, for Nozick endorses only the weaker proviso. It is the weaker proviso which obviously carries the compensation clause.

Nozick endorses the weaker proviso for several closely related reasons. The first is that Nozick wishes to rebut the broad claim that an extensive state is justified in order to achieve distributive justice. If distributive justice can in principle be achieved without a state apparatus to redistribute holdings, Nozick will not open the door to complaints that such a state is necessary. The stronger proviso poses stricter limitations on appropriations than the weaker. Thus, one might argue that there are good reasons to expect acquisitions to run afoul of the stronger proviso. So what we need, the argument continues, is a more extensive state than Nozick supports. This state is needed to put right violations of the stronger proviso. Endorsing the weaker proviso will mitigate some such concerns, though certainly not all of them.

Similarly, Nozick thinks the weaker proviso can mitigate the threat of an argument he constructs against the stronger reading of the proviso. The argument works as follows. Assume a chain of ostensibly just acquisitions has occurred. Now imagine that, due to limited supply of natural resources and those appropriations, an individual Z is unable to appropriate. Z is unable to do so because of some individual Y’s appropriation. Given this, Y’s appropriation was unjust under the stronger proviso. However, if Y is

30 ASU 178.

31 ASU 150.
unable to appropriate, it must be because the appropriation of some individual X before him put him in that situation. “And,” Nozick has the argument run, “so on back to the first person A to appropriate a permanent property right.” The argument can generate a formal *reductio* against the claim that the initial acquisition was just, and, Nozick seems to imply, against the conclusion that just acquisitions are possible. Given the apparent link between self-ownership and private property, Nozick cannot endorse a proviso that renders private property impossible. Of course, Nozick could claim, as he does, that private property increases the common stock of goods; and thus, legitimate private property rights are at least possible. However, the strictures of the weaker proviso less threatens this undermining of private property rights than do those of the stronger. The weaker proviso accomplishes this by requiring only that acquisitions do not prevent others from improving their situation and not that individuals may make an acquisition. In this vein, Nozick writes “though person Z can no longer *appropriate*, there may remain some for him to use as before.” This remainder may exist precisely because private property rights lead to the existence of more stuff for individuals to use to improve their situations even if that stuff currently belongs to others.

The weaker version of the proviso carries intuitive force. To demonstrate, Nozick has us imagine two scenarios. First, he has us imagine an individual appropriating the

\[\text{\textit{ASU} 176.}\]

\[\text{\textit{ASU} 176, emphasis original.}\]
only watering hole in the desert. This individual charges a fee so high that others must die, lest they violate the acquirer’s property rights.\textsuperscript{35} Second, he has us imagine a land owner ordering a castaway from a shipwreck off his island. \textit{Something} seems wrong with both the acquisition and the exclusion described here. Nozick’s weaker proviso offers an explanation: the acquisitions somehow prevent others from improving their situation through any sort of activity or use.\textsuperscript{36} To clarify, the weaker proviso does not require that everyone is able to make an acquisition; instead, the proviso precludes individuals being prevented from using things to improve their situation. Let me explain.

Acquisitions that merely prevent others from using freely what they could before privatization need not violate the weaker proviso. Even if an appropriation makes it such that no further appropriations are possible, the acquisition can still be not unjust. While the stronger proviso would regard the appropriation in question as unjust, the weaker does not. This is because others could still improve their situations by renting, working, saving, and buying things like cars, condos and so forth. In the water hole and island case, the private property holders preclude others from pursuing any such opportunities.

Nozick ends his presentation of the proviso with the following remark: “I believe that the free operation of a market system will not actually run afoul of the Lockean proviso.”\textsuperscript{37} He says this because he has just argued that initial acquisitions actually make it easier for others to improve their situations. A slew of considerations in favor of private

\textsuperscript{35} \textit{ASU} 180.

\textsuperscript{36} It turns out that it is hard to think of real world examples of \textit{acquisitions} that have this effect. Both of Nozick’s examples are actually examples of unjust \textit{uses} of property.

\textsuperscript{37} \textit{ASU} 182.
property and its ability to increase the social product lead Nozick to the judgment quoted above. I introduce this point to note that Nozick believes (almost) all initial acquisitions will actually improve others’ chances to improve their lots.³⁸

2.2 Justice in Transfer

The second part of the theory is a gesture toward principles of justice in transfer. There is a principle of justice in transfer tell us that specifies the “legitimate means of moving from one distribution to another.”³⁹ More specifically, the principle of justice in transfer tells us by what processes a person may transfer holdings to others and by what processes a person may acquire holdings from another who holds it.⁴⁰ This topic deals with “descriptions of voluntary exchange, and gift and … fraud, as well as reference to particular conventional details fixed upon in a given society.”⁴¹

Some observers have claimed that Nozick makes no effort to specify what counts as a just transfer. James Coleman, for example, argues that Nozick does not even tell us what a good candidate for a just transfer is.⁴² However, this is not true. Nozick clearly deems as unjust any transfers involving (unjustified) force or fraud. So he eliminates

³⁸ David Schmidtz notes that it is generally less desirable to be the first owner of raw material than to be a later owner. While acquiring consumer goods, goods that can be immediately used to satisfy some desire, may be immediately beneficial, such is not the case with producer’s goods. Producer’s goods must be manipulated to create consumer’s goods. The first person to claim something like a coal pit, which must be manipulated in order to yield a consumer good, will likely be the first person to die attempting to excavate the pit.

³⁹ ASU 150.

⁴⁰ ASU 150.

⁴¹ ASU 151.

some possible transactions as candidates for just transfers. The passage cited at the end of the last paragraph clearly states that just transfers should be voluntary and not involve fraud.

Even the more specific concern that Nozick does not tell us exactly what force and fraud are is not quite right. Nozick distinguishes between limiting an individual’s choices and forcing an individual to act or refrain from acting. Nozick needs such an account to determine whether an action has violated a side constraint. This is so because any sort of appropriation or use of an object – or, for that matter, the mere occupying of space – limits other people’s choices. He thus argues that actions violating side constraints against aggression are forcings and actions that merely limit choices are not.43 He also refers the reader to his earlier work on coercion to help further flesh out the distinction between forcing and limiting choices.44 Barring entry into a social arrangement that has specific rules of just transfer, Nozick has these minimal conditions that just transfers must meet: they must be voluntary and not involve force or fraud.45

Now, it is true that Nozick gives primarily abstract principles when discussing (exactly) which transfers are just. I say “primarily” because Nozick gives at least one concrete example of what he thinks is a just transfer, and that is the Chamberlain

43 ASU 169; Nozick has even more to say about what counts as a relevant forcing. For a discussion see A.R. Lacey’s discussion in Robert Nozick OUP, 2001 pp. 38-39.


45 These are separate conditions. Stealing a sleeping person’s hat does not involve force or fraud, but the victim has not voluntarily engaged in the transfer.
The transfers involved in the Chamberlain example had better be just or the argument against end-state theorists cannot get off the ground.

Beyond this, Nozick has two good reasons for not being more specific about what a just transfer is. The first is that, as a theorist analyzing justice, he needs only one or two uncontroversial illustrations of the concept before he can go on and offer an explanation of how justice in transfer will work. The second is that his desire to accommodate utopian arrangements precludes his offering specific examples that must hold in all social arrangements. I make the point below that Nozick wishes to defend a historical conception of justice. Since such a view regards justice in holdings as a matter of what has actually happened, Nozick wishes to leave open the possibility that different groups of people will form different rules regarding justice in transfer. He notes, for example, that different conventions regarding just transfers arise in different places. Beyond the basic principles Nozick offers to delimit just transfers, he leaves open the description of exactly which transfers are just.

When descriptions of just transfers are at hand, they will fill in the account of justice in transfer fixed for a particular society. Since the descriptions in question will provide an account of the traits any transfer must have in order to be just in that society, it is to be true by definition that transfers bearing those traits are just. The holdings that result from just transfers are to be just, provided the holdings before the transfer were just. It is important to notice this. Just steps for Nozick simply are the steps that tell us

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46 Nozick also has an example of an individual who works extra hours in a socialist society. The transfers to this individual are to be just. Like the Chamberlain example, these transfers thwart the socialist’s commitment to egalitarian outcomes.
how to move from one just situation to another. This interpretation makes sense of
Nozick when he says the following:

> Whatever arises from a just situation by just steps is itself just. … As correct rules
of inference are truth preserving, and any conclusion deduced via repeated
applications of such rules from only true premises is itself true, so the means of
transition from one situation to another specified by the principle of justice in
transfer are justice-preserving, and any situation actually arising from repeated
transitions in accordance with the principle from a just situation is itself just. 47

Thus, within a given society such a rule will work as follows. Whenever a
transacting agent, or agents, goes through a series of steps that are justice-preserving in
that society, the resulting holdings are just. The rules themselves will likely vary.
However, as long as one goes through the proper channels one is entitled to the resulting
holdings. 48

Speaking of societies makes it sound as if the rules are limited to specific
geographical areas. However, in modern economies many transactions occur on the
internet between people in decidedly different societies. There is no reason to regard the
rules of transfer as confined to particular geographical locations. Locations can be cyber
locations or the like; and the groups who trade there can count as societies, as far as I can
tell. What seems to matter for Nozick is that the rules of justice in transfer arise in these
forums and are accepted by the individuals engaging in them.

Nozick’s entitlement theory is, as I have said, historical in nature. On a historical
conception, if a given holding is just it is so because it came about by just steps traceable
back to a just initial acquisition. However, “not all actual situations are generated in

47 ASU 150.
48 I do not mean to suggest that justice in acquisition is not part of the proper channels.
accordance with the two principles of justice.”49 Since the not every holding will arise through just processes, a third principle is required: “the rectification of injustice in holdings.”50

2.3 Rectification

Nozick says very little about the principle of rectification. Instead, he offers a series of questions that any good theory of rectification must answer and suggests how such a principle might be employed. However, Nozick manages to commit himself to nothing in regards to how and when injustices should be rectified. What he is clear about is that the principle of rectification exists only to deal with violations of the principles of justice in acquisition and transfer. So a holding is just if and only if it is traceable through just steps, or unjust but rectified steps, or to just, or unjust but rectified, original acquisition.51

Once the three principles of justice are fixed, Nozick’s system becomes deductive in nature. I say this because any action within a just situation bearing the predicate ‘just’ is to yield a holding bearing that same predicate. And any transfer or acquisition not bearing the predicate ‘just’ is unjust; unless that transfer or acquisition is combined with a step bearing the predicate ‘rectificatory’. This, I think, fits with the passage cited above in

49 ASU 152

50 ASU 152

51 An alternative explored by some proponents of the entitlement theory is to implement a moral statute of limitations on claims of redress. These statutes would limit both claims to compensation for unjust acquisitions and transfers. See Murray Rothbard’s “Society Without a State” The Libertarian Forum vol. 7.1 Jan. 1975. For a more tentative approach, see Loren Lomasky’s Persons, Rights, and the Moral Community (Oxford: Oxford University Press, 1987) p. 145. In pursuing a different line, Jan Narveson argues that since we do not know what to say about past injustices right now, we should not expect a theory to tell us what we ought to do about them. See Narveson’s “Present Payments, Past Wrongs: Correcting Loose Talk about Nozick and Rectification,” Libertarian Papers 1, 1 (2009).
which Nozick draws an analogy between just steps and valid inferences; not to mention the general tone of Nozick’s discussion.

Part of what the entitlement theory is to accommodate, which its rivals cannot, is the idea that individuals who are entitled to their holdings also enjoy a right to dispose of those holdings in certain ways. Another portion of Nozick’s project is to provide a clear explanation for the intuition that people may choose to live in any sort of arrangement they like. Nozick very reasonably claims that “the idea that there is... one best society for everyone to live in seems to me to be an incredible one.” The reason we find transactions occurring both in kibitzes and on the frontier just simply is that people willingly engaging in those transactions; and an acceptable theory of distributive justice must account for that intuition. In the former kind of organization, there are rules of transfer in place and in the latter, the transfers meet certain basic, justice-preserving, principles. Nozick’s project is thus to account for the attractive idea that different rules of just transfer can arise in different areas and individuals may choose which of those areas are best for them. In terms of the debate with its rivals, the entitlement theory is to be able to account for this attractive idea while its rivals cannot.

In the following section I will introduce and explain the rivals Nozick addresses in ASU: patterned and end-state theories of justice. I will focus on what Nozick finds

52 I sidestep issues of whether individuals may live in certain problematic arrangements, like voluntary enslavement and so forth. In ASU p. 331 Nozick says he thinks a free society should allow them to do so. However, he apparently told David Schmidtz that he gave up on this idea. Interestingly, Nozick said giving up on this single belief marked the entirety of his departure from libertarianism. See Schmidtz’s discussion of Rawls and Nozick in the econtalk podcast series found here: http://www.econtalk.org/archives/2012/05/schmidtz_on_raw.html#.T6fgNP2UrTs.facebook

53 ASU 311.
wanting in these theories. I do this with an eye toward explaining how I think the Chamberlain example raises problems for the theories in question.

2.4 End-state and Patterned Theories of Justice

End-state theories judge the justice of a particular set of holdings by “some structural principle(s) of just distribution.” The idea of structure is important here. The end-state theorist will insist that a set of holdings of individuals should look a certain way. To illustrate the sort of end-state theory that assesses comparisons, imagine a caricature of an unsophisticated egalitarian. This egalitarian holds that people should have exactly the same amount of material wealth. He can then assess the justice of a set of holdings simply by looking at the current distribution and looking to see if the current distribution better matches the ideal distribution than any rival. If the holdings are as equal as possible, they are just. If they are not, they are unjust.

Nozick also rejects patterned theories of justice. Patterned theories of justice insist “that just holdings should vary along some natural dimension, or lexicographic ordering of natural dimensions.” Importantly, Nozick is careful to note that patterned theories can have historical components, though some do not. If, for example, one thinks

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54 ASU 153.

55 Utilitarians and Rawlsians are also end-state theorists. They each hold that the set of just holdings will look a particular way. The utilitarian will see the set of just holdings as either maximizing overall happiness or wealth, and the Rawlsian will seek to maximize the position of the worst off members of a particular society as much as possible, provided doing so does not run afoul of the principle of equal maximal liberty and the difference principles.

56 ASU 156.

57 ASU 156. It is worth noting that one could analyze justice in terms of a particular pattern, but hold that there are practical reasons for not attempting to actualize that pattern. See ASU 156-158.
holdings should vary according to moral merit and one believes that current merit is based upon past actions, this view is historical and patterned.\textsuperscript{58}

Nozick’s section of \textit{ASU} entitled “How Liberty Upsets Patterns,” Nozick uses “patterned” to refer both to patterned and end-state analyses of justice. He claims that “almost every suggested principle of distributive justice is patterned: to each according to his moral merit, or needs, or marginal product, or how hard he tries, or the weighted some of the foregoing, and so on.”\textsuperscript{59} Thus, the argument presented in section III here is meant to target \textit{both} views of justice. I now turn to the famous Wilt Chamberlain example.

\subsection*{2.5 The Wilt Chamberlain Example}

With a sketch of the entitlement theory and rival conceptions of justice at hand, Nozick then presents his famous Wilt Chamberlain example:

\begin{quote}
[S]uppose a distribution favored by one of these non-entitlement conceptions is realized. Let us suppose it is your favorite one and let us call this distribution $D_1$. Now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction. .. He signs the following sort of contract with a team: In each home game, twenty-five cents from the price of each ticket admission goes to him… The season starts, and people cheerfully attend this team’s games; they buy their admission tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain’s name on it. They are excited about seeing him play; it is worth the total admission price to them. Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with \textdollar{250,000}, a much larger sum than the average income and larger even than anyone else has. Is he entitled to his income? Is this new distribution $D_2$ unjust? …If $D_1$ was a just distribution, and people voluntarily moved from it to $D_2$, transferring parts of their shares they were given under $D_1$… isn’t $D_2$ also just?\textsuperscript{60}
\end{quote}

What is the point of the Chamberlain example? Nozick puts it as follows:

\textsuperscript{58} \textit{ASU} 156.

\textsuperscript{59} \textit{ASU} 156- 157.

\textsuperscript{60} \textit{ASU} 161.
The general point illustrated by the Wilt Chamberlain example … is that no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people’s lives. To maintain a pattern one must either continually interfere to stop people from transferring resources as they wish to, or to continually… interfere to take from some persons resources others for some reason chose to transfer to them.\textsuperscript{61}

That end-state theories require constant interference may look like a practical problem or mere administrative inconvenience.\textsuperscript{62} It may look like Nozick is claiming that it will be a hassle ceaselessly to figure out how to redistribute. While this is a problem for end-state theories, Nozick is pointing to a deeper conceptual problem, or set of problems. In the following paragraph I locate the fundamental cause of the conceptual problems end-state and pattern theories face. Then I show how other difficulties stem from this fundamental point.

What I think Nozick wishes to show is that end-state theories lack an adequate principle of just transfer; and here I read ‘transfer’ so broadly as to include refusals or failures to transfer. In speaking of refusing or failing to transfer, I do not mean to imply anything negative about these (in)activities. Individuals refuse to transfer all the time, generally legitimately so. Not buying a product one does not want; saving and investing money; and similar activities are instances of failures to transfer. And I think we can read Nozick’s argument to include these sorts of activities. Doing so makes his argument against end-state theories all the more powerful. As we shall see, in Cohen’s response to Nozick he worries that Chamberlain might use his newfound wealth to buy a collection of

\textsuperscript{61} ASU 163.

\textsuperscript{62} ASU 170.
apartments and leave them unoccupied in the hopes that their value will increase. So Cohen objects to Chamberlain’s imagined failure to lease out his property. This provides some evidence of my claim that we can read ‘transfer’ very broadly in this argument.

To begin the argument I focus on the predicate ‘just. The proponent of end-state and patterned theories will define just transfers in terms that reflect the favored structural principles. Recall that an unsophisticated egalitarian defines just holdings as a set of holdings that is equally distributed. This is because the predicate ‘just’ simply means ‘equally distributed.’ The end-state theorist will analyze the predicate ‘just’ in the same fashion whether assessing a set of holdings or transfers of holdings. Holdings are just if and only if they yield equal maximal levels of wealth. Transfers are just if and only if they yield equal levels of wealth.

Now, if we need to analyze either the egalitarian principle of just holdings or the egalitarian principle of just transfers, we do so in terms of the same principle: equalizes wealth. If this is how the egalitarian will analyze the concepts in question, then the egalitarian has no independent view about justice in transfer. I suggest it is the end-state theorist’s commitment to analyzing the predicate ‘just’ in the same fashion in both transfers and holdings that explains how the end-state theorist must react in the Chamberlain case. The transfers the fans engaged in moved the distribution away from equality, so they were unjust. The Chamberlain example nicely illustrates the end-state theorist’s commitment to that kind of analysis. And this commitment is reflected by the lack of an independent principle of just transfer.

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63 SFE 27.
To further draw out the end-state theorist’s lack of an independent principle of just transfer, I turn to the role rectification plays in the entitlement theory. The principle of rectification, recall, is to set right those holdings that arise via violations of the principles of just acquisition and transfer. There is no call from the entitlement theorist to reshuffle holdings if the first two principles of justice are not violated. It is only when something unjust has occurred that the principle of rectification is to be required.  

If the end-state theorist wishes to set right deviations from his favored end result, he must regard these deviations as injustices. If deviations from the favored end-result should be put right, the manner in which one puts right the injustices represents the implementation of a principle of rectification. The only explanation for employing such a principle is that the transfers in question were unjust. But the only explanation for why the resulting holdings were unjust is that the favored end-result is not met. So the end-state theorist’s commitment is to regard just holdings as those that achieve some favored result; and just transfers are transfers that achieve some favored result. (Thus, the two arguments from this section dovetail both to explain and yield the same conclusion.)

In the Chamberlain case, the end-state theorist must find injustice in the holdings resulting from the fans’ transfers. They find this injustice, I have argued, because just transfers simply are transfers that preserve the favored end-state. Similarly, the end-state theorist will wish to redistribute Chamberlain’s post-transfer holdings. The principle of rectification’s purpose is to make right injustices. The only explanation for redistributing Chamberlain’s holdings is that the transfers that brought them about are unjust. This is

64 This is not to say that all past wrongs can or should be rectified. See note 46 above.
the two-part argument for the conclusion that the end-state theorist has no independent principle of just transfer.

It is important to see the problem a principle of rectification poses for end-state theories. End-state theories will wish to preserve their favored distributional results. There are good reasons to believe end-state accounts of justice will require lots of redistributive activities, and the only rationale for engaging in these activities is that injustice has somehow entered the distribution. Now, if the end-state theorist redistributes to achieve his favored distribution, he will be able to do without specific information concerning how the putatively distribution originated. Any rectificatory redistribution that restores the favored pattern will be just. What this points to is the end-state theorist’s lack of an independent principle of rectification.

To illustrate, think again of the unsophisticated egalitarian who wishes to preserve equality of wealth. Assume we have 5 individuals, A through E, each holding 5 units of goods. Our egalitarian sees this as just. Now, assume A creates lots of stuff, increasing his holdings to 10. Now, B and C together steal 2 units from him and consume them. Suppose also that the holdings of D and E have held at 5. Now A has 8 units and it seems B and C owe him 2 units as a matter of rectificatory justice. However, the egalitarian would hold that further redistribution is required, but what justice demands is that we take more from A. This is a highly counterintuitive and implausible result.

Of course, our egalitarian would deny that A was entitled to his increased holdings in the first place. But we could retell the story so that B and C intentionally squander their holdings simply because they wish for A, D and E to suffer. We could

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then observe that the egalitarian end-state analysis in question would call for 
‘rectificatory’ redistribution from A, D and E to B and C! This is because the end-state 
theory of rectification simply refers to the favored end-state distribution.

Now, lacking both an independent principle of just transfer and a principle of 
rectification is a problem in itself. It is the end-state theorist’s lack of such principles that 
justifies Nozick’s claim that end-state theorists cannot give us entitlements to our 
holdings. He writes that “patterned distributional principles do not give people what 
entitlement principles do, only better distributed. For they do not give the right to choose 
what to do with what one has; they do not give the right to choose to pursue an end 
involving… the enhancement of another’s position.”66 This is also why Hillel Steiner 
says that patterned theories “create rights to interfere with the rights it has created.”67 
And, as I said above, the holdings of individuals are always held hostage to the activities 
of others. Those who keep their holdings will be required by the demands of justice to 
expend them on others, if such is required to preserve the favored pattern.

Eric Mack observes that Nozick could have simplified the Chamberlain example 
and still made the same argument against end-state theorists. Mack writes the following:

Nozick might… have asked his pattern-friendly reader to envision the simpler… 
case of relatively well-endowed individuals increasing their respective holdings 
under D₁ through purely unilateral action – through these individuals separately 
engaging in enhancing transformations of their assigned resources. Indeed, he could 
also have asked the friend of the structure to envision relatively ill-endowed

65 Assume also that they have these character traits due to brute luck and are thus not responsible for them. 
This is to accommodate certain egalitarian concerns. For a discussion, see Richard Ameson’s 

66 ASU 167.

67 Steiner, Hillel “The Natural Right to the Means of Production” Philosophical Quarterly 26, Issue 106 
January, 1977 p. 43.
individuals decreasing their respective holdings under D₂ through purely unilateral action.⁶⁸

This alternative to the Chamberlain case brings to the fore the commitments of the end-state theorist. The end-state theorist must regard the set of holdings that result after the actions described above as unjust. And this commits the end-state theorist to the belief that, not just any transfer, but any use or failure to use, that thwarts the favored pattern is unjust. As Mack sees it, Nozick’s Chamberlain argument “points to a tension between justice-initiating application of a favored end-state or pattern and being committed to the repeated application of that end-state or pattern in a way that negates the outcome of individuals employing as they see fit the holdings established by the justice-initiating application of that pattern.”⁶⁹ Then, he writes that “the successive application of the pattern is incompatible with the entitlements to holdings that we expect under the banner of justice in holdings.”⁷⁰ The idea is that end-state analyses promise us that we will finally have what we are justly entitled to; and it is the favored end result that delivers this. However, the end-state theorist is also committed to regarding pattern-thwarting uses of property as unjust.

Here is the argument as Mack constructs it. If some initial distribution, D₁, was the distribution before folks paid to see Chamberlain play, the end-state theorist must explain how the distribution after the transactions occurred became “infected with

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⁶⁹ Ibid 81.

⁷⁰ Ibid 84.
injustice even though $D_2$’s existence and structure is entirely a function of just allocation $D_1$ and individuals employing their just holdings as they respectively see fit without trenching on the just holdings of anyone else.”\(^\text{71}\) As Mack sees it, Nozick’s argument raises two challenges. First, “the friend of the pattern is bound to explain, but cannot explain, how quite innocuous actions can inject injustice into a previously just world. Second, the program of the friend of the pattern promises us more than the ongoing application of the favored pattern can deliver.”\(^\text{72}\)

I have already explained why the friend of pattern theories promises more than he can deliver: the motivation for adopting a certain pattern is to give people what they are entitled to as a matter of justice, but it turns out that people lack entitlements to what they deserve.\(^\text{73}\) The first point calls for the proponent of a particular pattern to explain how it is that injustice appears in the set of holdings. Mack claims that the only way to deny that the holdings in $D_2$ are just is to deny that $D_1$ itself was just.\(^\text{74}\)

I take it the idea is that, if one is entitled to one’s holdings, there is an uncontroversial set of ways one may employ those holdings.\(^\text{75}\) Only if the pattern theorist accepts standard judgments about the size and scope of this set can he say that individuals are entitled to what they have in $D_1$. This is because the he claims that any deviation from

\(^{71}\) Ibid 82.

\(^{72}\) Ibid 84.

\(^{73}\) It turns out also that the end-state theorist’s lack of an independent principle of rectification is at odds with the notion of desert.

\(^{74}\) Ibid 84.

\(^{75}\) Or, maybe the way to put it is that “the rights secured by justice...are not subject to the calculus of social interests. John Rawls A Theory of Justice p. 4.
D₁ is unjust and requires redistribution. If the pattern theorist accepts both that D₁ is just and the existence of a set of uncontroversial employments of property, he will be unable to explain how D₂ became unjust, though he will presumably regard it as such.

However, the friend of a patterned analysis of justice may not wish to offer an intuitively adequate view of just holdings. The pattern theorist could claim that, surprising as it may be, justice demands that we only use our holdings in ways that preserve the favored pattern. Thus, the pattern theorist could say injustice infects the set of holdings when it moves from the pattern. That option is open, so I turn now to the practical and theoretical problems that arise from the end-state theorist’s inability to offer a principle of just transfer that does not refer to a favored pattern. The idea here is to reduce whatever appeal there might be in upholding the patterned analysis of justice.

The practical and theoretical problems are the following: The first seems to be that end-state and patterned principles will require constant redistribution. I believe this is why Nozick claims that “patterned principles of distributive justice necessitate redistributive activities. The likelihood is small that any actual freely-arrived-at set of holdings fits a given pattern.” Nozick does not mean that it is logically impossible for a series of free transfers to preserve a certain pattern. That could happen by accident or perhaps by exceptionally scrupulous calculation. What matters is that it is unlikely that this will happen. And since the only uses of one’s property that are just are those that best

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76 Some Marxists openly deny that we should aim for our theories to be intuitively adequate. The Marxist Keith Graham rejects appeals to common intuition in assessing the validity of any particular theory. See his J.L. Austin: A Critique of Ordinary Language Philosophy (Sussex, England: Hassocks Press, 1977). There is a distinction between ordinary language philosophy and appealing to ordinary judgments. However, Graham seems to regard the former and latter as equally unacceptable.

77 ASU 168.
preserve the favored pattern, there are good reasons to expect lots of redistribution to be required. Whenever people quite innocently move to distributions that fail to achieve the desired end result, intervention will be required to return to that result.

Nozick might have added that the quest for some favored result will yield constant political battles over what sorts of taxation and redistributive programs will best achieve those results. The cost of waging those battles in terms of private spending on lobbying and advertising combined with the economic costs in terms of uncertainty and the like might render any particular pattern theory unhelpful and self-defeating. Those battles might also create incentives for government officials to pander to certain groups, rather than honestly pursue the favored pattern.\(^78\)

Even if one is not moved by the problem of constant shuffling, there is a theoretical advantage the entitlement theory has over end-state theories. The advantage is one of explanatory power. End-state theorists cannot explain why we seem able to judge lots of transactions as just or unjust without knowing what their upshots are. The entitlement theory provides a framework for us to do so. I explain why in what follows.

To begin, recall that Nozick claims the principle of just transfer involves “descriptions of voluntary exchange, and gift and … fraud, as well as reference to particular conventional details fixed upon in a given society.”\(^79\) This characterization is to capture three kinds of intuitions. First, the utopian intuition that there are many kinds of societies into which consenting adults may enter. Second, it is to capture the more


\(^79\) ASU 150.
mundane intuition that in the real world local custom defining justice in transfer represents the fruits of many years of attempts to resolve conflicts. Finally, it is to capture the intuition that certain non-consensual ways of treating people are unacceptable. Once such a principle is specified, transactions in accordance with it will necessarily be just.

With the sort of account of justice in transfer the entitlement theorist seeks to provide on hand, we can determine whether any transfer is just or unjust within a given society without asking “Then what happens?” Thus, end-state theories of justice cannot explain our judgments when those judgments occur without knowledge of whether a particular pattern arises from a specific transaction.

The end-state theorist cannot explain our standard reactions to transfers; specifically, she cannot explain how we are able to judge those transfers in the absence of information about the upshots of those transfers. The end-state theorist requires that sort of knowledge to assess the justice of the transfers. We also need to know if the transferred item was properly the individuals who traded it, but that is a matter of looking back at the history of the item. This is why we might ask whether the person who engages in a specific transfer stole that item. If we show that the proper channels have been followed leading up to the transfer, the outcomes do not matter. The present point is that we can figure out whether transfers fit local rules without referring to outcomes. It seems the end-state theorist doesn’t require that information. So the end-state theorist can ignore the information he should require and must ask about information that he should ignore. The point then is that whatever principles are at work in our folk theory of just

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80 This would be another factor that may or may not matter to achieving the desired end-result.
transfer, it makes no obvious reference to end-state principles. We simply judge transfers themselves and this requires an independent principle of just transfer.\(^{81}\)

Nozick has a ready explanation for our reactions. It consists first in the observation that we have a principle of just transfer and that, within our rules, certain transfers are examples of justice preserving transfers. If this explanation looks too easy, there is a sense in which it should be. The rules we have internalized, subject to constraints of force and fraud, just are the rules of just transfer at work in this social arrangement. There will be many imaginable transfers about which we are unsure what to say, but for that reason they cannot function as purportedly obvious counterexamples to the entitlement theory.

I want to close this portion of the discussion by noting that the argument here has not turned on an appeal to ignorance. It is not that we lack knowledge about some salient features of the transfers (or failures to transfer) *themselves* that motivates the present argument. Instead, I make the conceptual claim that on end-state theories all the information about a transfer itself does nothing to allow us to assess the transfer. For the end-state theorist, we need to know what happens as a result of the transfer in order to evaluate whether it is just. Our folk theory of justice in transfer is rule-based; end-state theories are outcome-based. This is what leads to the explanatory impotence one finds in those theories.

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\(^{81}\) I need to clarify what is going on in this section. I am making a claim about the entitlement theory and its ability to explain our reactions to *transfers*. I am claiming that the entitlement theory explains our reactions to transfers in a way that is superior to its rivals. I am not claiming that, no matter how an individual comes to have something, if he transfers it according to the rules of justice in transfer, the outcome is just. I am also not claiming that this is how our local rules of transfer work.
Conclusion

This section has presented the entitlement theory and the argument it generates against pattern theories of justice. The self-ownership thesis undergirds the theory: it explains in part how individuals can generate entitlements to the external world and why they have claims only to the entitlements they have generated, unless they receive those holdings as a gift or the like, are answered by the self-ownership thesis. I devote the following chapter to sketching an explanation both of what the self-ownership thesis says and why it leads to entitlements to things in the world. Here I explain that the self-ownership thesis claims individuals own their bodies and world-interactive powers. I then construct the link between this sort of ownership and the ability to generate entitlements to objects in the world. The second chapter concludes by illustrating why the link between self-ownership and entitlements requires a historical view of justice.

The exposition of self-ownership matters for two reasons. The first is that Cohen attempts to mitigate the appeal of the self-ownership thesis. So having a clear explanation of that thesis on hand is necessary for assessing his efforts. Second, Cohen tries to show that self-ownership is compatible with moral baselines different from the weak proviso Nozick chooses. If Cohen is right, there are serious ramifications for the account of justice in acquisition, transfer and the Lockean proviso in general. In short, if self-ownership is compatible with Cohen’s alternatives, states greater than the minimal state appear to be justified. Formulating the concept of self-ownership is necessary to determine whether such is the case.
CHAPTER 3

Self-Ownership

This chapter articulates the self-ownership thesis and what that thesis entails. I rely in large part on Cohen’s exposition of self ownership. Though this may seem odd, I do so for three reasons. First, I think Cohen’s exposition is very good.\(^1\) Second, in chapter 6 I attempt to determine whether Cohen’s critique of Nozick on justice in acquisition fails.\(^2\) In that chapter I conclude, among other things, that what Cohen says about justice in acquisition is incompatible with his own accurate exposition of self ownership. Finally, chapter 7 assesses Cohen’s attempt to reduce the appeal of self-ownership. Thus, the reliance on Cohen. I follow his explication of what the self-ownership thesis says.

In this exposition I show the constraints self-ownership places on how individuals may treat each other and how the thesis explains common moral judgments. I conclude by presenting the obstacles a commitment to self-ownership poses for programs of redistributive taxation. This is relevant because Cohen rightly takes his commitment to egalitarianism to require the legitimacy of redistribution; and the most natural way to engage in this redistribution is through taxation.

\(^{1}\) I have changed my mind about this during the time I have spent writing this dissertation.

\(^{2}\) The structure of Cohen’s work on self-ownership moves slowly from the suggestion that self-ownership is compatible with very egalitarian requirements about justice in acquisition to the conclusion that egalitarians must reject self-ownership because it readily allows for unacceptably unequal holdings. Thus, my discussion of Cohen on acquisition focuses on his thoughts before he fully realizes that he must deny that people own themselves.
3.1 Self-Ownership

The self-ownership thesis is a normative claim about who has discretionary authority over persons and their world interactive powers. Cohen rightly notes that self-ownership thesis is not directly a claim about personal identity. The notion of the self Locke and Hume puzzled over is not the self that is at play in discussions of self ownership. Instead, bodies and their physical and intellectual abilities are what are owned; and those collections are the ‘self’ that is relevant to the self-ownership thesis. The idea is that it is only the individual whose powers are in question who has a moral right to employ those powers, unless, of course, the individual has taken on obligations to use or refrain from using those powers. Other individuals may attempt to convince self-owners to use or refrain from using their powers; but the ultimate discretionary authority over whether the self-owner does so is held by the self-owner.

Before entering into agreements to the contrary, each person is to enjoy the fullest set of ownership rights in himself possible, provided that set is compatible with an identical set of ownership rights of others over themselves. It is this compatibility or compossibility issue that helps to specify the content of self-ownership.

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3 Thus, an account of coercion is required to delimit the ways in which others can attempt to ‘convince’ self-owners to use their powers. Similarly, an explanation of why lies, fraud and so on violate self-ownership rights is required to complete a full explanation of self-ownership. I do not delve into those issues here.

4 *SFE* 213. Spelling out self-ownership in terms of the largest set of ownership rights possible is now often called ‘Full Self-ownership’ or FSO.

5 This is Hillel Steiner’s term. It is a necessary condition on whether a set of rights is coherent. Individuals must be able to exercise the incidents of their rights without violating the rights of others in the process.

6 *SFE* 213.
Because of its explanatory power, self-ownership is an attractive moral principle. Thus, purging oneself of the notion of self-ownership is not easy. Cohen observes that “its antecedent (that is, pre-philosophical) appeal rivals that of whatever principles of equality it is thought to contradict, even for many committed defenders of such principles: that is why Anarchy, State, and Utopia unsettles so many of its liberal and socialist readers.”7

Part of the appeal lies in self-ownership’s ability “to capture our common perception of the moral inviolability of persons – an inviolability that is manifested in the wrongfulness of unprovoked acts of killing, maiming, imprisoning, and extracting labor from individuals.”8 It also explains the standard judgment that it is unacceptable to attempt to control the thoughts or beliefs of others.9 The thesis can also explain the force of standard objections to consequentialism; and why a side-constraint-based moral theory is an attractive alternative.

It is important to notice also that self-ownership is incompatible with a consequentialism of rights. If one wishes either to maximize the self-ownership rights individuals have over themselves or minimize rights violations, the result is what Nozick calls a “utilitarianism of rights.”10 But Nozick rejects this view on the grounds that it allows the very same kinds of treatment proponents of self-ownership find unacceptable

7 SFE 70 interpolation original.


9 Nozick invokes Kurt Vonnegut’s Harrison Bergeron in Welcome to the Monkey House (New York: Bantam Doubleday Dell Publishing, 1968) to illustrate this kind of control.

10 ASU 28.
when defended by standard consequentialists. More precisely, if we can violate rights to limit rights violations, we seem to deny that individuals really own themselves; we hold instead that individuals lack discretionary authority over their powers, because allowing them this control thwarts the goal of minimizing rights violations. This is, *mutatis mutandis*, what any consequentialist could say.\(^{11}\) Thus, Nozick holds that self-ownership properly construed requires side constraints on actions.\(^{12}\)

Cohen notes that self-ownership, as Nozick constructs it, blocks forced eyeball redistributions.\(^ {13}\) This is something it seems consequentialist principles cannot accomplish. We can always imagine a situation in which the only way to achieve some putatively good consequence is by doing something as unacceptable as forcibly extracting the eyeballs of some and giving those eyeballs to others. Cohen is honest in this regard and suggests the egalitarianism he endorses can require forced eyeball redistributions. Thus, he attempts to show that our reluctance to acceptance such redistributions is based on reasons that are not morally defensible; or, the reluctance is not based on a commitment to self-ownership.\(^ {14}\)

Obviously, this incompatibility of self-ownership with consequentialism is what renders self-ownership incompatible with end-state theories of justice. As analyses of justice, end-state theories are the analogs of consequentialist moral theories. Though

\(^{11}\) The motivation driving utilitarianism of rights is different from that driving normal consequentialism, of course. The point of departure for the utilitarian of rights might be the importance of respecting rights, whereas it is something else – the value of equality or overall utility - for the consequentialist.

\(^{12}\) *ASU* 28-30.

\(^{13}\) *SFE* 70.

\(^{14}\) *SFE* 243-244.
patterned theories of justice need not be tied to common variants of consequentialism, self-ownership’s *compatibility* with market harms shows why self-ownership is incompatible with patterned theories of justice. On the market, individuals may trade, destroy and invest to get the things they want. There is no reason to believe that this process will yield any particular pattern of holdings.

It should be clear by this point why Nozick and many others believe self-ownership necessitates a historical conception of justice. If individuals own their world interactive powers, others do not have a natural claim to the fruits of their labor;¹⁵ and they may not force others to deliver products to them. Individuals must generate titles – unless their rights are violated – by exercising their powers. This is because individuals have no claim to the results of the labor of others. Of course, they may generate titles merely by being the recipients of gifts or charity from others entitled to dispose of their holdings.

It is important to see that self-ownership requires a historical view of justice, even though a self-owning individual may do nothing to generate titles. This is why the “unless their rights are violated” line is inserted above. If an individual acquires so much that others cannot bring their powers to bear on the world, those so prevented are entitled to compensation. The principle that limits how the actions of some may bear on others is often called the ‘Lockean proviso.’ I discuss this proviso, and an alternative version of it, in the following section.

¹⁵ I leave aside the question of what to say about children here. Promising remarks in this regard are found in Locke. He holds that children do have a natural claim to their *parents’* holdings. See *First Treatise* §§88–97.
3.2 The Lockean Proviso

The Lockean proviso, as Nozick employs it, is to provide an answer to the question “How may the acquisitions of some bear on others?” I have already sketched Nozick’s answer to this question, but here I endorse a correction of the position Nozick endorses in *ASU*. I attributed to Nozick in chapter one the following belief: If we believe individuals own themselves, we must believe they can generate titles to the unowned world. In particular, we must believe that labor can lead to property rights. Otherwise, self-ownership rights are rendered nugatory.\(^\text{16}\)

One question we should have about Nozick’s proviso is why it should apply to holdings as opposed to the way one uses one’s holdings. After all, the mere possession of an object does not seem to bear on others, especially if the possessor allows others access to the object. Nozick discusses the proviso largely, but not entirely, in relation to acquisitions of holdings.\(^\text{17}\) If the proviso is somehow motivated by respect for self-ownership, it seems the proviso should govern all sorts of property *uses* and not only holdings themselves. If one individual places without invitation a knife in the chest of another, the victim’s self-ownership rights are violated. This is because the property right of the knife-owner is itself constrained by the self-ownership of others. So the owner of the knife owns it even though he cannot place it wherever he likes. The self-ownership thesis poses limitations on how individuals may treat each other; and part of this limitation is called “The Self-Ownership Proviso.” (SOP)

\(^{16}\) Nozick never says this, of course. And I have come to have doubts about the extent to which Nozick believes this. I do not let these doubts appear in the body of this dissertation though.

\(^{17}\) Nozick, as I mentioned in chapter 1, does seem to regard his proviso as limiting transfers as well. He says, “If the proviso excludes someone’s appropriating all the drinkable water, it also excludes his purchasing it all.” *ASU* 179. He even says the proviso bears on acquisitions and transfers. See *ASU*, 54.
The SOP is largely articulated by Eric Mack. The SOP claims that, morally speaking, we are not allowed to employ our holdings in a way that nullifies the world-interactive powers of others. These world-interactive powers include the individual’s “capacities to affect her extra-personal environment in accord with her purposes.” As Mack sees it, these 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.” Because the powers individuals own are essentially related to an extrapersonal environment, Mack presents the following argument:

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 is distinct from the Lockean proviso that Nozick offers. The Lockean proviso seems to be a restriction on holdings, but as I said above, there seem to be other ways of using one’s property to violate people’s rights. The SOP does not limit per se the acquisitions in which individuals may engage, but only how individuals may employ their resulting property. Also, Nozick’s proviso deals with whether an acquisition allows others to improve their situation by making an acquisition. The SOP does not focus on whether others can engage in acquisitions; instead, what matters is that others may employ their world-interactive powers. So even if individuals cannot make acquisitions,

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19 Ibid 186.

20 Ibid 187.
they may come to have plenty of opportunities to bring their world-interactive powers to bear in some other way. The example Mack uses to illustrate this possibility is Hong Kong. There is no opportunity for initial acquisition in Hong Kong, but the prospects of bringing one’s world-interactive powers to bear have increased dramatically. Thus, the uses of holdings there do not run afoul of the SOP.  

To see the rationale for applying the proviso to uses, as opposed only to acquisitions, consider the following scenario presented by Mack:

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, Adamdesignates it, and it disappears. And so on.

The idea here is that individuals might violate the ownership rights of others both invasively and non-invasively. The former violations involve disabling the capacities of another agent by directly impinging on her body. The latter have the same effect, but do not involve directly impinging on her body. So Mack’s argument is that the very same good reasons we have for regarding invasive disabling as wrong, yield the conclusion that non-invasive disabling is wrong as well. In the scenario presented above, while Adam does not invade Zelda’s body in any way, he does wrong her. The SOP is developed to explain that wrong.

The SOP does not require individuals to try to maximize the ownership rights others enjoy in the world. This sort of requirement would actually deny that individuals

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21 I say they do not necessarily do so. I take it that, as a matter of historical fact, they did. I am only making a point about the SOP, not the specific actions of individuals in China.

own themselves, for it would remove standard incidents of property rights from the
discretion of the alleged self-owners. Instead, the SOP precludes preventing others from
bringing their world-interactive powers to bear on the world. Any employment of
property that precludes others from bringing their world-interactive powers to bear runs
afoul of the SOP.

The SOP is a constraint on how individuals may use their property. Self-
ownership imposes further limitations on how individuals may treat others. What is
relevant to the Nozick-Cohen interaction are the constraints self-ownership imposes on
government activity, specifically taxation.\(^{23}\) I turn to the obstacles self-ownership poses
for taxation in the next portion of this chapter.

3.3 Self-ownership and Taxation

Cohen argues that self-ownership is incompatible with at least some activities that
most political philosophers regard as acceptable. In particular, he claims that a
commitment to self-ownership rules out non-voluntary redistributive taxation. (I drop the
‘non-voluntary’ henceforth, but the reader should regard it as implied.) On this matter,
Cohen writes the following:

The polemically crucial right of self-ownership is the right not to (be forced to)
supply product or service to anyone. …. Failing to help another cannot be construed
as interfering with his right to use himself as he wishes, and not being required to
help others leaves everyone with more rights over their own powers than they
would otherwise have. Accordingly, the right not to (be forced to) supply service
for product is part of any plausible reading of the self-ownership principle.\(^{24}\)

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\(^{23}\) Of course, if individuals own themselves, no others may legitimately tax them against their will. It is
usually governments that engage in taxation though.

\(^{24}\) *SFE* 215, interpolation original.
The idea here is that ownership rights over oneself include discretionary authority over whether one will use one’s talents or abilities, modify oneself, and so on. Cohen observes that schemes of redistributive taxation will require the government to force some individuals to supply products and/or services to others. This could involve forcing some individuals to keep records, furnish receipts and then deliver a certain portion of their income to the government; or it could just involve forcing some individuals to serve others. However this happens, the redistributive scheme impinges on ownership rights individuals have over themselves.

The argument just sketched shows that, if the self-ownership thesis is correct, the government may not force individuals to aid others. There are, however, other ways of redistributing. In strengthening Cohen's argument, Eric Mack notes that the state with redistributive designs might not require individuals to render services or products to others. Instead, the state might just take the products of some individuals and redistribute those holdings to others. Since an argument to show that this taking is illegitimate would assume that individuals are entitled to the fruits of their labor, the assumption would be question-begging as an argument against the justice of redistributive taxation.

What Mack does to avoid begging this question is argue that any redistributive scheme that is to be successful will require the state to use the threat of force and violence against at least some people albeit not necessarily against those whose products

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are taken.\textsuperscript{26} Such force and violence will violate the rights of self-owners. Mack envisions a state that pays some people to collect and deliver other people’s products; e.g. the state pays employers to garnish the wages of its employees. In this way, no self-owners are forced to perform services or render aid. Still, Mack thinks there are good reasons to believe that such a scheme will fail unless force or the threat of force is employed against some people. Employers who refrain from participating in the garnishing will have competitive advantages in attracting employees. One should expect many firms to refuse to participate in the tax scheme. This would cause the state to lack the funds for its various favored activities.

If states engage in activities to prevent individuals from working for non-participating firms or from leaving the arrangement altogether, the state violates self-ownership rights of those individuals. As Mack puts it, “self-owners do have the right to migrate from one set of affiliations to another… Self-owners do have the right to arrange their affairs and help other people arrange their affairs in ways that reduce their exposure to the state’s non-violent taking of the products of their time, talent and labor.”\textsuperscript{27} So instituting a scheme of redistributive taxation is almost certain to require that at least some individuals be forced not to engage in tax evasive actions or actions that facilitate tax evasion that are within their self-ownership rights.

Now, David Gauthier challenges Cohen’s claim that self-ownership is incompatible with redistributive taxation.\textsuperscript{28} Gauthier basically argues that an individual’s

\begin{flushleft}
26 Ibid 253.

27 Ibid 253.
\end{flushleft}
discretionary control over his or her natural abilities is compatible with taxation of
income. Self-ownership and redistibutive taxation are compatible because income
generated by the employment of certain natural abilities can exist only within the
confines of the state. In the state of nature, people would not be able to earn money
playing hockey, for example. Thus, the state may tax their income generated from doing
so, and this tax does not violate individual rights. Individuals can thus retain their
natural right to decide to play hockey and to charge others to watch them do so, while the
government may tax that income. The right over the employment of the ability to play
hockey is not diminished by the taxation. So Gauthier relies here on a distinction between
rights over one’s activities and rights over the products of one’s activities. The right of
self-ownership protects the former, but not the latter; and if certain goods exist only in a
political setting, taxing those goods does not violate the rights of those who produce
them.

The relevant portion of Cohen’s response focuses on the link between self-
ownership and the right to trade with others. Cohen writes the following: “Suppose I
own three frying pans and you own three feather dusters, and we trade them with one
another. The state then claims the right to confiscate one of my post-trade dusters and one
of your post-trade frying pans, on the Gauthier grounds that… there are no frying pans in
the state of nature.”

wrote on this issue for so many years, Gauthier’s response predates SFE. However, it does not predate
many of the articles that were ultimately revised to comprise SFE.)

29 Ibid 273-274.

30 SFE 220.
The claim that there are no frying pans in the state of nature, we can assume for the sake of argument, is true. But Cohen claims that, even if it is true, it is equally true that “the state’s claim trenches against our rights in what we originally owned: we have not been allowed to get what others are willing to give us for them.”\footnote{SFE 220.}

There are two ways of taking Cohen’s challenge here. The first, which I take to be unsuccessful, draws a comparison between ownership in the state of nature and ownership within the state. It then observes that ownership of products in the state of nature allows individuals to get what others are willing to give for their products. Ownership of products in a state that taxes income does not preserve this right.

This argument is unsuccessful for three reasons. First, this reading of Cohen ignores Gauthier’s basic challenge. If individual rights are not violated through taxation of goods that exist only when the state exists, the fact that we are no longer able willing to get what others are willing to give is beside the point. If we couldn’t get those frying pans in the state of nature, the state’s taxing the trade of frying pans does not violate our rights. Gauthier limits the scope of the rights we have to get what others are willing to give.

Second, the argument ignores the distinction Gauthier is drawing between the rights individuals enjoy outside the state and the rights they enjoy within it. Gauthier holds that our rights are specified by the rights an isolated individual would enjoy. He claims that “a solitary being… is free to use her capacities in whatever way will best fulfill her preferences given the external circumstances in which she finds herself.”\footnote{Of}
interest here is the liaison between taxation and individual rights. In this regard, Gauthier observes that “an isolated individual enjoys the full benefit of her labors; what she consumes is what she produces.”\textsuperscript{33} However, Gauthier claims that the “freedom to collect factor rent... is no part of the freedom of a solitary being; the surplus represented by rent arises only through interaction. And so it is not a necessary part of market freedom conceived as an extension of the natural freedom enjoyed by a Robinson Crusoe.”\textsuperscript{34}

The idea here is that factor rent, as Gauthier uses the term, refers to the difference between the costs of the factors involved in producing some good and the price of that good on the market.\textsuperscript{35} Gauthier wishes to deny that taxation violates an individual’s right to his basic endowment. He denies this, as I said above, on the grounds that rights to basic endowments are spelled out in terms of the freedoms an isolated individual enjoys. And, precisely because by hypothesis there is no market when individuals are isolated, individuals do not have a right to the income generated through the market.

Finally, it is not clear that it is self-ownership that is being trenched upon here. Instead, it looks like it is ownership of physical objects that is trenched upon in this rendering of the argument. True, there is a link between self-ownership and the right of property, but Gauthier seems to challenge just how robust that link is; and not whether it exists at all.

\textsuperscript{32} David Gauthier \textit{Morals by Agreement} 90.

\textsuperscript{33} Ibid 90.

\textsuperscript{34} Ibid 276.

\textsuperscript{35} Cohen is critical of Gauthier’s use of “factor rent” here. This critique does not bear on the present discussion. Still, see \textit{SFE} 218.
Fortunately, there is a better reading of Cohen’s argument; and it is the one I take him to have in mind. Cohen’s argument occurs within the context of a discussion of Nozick’s minimal state. Cohen is not interested at this point in the question of whether a more extensive state could be justified or whether, as a matter of fact, the state enables certain objects to come into existence. Thus, when Cohen analyzes Gauthier’s argument, he is regarding the minimal state as a possibility; and the minimal state does not engage in redistributive taxation. Instead, each individual pays a fee for the state’s protection. Each individual has a protection contract and that contract does not need to require a right to tax.

So assume that individuals in that minimal state have very specific contracts with the government. These contracts are limited to the functions of protecting against force and fraud, enforcing contracts, and so on. Suppose that these individuals produce things that cannot be produced within the state of nature. If the state then claimed the further non-contractual right to tax all transactions on the ground that it facilitates the existence of social product, the state would clearly violate the contract it has with its citizens. The idea is that the contract restricts the activities of the state. This, I gather, is Cohen’s point: even if individuals lack a right to collect factor rent, the contract Nozick envisions precludes the state from seizing that rent. In fact, it requires the state to protect individuals in collecting it.

Of course, Cohen might have done well to reject Gauthier’s construal of self-ownership; and some of Cohen’s remarks suggest that he does. As Gauthier spells out

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36 This is not quite true. Nozick thinks a state that collects payments to protect the rights of non-paying members must arise. Cf. ASU Ch. 4. We can imagine for the purposes of discussion a state in which everyone can and does buy a protection contract.
individual rights, he does so in terms of the freedoms isolated individuals enjoy. Spelling out self-ownership in this fashion seems to reduce the explanatory power of self-ownership. If we assume that the freedom to marry (willing others) or play hockey do not exist outside the aegis of the state, say because the state enables these activities to come into existence, Gauthier’s view seems to allow that preventing people from marrying or playing hockey does not violate their rights. A judgment of this sort is at odds with the reasons a commitment to robust (or even moderate) rights is to be appealing in the first place. We would find it repugnant to preclude people from marrying or playing hockey, at least absent some very compelling reasons to do so.

The last two paragraphs of this excursion into Gauthier are not meant to beg the question and assert that our rights are not to be spelled out as Gauthier does. Instead, it is meant to show that spelling them out the way Gauthier does leads to implications that are counterintuitive and at odds with the way we tend to think about individual rights. We believe individuals should be allowed to converse and play hockey with willing others, and an adequate conception of self-ownership is to preserve those judgments.

Cohen rightly takes it that part of the right of self-ownership entails the right to enter arrangements that allow us to get what others agree to give us. This right is protected by an adequate conception of self-ownership. So if one enters an agreement with the state and that agreement requires a certain payment to protect us from force and fraud, and to enforce private contracts, one rightly expects this kind of protection. If a private individual does not give us what he has promised or takes more than we offered in an agreement, he violates a contract. Cohen relies on the judgment that the same is true of

\[SFE 220.\]
the government. Accordingly, he writes “I disagree with the view of Jeremy Waldron that ‘there is no sense to the idea that there is a natural phenomenon called “reaping the rewards of one’s talents” which is understood apart from the social arrangements and institutions that define one’s relationships to other people.’” Individuals need not enter contracts with the state that allow redistributive taxation; and Cohen holds that if individuals enter an agreement requiring the government not to seize surplus product, it is a violation of individual rights to do so. This, I take it, is his complaint against Gauthier.\textsuperscript{39}

Given Cohen’s interest in defending egalitarianism, he is worried by the self-ownership thesis and its implication that persons have rights to the fruits of their labor and to what they have gotten in exchange for the fruits of their labor. Just as importantly, he is worried by self-ownership’s incompatibility with requiring individuals to supply services to others. In particular, he notes that self-ownership can very easily generate entitlements to unequal amounts of holdings. He writes: “[If] all means of production were distributed equally across the population, and people retained self-ownership, then differences in talent and time preference and degrees of willingness to take risk would bring about differential prosperity.”\textsuperscript{40}

It is this point that leads Cohen very rightly to claim that egalitarians must reject self-ownership. Talent, time preferences and risk aversion are among the properties that

\textsuperscript{38} SFE fn. 23, pp. 221-222. Cohen might have one well to deny that the state is necessarily identical to those social arrangements and institutions. Murray Rothbard does this in “Society Without a State” The Libertarian Forum vol. 7.1, 1975.

\textsuperscript{39} This might simply go back to Mack’s point. Cohen seems to be saying that self-owners need not enter a state that engages in redistributive taxation; and it is unacceptable to force them to do so.

\textsuperscript{40} SFE 227.
self-owners own. These differences among self-owners would likely bear on outcomes, Cohen rightly sees, even if initial distributions of extra-personal resources were equal. He writes “each, if self-owning, could do with his share as he pleases. This… fails to secure the equality of condition that socialists prize.” Self-owners cannot be forced to employ or fail to employ those powers, so those who wish to ensure equality of outcome will need to deny that individuals own their powers. Alternatively, they must deny that individuals have rights to enter arrangements that protect the fruits of their labor, but Cohen rightly sees that to advance either of these denials is a reject of self-ownership.

The right to use one’s abilities as one sees fit, provided one does not violate the rights of others, and the right to associate with others in ways that protects the results of exchanges leads Cohen to make the point that self-ownership fits with market freedom. This is important for understanding a further point about self-ownership. Cohen rightly observes that self-ownership is compatible with being subject to some harms. The harms some may suffer in market competition are not precluded by self-ownership. He writes:

Since it is in general true of ownership that I need not devote what I own to another’s benefit, it is true of self-ownership that I need not devote myself to anyone else’s benefit… I therefore have no duty to help others. And the harming induced by market competition qualifies as acceptable in light of the concept of self-ownership. For I harm you in market competition by selling what you might not want me to sell or by buying what you might not want me to buy, and freedom to buy and sell, and, therefore, the harmings it may occasion, are integral to the concept of self-ownership.

Importantly, he observes that if “I own something, then no one else may damage that thing without my consent. So you may not chip a piece off my clock. But you do not

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41 SFE 94.

42 SFE 227.
damage my clock if you make a better one, and thereby bring it about that no one any longer wants to buy my clock at a price that appeals to me."

This last point is instructive for two reasons. First, it shows that individuals own things, not the value of things they own. This is why Nozick was careful to say that, after the Chamberlain transfers, the shares of those who did not transfer do not change. He thus shows sensitivity to the concern that transfers can bear on the holdings of third parties in a footnote when he writes the following: “Might not a transfer have instrumental affects on a third party, changing his feasible options? (But what if the two parties to the transfer independently had used their holdings in this fashion?)” Still, Nozick does not take this to be a problem with his theory, or for self-ownership. It is not a problem because we cannot have a right to the value of things, whether external objects or our own powers. I will briefly explain why this is so.

We can imagine an individual capable of digging a two foot hole in one hour with his bare hands. Since this is very hard to do, he might sell his labor at a relatively high price in a world lacking shovels. So imagine that the individual earns a high income doing just that. Then imagine that someone invents the shovel. With a shovel, most adults can with relative ease dig a 2 foot hole in an hour. If the man who digs well with his hands possesses no special skills with a shovel, he can no longer earn the sort living he did before.

43 *SFE* 228.


45 *ASU* 162.
The question is whether his ownership rights in his body have been trenched upon by the invention of the shovel. Nozick can here rely on the standard incidents of property rights and note that, on the standard view, the hand-digger’s rights certainly are not violated. He can still dig with his hands if he likes, or refrain from doing so. And he can charge what he can get a willing buyer to pay. It is just that there are fewer willing buyers and they will not pay what they once did. This is why the entitlements Nozick offers do not include rights to the value of things that one owns.

The second reason Cohen’s observation that self-ownership is compatible with market harms is important is that self-ownership is incompatible with act consequentialism. It is, for example, incompatible with egalitarianism. Individuals can use their property, which includes themselves, in ways that do not yield equality. This is a standard view of property rights; if one disagrees, one must refute the standard view. Cohen seems to agree when he writes “Persons are exclusive owners of what they own only if they are entitled to set the terms on which they will exchange what they own with one another.” This is why Cohen rightly concludes that egalitarians must reject self-ownership.

This sketch of self-ownership and the SOP provides an adequate background both for my presentation of Cohen’s assault on self-ownership (ch.4) and for my defense of self-ownership (ch. 6). I turn in the following chapter to Cohen’s criticism of the doctrine of historical entitlement.

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46 I restrict these remarks to act consequentialism because it might be that the best version of rule consequentialism is an appropriation of the entitlement theory and self-ownership.

47 SFE 221.
CHAPTER 4

Cohen’s Criticism of the Historical Entitlement Theory

This chapter provides an account of Cohen’s arguments against two portions of the entitlement theory. In the first section I offer Cohen’s challenges to Nozick’s account of justice in acquisition. In the second section I present Cohen’s attempt to show that the Chamberlain example fails to generate a successful argument against egalitarianism, and patterned theories in general. Specifically, I offer Cohen’s attempts to show that moving from a just starting point via just steps need not yield a just outcome. Cohen aims to show that injustices can arise even if individuals do not transfer their just holdings unjustly.

4.1 Cohen’s Criticism of Nozick on Acquisition

Nozick takes justice in acquisition to be limited by the Lockean Proviso. I explained in chapter 1 that this proviso limits how the holdings of some may bear on the situation of others. I followed Eric Mack’s claim that the proviso really ought to bear on uses of property, and not merely on holdings. The self-ownership proviso (SOP) prevents individuals who acquire property from using it in a way that precludes others from bringing their world interactive powers to bear. If an acquisition itself does not do this, and acquisition occurs according to local rules of just acquisition (should any exist), then the acquisition is just. This is the first step in the doctrine of historical entitlement: just acquisition.
Cohen regards the question of how an acquisition bears on others as the primary matter an account of justice in acquisition must tackle. The way acquisitions bear on others as the primary matter an account of justice in acquisition must tackle. The way acquisitions bear on others is significant because if an acquisition’s “impact on others is (at worst) harmless … then it will be difficult to criticize it.” Accordingly, Cohen sets about to “argue that there are relevant counterfactuals… with which we are to compare what happens when an appropriation occurs with a view to determining whether anyone is harmed by it.”

The idea here will be that for any level of well-being, opportunity or the like that we select as a baseline against which to compare an acquisition, there will always be an alternative baseline that might yield a different judgment about the justice of the acquisition in question. The challenge will be for the Nozickian to explain why we ought to select one comparison point instead of another.

In this vein, Cohen stresses that Nozick regards the world as naturally unowned; but Cohen thinks that this belief is arbitrary. Why should we take the world to be naturally unowned when there are other alternatives to consider? Cohen’s view seems to be that there is no non-arbitrary baseline from which to determine whether an acquisition renders others relevantly worse off. To argue for this view, Cohen first goes along with Nozick’s hypothesis that the natural extra-personal world is unowned. He attempts to show that, even on this hypothesis, there will be no single set of background conditions against which to assess whether the acquisition bears impermissibly on the condition of

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1 SFE 73.

2 SFE 78.
others. After pursuing this line of though, Cohen introduces two alternative hypotheses to Nozick’s. One could regard the natural extra-personal world as naturally jointly owned, or one could regard that world as equally owned. Cohen seeks to show that each of these alternatives yields different conclusions about whether a particular acquisition is just. The idea, as I said above, is that there is no compelling reason to select one of the hypotheses over the others.

I will trace Cohen’s discussion of Nozick on acquisition here. Thus, I begin with Cohen’s initial acceptance of Nozick’s assumption that the natural extra-personal world is initially unowned. Cohen assumes with Nozick that everything remains “in Lockean common ownership, a regime in which no one privately owns anything and each may use anything that no one else is currently using.” In such a condition, Cohen sets out to show that there are means of determining whether individuals are relevantly harmed that Nozick ignores.

To set up his argument, Cohen envisions a situation that meets Nozick’s proviso. First, we suppose some land is held in common. Then, imagine A and B, who draw “sustenance from the land without obstructing the sustenance drawing activity of the other.” A and B draw $m$ and $n$ bushels of wheat from their separate farming activities, respectively. Cohen leaves the values of $m$ and $n$ undefined, because the value of those values is irrelevant to determining whether either is worse off.

\[\text{sfe 79.}\]
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Now, Cohen has us imagine that A acquires all of the land and leaves B less than enough to live on. This would violate the proviso, if there is nothing else for B to do. But A hires B to work the land at a salary of $n + p$. A, though the cooperation with B, earns an extra q bushels. So the total output is $m + n + p + q$. Both A and B have more wheat as they would have had the appropriation not taken place. Given this, it is natural to assume the appropriation is just, but Cohen aims to show that there are reasons to doubt this.

Cohen observes that A’s appropriation might seem just if we look only at the number of bushels each has after the appropriation, but he suggests we should consider more than this. Specifically, he writes that if “being subject to the directives of another person is regarded as a relevant effect on B of A’s appropriation, then we cannot say whether or not (A’s appropriation) violates Nozick’s proviso, since we have not put a value on the disbenefit to B of being under A’s command.”\(^6\) He claims that “entitlement theorists frequently neglect the value people may place on the kind of power relations in which they stand to others.”\(^7\) The idea is that ignoring this sort of valuation makes it too easy to satisfy Nozick’s strictures on justice in acquisition.

The thought behind these last two paragraphs is that there are concerns beyond the market that the proviso ought to consider. Cohen is suggesting, I take it, that certain moral considerations should play in our assessment of whether initial appropriations are just. He does not stop there, though. He does aim to show that, even if we limit our analysis to outcomes measured in terms of material goods, there are good reasons to

\(^6\) SFE 80.

\(^7\) SFE 80.
question Nozick’s view of just acquisition. Beyond concerns about power relations, Cohen is concerned with the entitlement theory’s explicit endorsement of the doctrine of first arrival.\textsuperscript{8} This is the idea that the first individual to claim a piece of land is the rightful owner of it. One concern Cohen has with the doctrine of first arrival is that some individuals, like B in the tale above, could have more if they had appropriated. After all, he writes that “B may have abstained from appropriating out of regard for A. Ought A to profit only because he is more ruthless than B?”\textsuperscript{9}

Cohen returns to his initial example in which A and B each farm land held in common. A appropriates the land and hires B to work it. As was the case above, each still does better than they would have, had A not appropriated. This is because their cooperation yields more bushels of wheat than if the two continued to work in isolation and each gets some of the additional wheat. However, Cohen now imagines that B is a superior organizer to A. Whereas under A’s appropriation, the total output is $m + n + p + q$, Cohen observes that if B had appropriated the land, the output could have been greater than this. Here the total output is $m + n + p + q + r + s$. The division Cohen envisions under this arrangement is as follows: A gets $m + p + r$ and B gets $n + q + s$. Thus, each would have had more wheat if B had engaged in the acquisition instead of A.\textsuperscript{10} And Cohen observes that “Nozick’s condition licenses, and protects, appropriations whose

\textsuperscript{8} \textit{SFE} 80.

\textsuperscript{9} \textit{SFE} 80.

\textsuperscript{10} \textit{SFE} 81.
The idea of Pareto comparisons will play a prominent role in the discussion of the remainder of this chapter, as well as my assessment of Cohen’s criticism in chapter 5 of this dissertation. Here I will offer a brief account of the relevant Pareto-related ideas that will work here. Pareto comparisons, for the purposes of this dissertation, focus entirely on income distribution. A distribution $D$ is Pareto-superior to distribution $E$ if everyone is better off in $D$ than in $E$; or if some are better off and no one is worse off. A distribution $D$ is Pareto-inferior to a distribution $E$ if distribution $E$ is Pareto-superior to $D$. A Pareto optimal distribution is a distribution to which there is no Pareto-superior distribution. This list of Pareto considerations is far from exhaustive, but this set of definitions is adequate for the purposes of presenting Cohen’s criticism of Nozick as well as my assessment of that critique.

Here is the second scenario Cohen envisions to show that Nozick’s proviso protects Pareto-inferior arrangements. He has us imagine that A is a poor organizer and B a good organizer. Appropriator A then “proposes to B that B design an optimal division of labor and then play his role in it.” B earns $n + p$, so he is better off than before the 

\[ SFE 81. \]

\[ SFE 81. \]
acquisition. But the issue here is that “the privatizer may not be the value adder.” It is B who adds the value that, I gather, is to justify the acquisition; it is B who adds the value that renders both himself and A better off. Thus, Cohen claims that Nozick’s proviso does not consider “what might have happened tout court, absent the appropriation, but what would have happened on the special hypothesis that the world would have remained commonly owned.” It may be too easy to meet considerations based on the latter hypothesis, and Cohen wonders why the proviso should protect acquisitions that make individuals worse off than they need be. Given that there are many ways of determining whether an acquisition is just even on Nozick’s assumption that the world is naturally unowned, Cohen takes there to be no non-arbitrary reason to select any particular one of those ways.

The problem is to be deeper though. We could employ a hypothesis very different form the one Nozick does. Specifically, Cohen claims we cannot ignore either of the two following possibilities: the world is naturally jointly owned or we each naturally own equal portions of the world. Cohen does not make much use of the equal ownership hypothesis in attacking Nozick on justice in acquisition. He notes, though, that Nozick does not even consider this hypothesis. Instead, Cohen spends far more time showing that employing joint ownership as counterfactual against which to test acquisitions would yield results far different from the hypothesis that the world is naturally unowned. Under

\[14 \text{ SFE} \ 82.\]

\[15 \text{ SFE} \ 83.\]

\[16 \text{ SFE} \ 84.\]

\[17 \text{ SFE} \ 87 \ fn. \ 39.\]
joint ownership, “the land is owned, by all together, and what each may do with it is subject to collective decision.”

Cohen confesses that “the appropriate procedure for reaching that decision may be hard to determine,” but he believes some sort of workable procedure is at least conceivable. What concerns the present argument, however, is not how the procedure would work, but the challenge joint ownership poses to the baseline Nozick chooses.

If joint ownership rather than no ownership is, morally speaking, the natural original state of the world, then B has the right to forbid A to appropriate, even if B would benefit by what he thereby forbids. And B might have good reason to exercise this right to forbid an appropriation by A from which B himself would benefit. For, if he forbids A to appropriate, then he can then bargain with A about the share of output he will get if he relents and allows A to appropriate. B is then likely to improve his take by an amount greater than what A would otherwise have offered him.

The idea here is that if individuals have a right to prevent others from acquiring, they can improve their situation more than if they had no such right. On Nozick’s hypothesis, individuals cannot prevent others from engaging in appropriations, provided they are not relevantly harmed. And Cohen is here challenging whether Nozick has the means of showing that his conception of making someone relevantly worse off is the right way to look at things.

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18 SFE 84.
19 SFE 84.
20 SFE 84.
The fundamental challenge Cohen pushes can be summed up as follows: There are rival ways of determining whether someone is made worse off by an appropriation than the means Nozick uses. Nozick does not establish that we must use his means. When we seek to determine whether an individual is worse off, we need to know “Worse off than what?” The basic point of Cohen’s line of criticism, I take it, is that there is no non-arbitrary way of determining what counts as making someone relevantly worse off.

Nozick cannot claim any advantage for his own position.

4.2. The Chamberlain Example is Inconclusive or Question-begging as an Argument against Socialism

A significant portion of Cohen’s discussion of the Chamberlain example is to “refute Nozick’s major argument against socialism.” Cohen uses ‘socialism’ here to refer to a society that upholds some strong principle of equality in the distribution of benefits enjoyed and burdens borne by its members. Cohen directs his refutation at two alternative interpretations of Nozick’s argument. The first interpretation regards Nozick as first defining justice in terms of liberty and, given that definition, arguing that “what socialists consider just is not in fact just.” The second interpretation regards Nozick as arguing that socialism is incompatible with liberty, even if Nozick is wrong about what justice is.


22 SFE 20.

23 SFE 19.

24 SFE 19-20.
My focus is on Cohen’s attempt to refute Nozick with respect to the first interpretation. The primary question driving this portion of the dissertation is whether a historical conception of justice is plausible. Also, I am interested in determining whether Cohen has accurately interpreted Nozick’s claims about justice. Thus, I focus on Cohen’s challenge to Nozick’s claims about justice.

Recall that, having presented the Chamberlain example, Nozick presents his general thesis about justice in transfer. Nozick claims that “Whatever arises from a just situation by just steps is itself just.” And I follow Cohen in referring to this proposition as (1). Cohen interprets Nozick as holding that “steps are just if they are free of injustice, and that they are free of injustice if they are fully voluntary on the part of all agents who take them.” Thus, he offers the following fleshing out of (1): Whatever arises from a just situation as a result of fully voluntary transactions on the part of all the transaction agents is itself just. I follow Cohen in referring to this as (2).

Cohen moves in his attempt to reject the idea of a principle of justice in transfer between two separate claims. He writes that there are “reasons for limiting how much an individual may hold, regardless of how he came to hold it.” In this passage, Cohen openly claims that redistribution is licit no matter how a set of holdings has a risen. This marks a straightforward rejection of the doctrine of historical entitlement. At other points, Cohen writes as if he is trying to show that a principle of justice in transfer should be

\[25 \textit{ASU} 161-162.\]
\[26 \textit{SFE} 21.\]
\[27 \textit{SFE} 21.\]
\[28 \textit{SFE} 25.\]
much more demanding than Nozick’s seems to be. We will see Cohen’s attempt to do this sort of thing below.

As I understand Cohen, his ultimate position is that we should reject a historical conception of justice. Egalitarians like Cohen can hold that we should limit, possibly through taxation, what individuals may hold. The attempt to find a more demanding version of (2) is Cohen’s critique of Nozick’s argument against socialism. Specifically, Cohen wants to show that the most plausible rendering of (2) is so demanding that it provides us with good reasons to believe that even the Wilt Chamberlain transfers will not be just.

Here is Cohen’s attempt to show that a plausible version of (2) will not confer justice on the upshots of the Chamberlain transactions. To show this, Cohen considers two arguments against Nozick that attempt to find that a “state of affairs which would be accounted unjust but which might be generated by the route (2) endorses.” The primary goal is to show that Nozick’s view of a just transfer is too permissive or, put differently, we should believe that Nozick’s conception of just transfer makes it too easy for transfers to be just. Now, Cohen thinks the argument against Nozick that I am about to consider fails. However, it is in the reason the approaches fail that Cohen finds a means to conclude that moving through voluntary transfers from a just starting point can fail to yield a just outcome.

The first argument is fairly straightforward. I formulate it here:

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29 This follows Cohen’s suggestion on SFE 25.

30 SFE 22.

31 This argument is found on page 22 of SFE.
1. (2), an account of justice in transfer, allows for the justice of voluntary slavery.

2. Slavery is unjust.

3. Thus, (2) is false.

   Cohen is aware that Nozick will not be moved by this argument, given that

   Nozick could hold that slavery with the appropriate genesis is just even if it is not morally
   attractive. So Cohen considers whether an argument can show that (2) might yield the
   justice of slavery that lacks the appropriate genesis.

   (2) precludes certain kinds of forced slavery. The genesis that Cohen focuses on is
   inherited slavery. Nozick is obviously against inherited slavery; and Cohen notes that
   Nozick says “some things individuals may choose for themselves no one may choose for
   another.” Accordingly, Cohen asks us to “remember this when we come to scrutinize
   the Wilt Chamberlain transaction, for widespread contracting of the kind which occurs in
   the parable might have the effect of seriously modifying, for the worse, the situation of
   members of future generations.”

   Cohen considers running the following *reductio* against Nozick. (2) yields the
   conclusion that a society with no slaves, on the one hand, and a society consisting largely
   of voluntary slaves, on the other, can be equally just. Cohen finds the judgment (2)
   yields here absurd. However, he thinks Nozick could defuse the absurdity. He thinks that
   “Nozick could claim that rational persons in an initially just situation are unlikely to

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32 *ASU* 159.

33 *SFE* 22.

34 *SFE* 22.
contract into slavery, except, indeed, where circumstances are so special that it would be wrong to forbid them to do so.”

Cohen’s motivation for suggesting Nozick would wish to show that a voluntary slave society could be as just as a free society lies in the following passage from *ASU*.

[I]t must be granted that were people's reasons for transferring some of their holdings to others always irrational or arbitrary, we would find this disturbing...We feel more comfortable upholding the justice of an entitlement system if most of the transfers are done for reasons. This does not mean necessarily that all deserve what holdings they receive. It means only that there is a purpose to someone’s transferring a holding to one person rather than another; that usually we can see that the transferrer thinks he’s gaining, what cause he thinks he’s serving, what goals he thinks he’s helping achieve, and so forth. Since in a capitalist society people often transfer holdings to others in accordance with how much they perceive these others benefitting them, the fabric constituted by the individual transactions and transfers is largely reasonable and intelligible.

Cohen has just offered Nozick two means of avoiding problematic conclusions. Nozick might hold that we cannot choose some things for other people. This would preclude inherited slavery. He might also argue that rational individuals in just situations would avoid certain kinds of actions, unless there were very good reasons to take those actions. It is in these responses that Cohen finds an opening to argue that there are reasons, at least under certain circumstances, to preclude the Chamberlain transactions. Cohen thinks those reasons are particularly pressing if agents live in a socialist society.

Since Nozick holds that agents cannot choose some things for others, Cohen attempts to show that apparently innocuous transactions can significantly alter the positions of third parties, and, hence, can be precluded by the principle that there are some things one cannot choose for others. Nozick himself is aware of this possibility. In a

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35 *SFE* 22.

36 *ASU* 159.
footnote which I have already mentioned, he writes, “Might not a transfer have
instrumental effects on a third party, changing his feasible options?” Nozick wonders
about this because he also says “after someone has transferred something to Wilt
Chamberlain, third parties still have their legitimate shares; their shares are not
changed.”

Cohen claims that the shares of third parties are in fact changed. The answer to
Nozick’s question of whether a transaction can alter the feasible options of third parties is
affirmative. Cohen writes, “(A) person’s effective share depends on what he can do with
what he has, and that depends not only on how much he has but on what others have and
how what others have is distributed… Third parties, including the as yet unborn, may
therefore have an interest against the contract.”

Cohen here indicates that, due to their father’s great wealth, Chamberlain’s
children will presumably have a bargaining advantage over the children of the fans who
paid to see him. The idea here is that, while an adult may choose to put himself at a
disadvantage, an adult may not choose to put his or her children in such a position. The
children of some people in the society in which the Chamberlain transaction has taken
place will start out at a disadvantage to Chamberlain’s children. Cohen is trying to show
that Nozick should be concerned about this, given Nozick’s claim, which I mentioned
above, that “some things individuals may choose for themselves no one may choose for

37 ASU 169.

38 ASU 161.

39 SFE 27.
another.”\textsuperscript{40} The concern is that the children of those who are at a disadvantage to Chamberlain’s children are effectively placed in a society they would not choose to enter. So there may be good reasons from within Nozick’s own position to prohibit Chamberlain-esque transfers even if agents lack any sort of commitment to equality.

This is part of Cohen’s famous externalities argument. Children who may be affected by transfers are only part of his concern, of course. There will be adults who will suffer a similar loss in bargaining position if the Chamberlain transfers are allowed. Those who did not engage in any transactions with Chamberlain will be disadvantaged as a result of the fans’ transactions. Chamberlain now has more money to use in bargaining with these third parties, so their holdings are affected by the actions of the fans and Chamberlain. Interestingly, Cohen approaches this issue by making use of the appeal to rationality he attributed to Nozick.

Recall that Cohen observes Nozick’s ability to make the following claim. Rational agents in just situations will contract to slavery only under extraordinary circumstances. So, while voluntary slavery can be just, it is not something Nozick expects to see often. Cohen thinks that rational agents might also avoid transactions that put them at great bargaining disadvantages. Voluntary slavery contracts, Cohen seems to suggest, are contracts that rational agents will avoid; and they will avoid voluntary slavery contracts precisely because those contracts place them at a massive bargaining disadvantage.

Cohen maintains that this same idea, viz. that rational agents will avoid putting themselves at great bargaining disadvantages, can be used to show that agents will avoid transactions like those in the Chamberlain case. Cohen claims that “we should not be

\textsuperscript{40} ASU 331.
content if what (a transacting agent) thinks he is getting is good, but what he actually gets is bad, by his own lights."\textsuperscript{41} The way Cohen goes about trying to determine whether an agent gets something bad by his own lights is by taking hold of Nozick’s claim that we should find it disturbing if “we cannot see what the… contracting parties \textit{think} they are gaining by them.”\textsuperscript{42} Cohen then claims the Chamberlain fans may well be understood to match this description. They may not sufficiently reflect on “the full consequences of what they are doing.”\textsuperscript{43} If this is possible, Cohen claims the Chamberlain transaction will not meet the parameters set out by (2). The reason is that those fans may be getting something bad, by their own lights; and if they were aware of this, they would not have agreed to the transaction. And Cohen takes this to be a reason to see the transaction as not fully voluntary. The Chamberlain transfers are thus not justice preserving.

The undesired consequences of the Chamberlain transaction, and iterations of it, are a loss of equality. Cohen writes:

\begin{quote}
It is easy to think carelessly about the example. How we feel about people like Chamberlain getting a lot of money as things are is a poor index of how people would feel in the imagined situation. Among us the ranks of the rich and the powerful exist, and it can be pleasing, given that they do, when a figure like Chamberlain joins them. Who better and more innocently deserves to be among them? But the case before us is a society of equality in danger of corruption. Reflective people would have to consider not only the joy of watching Chamberlain and its immediate money price but also the fact, which socialists say they would deplore, that their society would be set on the road to class division. In presenting the Chamberlain fable Nozick ignores the commitment people may have to living in
\end{quote}

\textsuperscript{41} \textit{SFE} 23.

\textsuperscript{42} \textit{SFE} 22, emphasis original.

\textsuperscript{43} \textit{SFE} 23.
a society of a particular kind, and the rhetorical power of the illustration depends on that omission.\textsuperscript{44}

Cohen suggests the Chamberlain fans may be irrational in the same way as individuals who move from a just situation to voluntary slavery. The fans may not be getting what they think they are getting, just as the slaves may not. As Cohen puts it, “Nozick says that a transaction is free of injustice if every transacting agents agrees to it. Perhaps that is so. But transactional justice… is supposed… to confer justice on what results from it.”\textsuperscript{45} What Cohen seems to say here is that transacting agents must agree not only to the transfer in question, but also to what results from the transfer. This point is to join with his observation that we should not be content if people get what is bad by their own lights to show. The upshot is to be that we have good reason to think the Chamberlain transactions are not justice preserving. At least some fans would not have engaged in the transaction had they known how much bargaining power Chamberlain would acquire as a result of it.\textsuperscript{46}

So, there are two ideas at work here. First, Nozick seems to make it too easy for a transaction to be deemed “fully voluntary.” Thus, even if one accepts (2), one could argue for a more demanding conception of fully voluntary transfers. Second, even though there may have been nothing unjust about the transfer itself, an injustice seems to have arisen from the transaction. So, while (2) says that “Whatever arises from a just situation

\textsuperscript{44} SFE 26.

\textsuperscript{45} SFE 23.

\textsuperscript{46} SFE 25 & 29.
as a result of fully voluntary transactions on the part of all the transaction agents is itself just,” it seems injustices could arise from fully voluntary transactions. So, (2) is false.

Now, it is important to see here that in the Wilt Chamberlain argument Nozick has invited his opponents to assume that their favored pattern is met.\textsuperscript{47} This is to count as a just starting point. Cohen assumes the people who populate the Wilt Chamberlain world are in the egalitarian world he thinks we ought to inhabit. In doing so, Cohen also assumes that a certain set of aims has been adopted by the majority of the that title. Chief among those aims is the desire to preserve equality.\textsuperscript{48} In \textit{Why Not Socialism}\textsuperscript{49}? Cohen suggests egalitarians might be after something akin to what he calls “camping trip morality.” Here he says “our common aim is that each of us should have a good time, doing, so far as possible, the things that he or she likes best.”\textsuperscript{49} With these sorts of commitments, and presumably with the assumption that Chamberlain will not devote his income to projects conducive to those ends, Cohen thinks individuals will wish to prevent activities likely to yield inequality.

The two lines of argument I have just sketched allow Cohen to conclude the Chamberlain example is inconclusive. He writes, “Nozick is… asking us whether we do not agree that any restrictions which would forbid the Chamberlain transaction must be unjustified. So construed the argument is … inconclusive.”\textsuperscript{50} After all, Cohen says,

\textsuperscript{47} \textit{ASU} 160.

\textsuperscript{48} See pages 26 and 29 of \textit{SFE}.


\textsuperscript{50} \textit{SFE} 28. It may be helpful to think of this portion of the Nozick/Cohen interaction as follows: Nozick says it is necessarily the case that whatever arises by just steps is itself just. Cohen then seeks to show that it is possible for an injustice to arise from just steps.
“considerations which might justify restrictions on transactions are not canvassed by Nozick.”\textsuperscript{51} I gather that Cohen does not want us to take the idea of restrictions literally here. We should do not need to \textit{prohibit} these sorts of transfers, though we can find them not to be justice preserving. Cohen’s externalities argument and the rationality argument amount to considerations for believing the transfers fail to confer justice on their outcomes.

Similarly, Cohen thinks Nozick’s argument could simply beg the question against the end-state theorist. It might be that Nozick is asserting that individuals have a right to deploy their holdings as the individuals in the Chamberlain example do; and that the results of those transfers must be just. This reading of Nozick’s argument naturally flows from the following question put forth by Nozick. “If the people were entitled to dispose of the resources to which they were entitled (under D1), didn’t this include their being entitled to give it to, or exchange it with, Wilt Chamberlain?”\textsuperscript{52} Cohen and many other end-state theorists wish to allow this kind of transfer; but they deny that the results are just. However, they might deny that Chamberlain himself has any right to make use of \textit{all} his resulting holdings. The Marxist Keith Graham, for example, notes that individuals only have a right to the surplus value they generate \textit{after} everyone’s needs have been met.\textsuperscript{53} Chamberlain may be entitled to some greater holdings than others, but he is not

\textsuperscript{51} \textit{SFE} 28.

\textsuperscript{52} \textit{ASU} 161.

entitled to *all* the money he has *immediately* after the transactions occur.

Similarly, Rawlsians would grant that individuals may dispose of their property in the manner the Chamberlain fans do. They would simply deny that deny that anybody’s rights are violated if some of Chamberlain’s holdings are redistributed after the transactions take place. As Rawls himself puts it, “Citizens understand that when they take part in social cooperation, their property and wealth, and their share of what they help to produce, are subject to the taxes, say, which background institutions are known to impose.”54

Others, like Thomas Nagel and Liam Murphy deny that there is any such thing as pre-tax income.55 Income can only be understood, they argue, in light of governmental structures that make income possible. Income is only conceivable after the government apparatus has shaped the holdings in a certain manner. So, liberal theorists of many stripes deny that individuals are entitled to all their holdings, even if those holdings arise via just steps. Thus, there are many who deny that (2) is true. Given this disagreement, the claim that individuals have entitlements when their holdings arise in accordance with (2) is not something that can function as a premise in an argument against those who deny it.

In the Chamberlain case, the fans engage in what looks like a series of just transfers. In the present section I have offered Cohen’s attempt to show that there may be reasons to believe that injustices can arise from those transfers. However, Nozick’s (1)


has a great deal of intuitive force. With that force in place, the Chamberlain example remains a powerful argument against end-state theories. What Cohen must do is undermine that force. The remaining two sections of this chapter present Cohen’s attack on (1). In the following section, I produce Cohen’s attempt to show that (1) is not an obvious conceptual truth.

4.3 (1) is not Self-Evident

In the previous section I presented Cohen’s attempt to show that we should expect injustices to arise within a set of holdings even if that set begins from a just starting point and moves through just transfers. But Cohen recognizes that there is intuitive appeal to Nozick’s claim that “whatever arises from a just situation by just steps is itself just.” Given the intuitive appeal of this claim, Cohen needs to find a way to show it is false or somehow misleading. Otherwise, he would need to regard the Chamberlain transactions as unjust. If they are unjust, Cohen could not show that Nozick’s principle is false; he could only show that Nozick’s example is poorly chosen. Cohen thinks he can regard the transactions as just, but the results as unjust. So what Cohen aims to do is “to show that… [(1)’s] self evidence is only skin deep.”56 Cohen’s ultimate theses of chapter 3 of SFE are “that (a) just steps are not justice preserving… and (b) common or garden ‘innocent’ market transactions are not justice preserving.”57

56 SFE 38.

57 SFE 40.
Cohen has three distinct approaches to casting doubt on (1). The first approach deals with "[bad] reasons" for thinking formula (1) must be true. This round of attacks pushes proponents of (1) to provide reasons to believe justice is preserved in the way (1) suggests. Cohen offers several such reasons and rejects all of them.

Cohen first suggests, and quickly rejects, the following. One might think that "the result of adding an f-ish thing to an f-ish thing could not possibly be a counter f-ish thing. But that supposed impossibility occurs all the time: when, for example, two odds numbers add up to an even one, or when two combustible substances combine to form an incombustible one."  

Cohen doubts the thought that adding an f-ish thing to an f-ish thing couldn’t possibly be a counter f-ish is what leads proponents of (1) to find it obvious. Thus, he proposes a second thought. Those proponents may be motivated by the following reasoning. Injustices can indeed yield justice, injustices “being negative things, can neutralize each other.” However, “adding justice to justice cannot produce injustice” because “though two wrongs may not make a right…how can two rights make a wrong?”

What motivates this thought, according to Cohen, is that injustices are defects. Justice, presumably, is not a defect. So the thought is that if one adds justice to justice, or perfection to perfection, the result will not be defective. However, Cohen claims that one

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58 *SFE* 38.

59 *SFE* 41.

60 *SFE* 51.
can combine a perfect wine with a perfect dish and end up with a deficient dinner. \(^{61}\)

Analogously, Cohen claims there are good reasons to expect justice in holdings to be able to combine with justice in transfer to yield an unjust set of holdings. To show this, he adduces a series of counterexamples. I present two of them here.

The first counterexample is as follows. Cohen justly possesses a rolling pin. One day the pin rolls from his house down the hill to the reader’s house. You believe the pin to be yours that you misplaced, so you pick it up and begin using it. You did not engage in any force or fraud in collecting the pin, but it seems you do not justly hold the pin. \(^{62}\)

Cohen notes that a defender of (1) may wish to hold that misadventure cannot count as a just step. \(^{63}\) However, he claims that this would be a Pyrrhic victory because it is not clear that market transactions are free of factors like misadventure. Luck, for example, plays a role in market and investment outcomes.

The second counterexample Cohen raises is to show that barring misadventure from (1) is not enough to preserve (1). He holds that agents may transact in extreme ignorance and, though that ignorance is not culpable, we may judge the result of the transaction unjust. The following illustrates the point. Two individuals who agree to exchange a bit of what they both take to be glass. However, they later discover that what they thought to be the glass is in fact a diamond. \(^{64}\) The seller sold for what he thought glass should fetch and the buyer unknowingly bought a diamond for the cost of glass.

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\(^{61}\) *SFE* 52. A perfect wine, I take it, is not one that goes with any meal.

\(^{62}\) *SFE* 44.

\(^{63}\) *SFE* 44.

\(^{64}\) *SFE* 45.
we take the upshot to be unjust, while taking the transaction to be just, we have a second counterexample to (1).

Cohen has now offered arguments against (1) as an obvious conceptual truth. However, since Cohen knows proponents of the entitlement theory will not be satisfied with his treatment of (1) as a conceptual truth. He thus attempts to show that the appeal of (1) lies in an equivocation between reading (1) as a trivial truth that holds just holdings arise from justice-preserving steps and reading (1) as a claim that any not unjust steps yield just holdings. He argues that being consistent in how one understands (1) will reduce the appeal of (1).

4.4 Two Interpretations of (1)

Cohen closes out this portion of his discussion by posing two understandings of a just step. As will become clear in a moment, these two interpretations are relevant to whether we should expect certain steps to preserve justice. The two options are (a) a just step is one with no injustice in it or (b) a just step (from a just starting point) is one that ensures no injustice ensues.65 Cohen then tells us that “if we take interpretation (a), then we cannot immediately infer, from the definition of “just steps” that (1) is true.”66 It remains an open question whether moving from a just situation via steps involving no injustice yields a just situation. Alternatively, he claims we can understand a just step to have the content provided in (b); but we are then forced to admit that (1) is trivially true.

65 SFE 42.

66 SFE 42.
For it is part of the definition of a just step that, if it begins with a just start point, the step yields a just situation.\textsuperscript{67}

He warns us that we must not regard (1) as obvious in the trivial sense, but also regard a just step as one merely lacking injustice.\textsuperscript{68} To do so is to equivocate between (a) and (b). If we read ‘just’ simply to mean ‘not involving injustice’ we must regard (1) as false. If, however, we read ‘just’ as meaning ‘preserves justice’ principle (1) is trivial. He writes “For [Nozick’s principle of just transfer] to be an interesting conceptual truth, counterexamples to it must be (at least) abstractly possible; it must be possible to investigate… whether or not a wedge can be driven between just process and just upshot.”\textsuperscript{69} Cohen’s attempt to do this appears in subsection 1.2 above. The rolling pin case, for example, is an instance in which there are steps not involving injustice, yet from which injustice arises.

Cohen closes his critique of (1) by arguing that an acceptable rendering of that principle will not support market transactions. In 1.1, I offered Cohen’s argument to show that Nozick has to appeal to an account of rationality to block the conclusion that a society of voluntary slavery could be as just as a free society. In the following section I offer Cohen’s attempt to show that no satisfactory account of rational or sensible transfers will justify market states of affairs.\textsuperscript{70} What Cohen seeks to show is that rational individuals would avoid engaging in transactions whose upshots ultimately yield morally

\textsuperscript{67} SFE 42.

\textsuperscript{68} SFE 42.

\textsuperscript{69} SFE 43.

\textsuperscript{70} Cohen seems to use ‘rational’ and ‘sensible’ synonymously here. I follow him in doing so.
undesirable consequences. The motivation is to show that, if transactions are actually justice-preserving, the strictures governing those transactions must be far more demanding than Nozick lets on. And there are good reasons to expect rational agents who engage in transfers meeting those strictures to avoid the sorts of unequal outcomes we find on the market.

4.5 No Adequate Conception of Sensible Transfers Will Justify Market States of Affairs

Nozick offers his principle (1) long after he has claimed that the legitimate state is limited to enforcing contracts and protecting against force, fraud, theft, violence, and enforcing contracts. This yields a state that will not become overly involved in economic affairs. Thus, Nozick holds that the market, combined perhaps with a state performing the functions outlined above, can yield just outcomes. Cohen takes it that there are good reasons to doubt that an adequate account of voluntary transfers will justify market outcomes. If this is right, we should hold that the state must perform much more extensive functions in order to assure that holdings are just.

To show this, Cohen observes that rational individuals need to think not merely about how their transactions take place; they need to think about more than whether they involve force or fraud. Rational individuals must also think about the upshots of those transactions. Accordingly, Cohen seeks a reformulation of Nozick’s (1) that captures this

71 It remains unclear whether Cohen is critiquing Nozick’s (1) as an account of fully voluntary transfers or as an account of sensible transfers. I believe that the objections I later raise to Cohen’s favored interpretation of (1) will succeed on either interpretation of Cohen’s argument. I read him as critiquing (1) on the grounds that many market transactions turn out not to be sensible because this follows from Cohen’s entrance into the debate with Nozick. Recall that it was Nozick’s claim that transfers must be sensible that allowed Cohen to begin the voluntary slavery argument – the argument which ultimately allowed Cohen to generate a rationale for precluding the Chamberlain transactions.
requirement. The goal is to have an account of sensible transfers that focuses not only on the transfer itself, but also on the transfer’s upshots. Recall that Cohen had reformulated (1) as follows:

Whatever arises from a just situation as a result of fully voluntary transactions on the part of all the transaction agents is itself just.72

It is the desire to capture the intuition that rational agents would consider the consequences of their transfers that leads Cohen to reformulate (2). The reformulation captures agreement, not just to transfers, but to their upshots. I follow Cohen in referring to the following proposition as (3).

Whatever arises from a just situation as a result of fully voluntary transactions which all transagents would still have agreed to if they had known what the result of so transacting were to be is itself just.73

As Cohen sees it (3) “looks plausible but its power to endorse market-generated states of affairs is, while not nil, very weak.”74 This conclusion comes on the heels of Cohen’s observation that “the Chamberlain fans get not only the pleasure of watching him play minus twenty-five cents, but also un-contemplated dis-benefits of a significant order.”75 The individuals would not have agreed to all the upshots of the transfers, had they known how wealthy Chamberlain would become relative to them. So, while Cohen deems (3) plausible, he observes that the Chamberlain transaction will not satisfy its conditions. Accordingly, the Chamberlain transfers were not justice preserving.

72 SFE 21.
73 SFE 23.
74 SFE 23.
75 SFE 23.
In an attempt to find a principle of justice in transfer that is both justice preserving and likely to endorse market outcomes, Cohen here offers a reformulation of (3). Here is (4):

Whatever arises from a just situation as a result of fully voluntary transactions where the transacting agents know in advance the probabilities of all significantly different possible outcomes is itself just.76

This rendering essentially compares the market to a lottery and suggests that, since we think lotteries in which the probabilities of the various outcomes are known are justice-preserving, we ought to find market exchanges that conform to (4) to be justice-preserving.77 It should also be obvious that (4) allows us to find injustice in the outcomes in the rolling pin and diamond counterexamples in virtue of the parties not knowing the probabilities of the possible outcomes.

The ‘fully voluntary’ condition shows that the transfer in the rolling pin case was not justice-conferring. Ignorance of probabilities is the explanation for the injustice in the diamond case. Neither party was aware of the possibility that the glass might be a diamond.

Cohen finds (4) unpromising for at least two reasons. The first is that (4) is inadequate by itself to find injustice in cases where it seems we ought to find it. Here is an example Cohen uses to illustrate the point. He has us imagine two individuals, A and B, who both wish to own a slave. They decide to flip a coin to determine which of them

76 SFE 48.
77 SFE 48.
will be the slave and which will be the owner. B loses and A puts him in chains. If B runs away, it seems A will contact the state to capture him. Should the state do so? The answer Cohen wants us to offer is negative.

It is important to note here that Cohen reads Nozick as holding that “justice is what a justice-enforcing authority rightly enforces.” So if B asks the authority to protect him against A, the authority must not do so, assuming the arrangement is just. But for all (4) tells us, the case Cohen has just constructed is just. So if we think the authority ought to protect B against A, this is because we think there is more to justice than (4) tells us.

The second problem Cohen finds with (4) is that it cannot be used to defend the range of market transactions that proponents of the entitlement theory wish to defend. Here is Cohen’s line of reasoning. In an actual lottery folks have the opportunity not to participate. Individuals can simply keep their money. But one cannot do so in the market. One must participate. Thus, the objection here is twofold. First, one must participate in the market, so it is not fully voluntary. Second, one cannot avoid risk in the market, so it is again not fully voluntary.

Given that (4) is so demanding that one should not expect market transfers to meet its strictures, Cohen considers a final move the proponent of the entitlement theory might make. This move involves “less stringent criteria of voluntariness.” The move

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78 SFE 47.

79 SFE 47.

80 SFE 49. Despite the fact that this is actually false, it may be true enough for people to feel the force of Cohen’s point.

81 SFE 50.
under consideration essentially makes it necessary only that agents know the immediate upshot of their transactions. Cohen formulates this position as follows.

(5) Whatever arises from a just situation as a result of fully voluntary transactions whose agents know what the immediate upshot of the transaction will be is itself just.  

While this formulation blocks counterexamples like the diamond case and the rolling pin case, Cohen argues that even (5) cannot be used to defend the market. He does so for several reasons. First, he presents the following argument:

[Justice further afield casts a shadow on the justice-preservingness of transactions which satisfy the undemanding epistemic condition laid down by (5). If radical ignorance about its immediate upshot… defeats justice in the diamond transaction, why should similar ignorance about economic values further afield have no effect on the power of the transaction affected by such ignorance to preserve justice?]

The basic argument here seems to work as follows. The motivation for (5) is to show that individuals need only know the probabilities bearing on the immediate upshots of their transfers. This seems to imply that radical ignorance about the immediate upshot of the transfers would show that those transfers are not justice preserving. But, Cohen argues, there is no good reason to believe that radical ignorance about immediate upshots is vitally important while holding that radical ignorance about broader upshots is irrelevant.

Cohen makes it clear that the arguments against the entitlement theory do not show that the market must be abandoned. 84 What should be concluded is that those who wish to defend the market via the entitlement theory are unable to do so – at least if

82 SFE 51.

83 SFE 51, emphasis original.

84 SFE 53.
Cohen’s survey of the moves such proponent might make is correct and exhaustive. There may be other means of defending the market; but there is no principle of justice in transfer that will do so. And such a principle is required by a historical conception of justice.

The last three sections of this chapter focused more or less directly on the Chamberlain example and the principle of justice in transfer. With an account of Cohen’s response to the Chamberlain example at hand I am now in the position to summarize Cohen’s response to Nozick’s claim that rival theories both lack an independent principle of just transfer and fail to give us entitlements to the holdings those theories give us.

Cohen essentially holds that any adequate principle of justice in transfer – that is, one that implements an acceptable sensibility requirement – will include considerations of how the results of the transfer bears on the bargaining position of others. An adequate principle of justice in transfer will find transfers fully voluntary only if those transfers preclude greatly worsening either the bargaining position of any of the traders or third parties. The idea is that just transfers must be informed by some account of rationality; and if it is rational to endorse egalitarian outcomes, for example, we should also to have an account of justice in transfer that reflects this. But, Cohen observes, there are no good reasons to expect that we can construct such a principle. Specifically, limitations on our knowledge seem to preclude the availability of a principle of justice-preserving transfer. The whole idea that moving from a just starting point through just steps guarantees a just outcome, Cohen argues, is plausible only if we take just steps to be those that preserve justice. But this is to trivialize claim that just steps yield just outcomes. What we should
do, then, is reject a theory of historical conception of justice. Socialism, with its commitment to egalitarianism, is to be vindicated.

Now, Cohen himself recognizes that, if the self-ownership thesis is true, he cannot make the sort of claim just suggested. If people wish to employ their holdings in ways that do not yield equality and, if individuals wish to enter arrangements in which rules of justice in transfer do not aim at preserving equality, self-ownership protects their doing so. Thus, Cohen must reduce the appeal of self-ownership. I turn to his attempt to do that in the next chapter.
CHAPTER 5

Cohen’s Criticism of the Self-Ownership Thesis

There are, broadly speaking, two kinds of objections to the self-ownership thesis. The first is that the concept of self-ownership is incoherent. The second is that the self-ownership thesis is not an appealing fundamental moral norm.¹ Cohen does not wage the first kind of argument. In fact, he argues that the concept is perfectly coherent. This chapter begins with his rebuttal of two arguments that challenge the coherence of self-ownership. Despite his belief that self-ownership is coherent, Cohen believes the self-ownership thesis is not an appealing fundamental moral norm. In particular, he claims that the apparent appeal of self-ownership is grounded ultimately in three false claims about self-ownership. Those claims are (a) that rejecting self-ownership licenses slavery; (b) that rejecting self-ownership licenses forced organ donations; and (c) that self-ownership preserves autonomy. Cohen argues that all three of these claims are false; and since rejecting self-ownership is not as costly as is often suggested, Cohen believes that self-ownership does not warrant its apparent appeal.

¹ The reader might expect another claim: maybe the self-ownership thesis is false. As Cohen sees it, one cannot prove that the thesis is false; one must instead argue that the thesis is unappealing. SFE 70.
5.1 The Coherence of Self-Ownership

The coherence of self-ownership has been challenged perhaps most notably by Immanuel Kant. Kant’s criticism is the first Cohen takes up. What we have from Kant are the following remarks on self-ownership:

Man cannot dispose over himself because he is not a thing, he is not his own property; to say that he is would be self-contradictory; for insofar as he is a person he is a subject in whom ownership of things can be vested, and if he were his own property, he would be a thing over which he could have ownership. But a person cannot be a property and so cannot be a thing which can be owned, for it is impossible to be a person and a thing, a proprietor and property.²

Cohen puzzles over what Kant actually means here. He supposes, perhaps unfairly, that the following argument come from the passage just quoted:³

1. Man is a person
2. Nothing can be both a person and a thing.
3. Thus, Man is not a thing.
4. Only things can be owned.
5. Thus, man cannot be owned.
6. Thus, man cannot own himself.

Cohen says little about this argument, because he finds it question-begging. The claim that only things can be owned assumes already that man cannot be owned.⁴ This

² SFE 211, citing Kant’s Lectures on Ethics.

³ SFE 212; I say this might be unfair, not because I think Kant has a good argument for this conclusion, but because Kant may be claiming that property rights run too counter to the categorical imperative for us to have them in ourselves. If we have property rights in something, we can do dispose over the object in ways the categorical imperative precludes our treating humans, or humanity. This would still be a question-begging argument, for it would assume our rights in ourselves are limited by the categorical imperative and not some other principle, like self-ownership. Still, Kant might only wish to offer a justifying explanation of his rejection of self-ownership.

⁴ SFE 212.
cannot function as a premise in an argument to show that selves cannot be owned. If one believes man can be owned, at least by himself, premise 4 begs the question.

Though Cohen does not assay the following argument, I think there is a better reason to reject Kant’s argument. The idea is that Kant is using the word ‘self’ differently from proponents of self-ownership. As Cohen implies in his exposition of self-ownership, and as I repeated in chapter 2, the self that the self-ownership thesis claims is owned, is a thing. (Of course selves are things, in at least some sense of the word.) It is a collection of world-interactive powers, each of which can be owned. It is very familiar for individuals to sell or rent out at least some of their world-interactive powers to others. Athletes can agree to play only for certain teams; soldiers agree to fight only for one particular country; and so on. It is hard to explain how someone can sell or rent something without owning it. So the natural explanation is that there is no incoherence in the claim that we do own ourselves. Self-ownership is coherent because proponents of self-ownership are speaking of a collection of bodies and world-interactive powers. Kant seems to be talking about a purely rational, non-positional consciousness. Maybe that sort of thing cannot be owned, but it is not what is at work in discussions of self-ownership.

A second way of arguing that self-ownership is incoherent is offered by Ronald Dworkin. Cohen claims Dworkin’s view is that “the concept of self-ownership is too indeterminate to pick out a particular political position in philosophy.”

It is unclear why Cohen initially suggests this is an argument to show that self-ownership is incoherent.

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5 *SFE* 213, where Cohen cites Dworkin.
since indeterminacy is not the same as incoherence. Still, Dworkin’s argument does aim to show that self-ownership cannot do any meaningful work in political philosophy. This is what an argument to show that self-ownership is incoherent might also wish to do. The argument for this conclusion is that ownership rights over things can consist of various sets of rights; individuals could endorse self-ownership, but that does not commit them to any particular judgment about what set of rights that entails.

In these passages Dworkin seems to mean that it is ownership itself that is problematic and not self-ownership in particular. Cohen notes that Dworkin seems to grant that ownership of a self is no more problematic than ownership of a field. So the challenge is for the proponent of self-ownership is to explain why we ought to choose one set of ownership rights over ourselves as opposed to any other set.

Cohen regards this argument as inconclusive. Dworkin’s argument fails to show that there is not a maximal set of ownership rights individuals might enjoy over themselves. Cohen claims “self-ownership confers the fullest right a person (logically) can have over herself provided that each other person also has just such a right.” This idea “generates a procedure for determining the concept of self-ownership.” It remains unclear whether Cohen believes all proponents of self-ownership do, or should, endorse this view. However, he does say the position is open to proponents of self-ownership and

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6 It isn’t called the Heisenberg Incoherence Principle; and it would be terribly misleading to call it that.

7 SFE 213.

8 SFE 213.

9 SFE 213.

10 SFE 213.
that Dworkin has no argument to show that there is no such set. Cohen might have gone on to say that there could be a less than maximal set of rights self-owners enjoy; and once that set of rights is settled, Dworkin’s concern vanishes.

Cohen’s argument can be reinforced by noting that Dworkin’s own view that egalitarianism requires equality of resources is itself an attempt to do exactly what he calls on proponents of self-ownership to do: explain exactly what one’s fundamental norm requires. One might claim that egalitarianism fails because there are all kinds of things one might wish to equalize. In response to this kind of objection Dworkin spells out what he believes an egalitarian should wish to equalize. There is no good reason to believe proponents of self-ownership cannot do something comparable when it comes to ownership rights. Without an argument to show that proponents of self-ownership cannot explain what the maximal or otherwise preferable set of ownership rights is, there is no reason to accept Dworkin’s claim that self-ownership is too indeterminate to do any work in political theory.

I move now to the other sort of argument against self-ownership. Here I take up Cohen’s attempts to diminish the appeal of the self-ownership thesis. In the following section I offer his attempt to show that rejecting self-ownership does not license slavery.

5.2 Self-Ownership and Slavery

Conceptual issues regarding self-ownership are not Cohen’s primary issue; that is, he regards self-ownership as a coherent philosophical concept. Cohen’s primary concern is that self-ownership is incompatible with egalitarianism.\textsuperscript{11} Accordingly, he thinks

\textsuperscript{11} \textit{SFE} 229.
egalitarians need to reject self-ownership. But he needs to provide reasons other than that incompatibility to show us that we ought to reject self-ownership. After all, Cohen recognizes that the idea that all persons are originally self-owners enjoys a lot of pre-philosophical appeal.\textsuperscript{12} As I said in chapter 2, this thesis explains why murder, rape and false imprisonment are wrong. The thesis also fits nicely with our judgment that the individual himself should have control over his body and its abilities.\textsuperscript{13} Cohen himself makes this observation, though as we shall see later in this chapter, he seems to think we should jettison the belief that we should enjoy this sort of control.\textsuperscript{14}

What Cohen seeks to do is show that the rejection of self-ownership is not as costly as its proponents claim. One way to begin making this case is to show that the rejection of self-ownership does not license slavery. Specifically, he claims that proponents of self-ownership employ an unreasonably robust notion of slavery in their attempts to show that self-ownership protects us from slavery.

One way of seeing the motivation for the strategy Cohen employs in this regard is to think of what Nozick aimed to show about end-state theories of justice. Nozick showed that end-state theories promise more than they can deliver; they cannot give us the entitlements we naturally expect to have once we have what we are entitled to as a matter of justice. Cohen wishes to show the something similar is true of self-ownership. Self-ownership might market itself as doing something it cannot actually do, or that other moral principles can do as well. Accordingly, his attempt to mitigate the appeal of the

\textsuperscript{12} SFE 70.

\textsuperscript{13} SFE 70.

\textsuperscript{14} SFE 70.
thesis consists of an attempt to show “that self-ownership is different from other conditions its confusion with which explains (at least) some of the favor it attracts.” These conditions are that rejecting self-ownership licenses slavery, restricts human autonomy and endorses forced organ donations. In what follows I offer Cohen’s attempts to accomplish each of these three tasks.

I begin with Cohen’s discussion of slavery and self-ownership. Here is the most natural reading of Cohen’s argument. He denies is that the rejection of self-ownership is sufficient for licensing slavery. This is the most natural reading because the antecedent in the first premise of the argument he considers is an explicit rejection of self-ownership. However, he may wish to say instead that a little slavery is not so bad; and his discussion may aim to win our allegiance to that conclusion. I will accordingly discuss both these interpretations of his remarks.

Cohen begins his discussion by reinterpreting an argument he finds in ASU. The argument runs as follows:

\begin{enumerate}
  \item If X is non-contractually obliged to do A for Y, then Y has a right of disposal over X’s labour of the sort that a slave-owner has.
  \item If Y has a right of disposal over X’s labour of the sort that a slave-owner has, then X is, pro tanto, Y’s slave.
  \item It is morally intolerable for anyone non-contractually to be, in any, degree, another’s slave. Therefore,
  \item It is morally intolerable for X to be non-contractually obligated to do A for Y.\footnote{SFE 230-231.}
\end{enumerate}
Non-contractual obligations to provide a service to others can exist only if we reject the idea that each individual is an original self-owner. Thus, this argument suggests that rejecting self-ownership is sufficient to license slavery. Cohen accepts that this argument is valid. However, he challenges (1) and (3) in the above argument. Cohen's challenge consists of three stages. The first stage deals with premise (3). Here he observes that there is "a massive normative difference," between brief detention and life-long imprisonment. What characterizes a slave is "the life-long forced labour." But being detained for a matter of moments is not as morally intolerable as being a slave. There may be circumstances under which we think it is acceptable briefly to detain an innocent person. Cohen suggests such may be the case under conditions of massive social disorder. So, Cohen concludes, it is not morally intolerable for anyone to be, in any degree, another's slave.

The second stage deals with premise (1) from the argument Cohen attributes to Nozick. Here he follows Joseph Raz in claiming that "when X is non-contractually obligated to Y, it does not follow that anyone has a slave-owner-like right to dispose over X's labour." The claim here is that one individual may have a right against another, yet that right may not amount to the sort a slave-owner has. If it does not amount to a slave-owner-like right, it is not objectionable. To illustrate this point, Cohen invokes Bernard Williams' example of a young man who must care for his sick mother. The Cohen-Raz line is to argue that, in regards to the young man's obligation to care for his mother, there are two possibilities that are problematic for Nozick. First, an individual could have an

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18 SFE 231. This is admittedly a weird characterization of slavery, but it is what Cohen says.

19 SFE 234.
obligation which no one, not even the object of that obligation, has a right to absolve that individual of. So, despite the non-contractual obligation, the mother may not have the right to absolve the son of his obligation. Alternatively, Cohen writes, “even if... my mother does have the right to absolve me from that particular obligation, it remains untrue that she has unrestricted disposal, of the kind a slave-owner has, over the personal power that I must use in discharging the obligation.” So the mother’s right that the son perform an action does not need to entail a slave-owner-like right – a right over how the son performs his duty.

The final stage of Cohen’s rebuttal of Nozick’s (1) consists of three responses that share a common theme: the key idea is that we can have obligations even if no one has a right against us. This stage focuses on our obligations, as opposed to the rights of others; and it seeks to show that some of our obligations, which look slave-like, are actually unobjectionable if they arise in the right way. The idea is that it may not be morally objectionable to have the kinds of obligations slave have, provided those obligations are not combined with certain rights on the part of others. Thus, Cohen claims that “it might be said that my having an obligation to (my mother) need not mean that (she) has any right against me at all.” So having a slave-like obligation when others lack a right against one may not be morally odious. Cohen confesses that he knows some will find this hard to grasp. He thus moves on to a weaker claim, which is the following.

20 *SFE* 232.

21 Each of these responses is borrowed from Raz.

22 *SFE* 232.
The second, weaker, claim is that, although my mother may indeed have a right against me, although it may be she and no one else who has a grievance if I do not fulfill my obligation, she may yet lack the right to absolve me of my obligation, and therefore lack the sort of right that a slave-holder has.”

Here Cohen suggests one could have a right against another, but not have the right to relinquish others of their duty to respect that right. This possibility removes one right slave-holders do have: the right to free their slaves from their obligations. So perhaps it is unobjectionable to have the kind of obligation a slave has, provided there is no one who can absolve one of that obligation. If this fails to convince us that one can be a slave-holder without having a slave-holder type right, Cohen offers one further possibility that would undo (1). He writes “Finally, even if my mother does have the right to absolve me of the obligation, or even to forbid me to carry it out, it does not follow that she has the slave-holder-like right to tell me to do whatever she chooses with whatever resource I would use to carry out the stated obligation.”

Perhaps one can have a right against another, a right that is accompanied by the standard right to waive, yet still lack the sort of rights of disposal a slave owner has. Slave owners can, I take it, not merely order slaves to dig ditches, but tell their slaves exactly how to do so. Cohen’s point is that moral rights need not extend to this latter sort of right. Obligations that are not tied to such an incomplete package of rights may not be objectionable. Cohen summarizes the three means of rejecting (1) sketched above in the following passage: “nobody’ is the answer to some questions of the form: who has the

\[\text{23 SFE 235.}\]

\[\text{24 SFE 232.}\]
right to decide whether or not I do A? And this defeats Nozick’s claim that, to the extent
that I do not own myself, I am slave.”

The basic idea driving Cohen’s claims here is a Kantian idea that we can have
obligations to act in certain ways, even if those obligations are not linked to the rights of
others. For Kant, these obligations arise through the categorical imperative; and we have
the obligations even though others cannot release us from them. It is an idea like this that
seems to drive Kant’s moral prohibition on prostitution. Would-be clients have an
obligation not to treat would-be prostitutes in certain ways, viz. as things that can be sold
or rented; and the prostitutes have no right to release the johns from those obligations. So
the idea that we must simply fulfill our duties, despite the wishes of the target of those
duties is not unheard of outside Cohen and Raz.

Having presented this assault on Nozick’s argument, Cohen turns to possible
responses from the Nozickian. He calls the first response the ‘Enforcement Objection’.
The Enforcement Objection holds that “self-ownership does not exclude (non-
contractual) moral obligations (to provide services), but only legally enforceable
obligations.” A friend of the Enforcement Objection might wish to preserve the
legitimacy of the entitlement theory and its link to the minimal state, yet affirm that we
have non-enforceable obligations to serve others. The son’s obligation to take care of the
mother would be construed along these lines.

This response seems to require the reformulation of the argument offered above.
There, the claim was that the existence of non-contractual obligations licenses slavery.

25 SFE 234.

26 SFE 233; interpolation added, because Nozick certainly believes we have moral obligations.
The Enforcement Objection holds that non-contractual enforceable obligations license slavery.

Cohen finds some plausibility in this rendering of the Enforcement Objection. He admits that “it is not clearly inconsistent to say both that I am an unambiguous full owner of this tract of land and that I have a moral obligation to let my neighbor peacefully traverse it… and that he has no right to traverse it (without my permission).”\(^{27}\) Still, he asks whether the state’s having the power to enforce a legal obligation to aid others gives the state the right over the citizens’ labor that a slave-holder has over his slave. He thinks it does not, for the same reasons he adduced earlier: the state could have an obligation to enforce this obligation without having the right to release me from it. He writes, “In sum, we could all have enforceable obligations to one another which imply no slave-owner-like rights of disposal in anyone over anyone’s labor.”\(^{28}\) Even the state might lack the ability to release us from the very obligations it must enforce.

Part of the force Cohen finds in his objection to Nozick stems from the fact that Nozick himself allows the state to force members to pay for their own protection. Here is the concern in Cohen’s words:

Citizens in the minimal state whose coercion Nozick regards as legitimate are obliged to pay taxes which support that state’s protective apparatus whether or not they want the protection they get in exchange. It is impossible that an hour’s labor that ends up as part of somebody’s welfare payment is like slavery, while an hour’s labor that ends up as part of a policemen’s salary is not, when focus is on the

\(^{27}\) SFE 233.

\(^{28}\) SFE 234.
condition of the putative slave himself.\textsuperscript{29}

Cohen takes Nozick to allow the minimal state to force some individuals to pay for their own protection; and that payment will go to someone other than the individual who is forced to pay. So, Cohen would say, since the individual forced to pay for his own protection is not enslaved, neither is the person forced to pay for another’s welfare.

Cohen is aware that his remarks do not show that “if Nozick is right, then taxation for policemen is justified and taxation for the poor is not, because the principle of self-ownership, through a complicated argument to do with self-defense, licenses the first taxation and forbids the second.”\textsuperscript{30} Cohen is not taking issue with Nozick’s claim that self-ownership justifies one course of behavior but not another here. Instead, Cohen claims that “the principle of self-ownership cannot be invoked to distinguish the cases” of taxation to pay for the poor from taxation to pay for one’s own self-defense.\textsuperscript{31} He writes that “the slavery argument is here supposed to be an argument \textit{for} the principle of self-ownership.”\textsuperscript{32}

As I understand Cohen, he wishes to say the following. If we hold that having a non-contractual obligation to supply service to another is objectionable, we can find no difference between the state’s requiring members to pay for the well-being of others and

\textsuperscript{29} \textit{SFE} 235. Cohen is wrong here. Nozick does not allow for forcing individuals to pay for their own protection. Instead, he allows for precluding some individuals from paying rival protective agencies for protection. The compensation those prohibited from purchasing protection receive is, it turns out, protection. Admittedly, it is protection from a source the individuals may not desire. The willing clients of the protective association will have to see increased premiums to pay for the protection of those who are precluded from seeking protection elsewhere. See \textit{ASU} chapter 2.

\textsuperscript{30} \textit{SFE} 235.

\textsuperscript{31} \textit{SFE} 235.

\textsuperscript{32} \textit{SFE} 235.
the state’s requiring members to pay for their own protection. The issue here is not really that, in either case, the money ends up in someone else’s hands. Instead, it is that, in either case, the individual is being forced to labor. Cohen claims that Nozick permits forcing the member of the minimal state to pay for his own protection. Because Cohen wrongly takes Nozick to allow that sort of forcing, Nozick cannot use the unacceptability of forcing someone to pay for something to show that redistribution is unacceptable. So Cohen holds that Nozick cannot employ the Enforcement Objection; more specifically, Nozick cannot employ this argument on the grounds that forcing someone to labor is objectionable.

Cohen pushes here and constructs a second possible response on behalf of the Nozickian. I simply reproduce his argument here:

Suppose that I am obliged to spend a stretch of time carrying out a task for you that no one has a right to absolve me from performing and that it is so precisely specified that there are only trivially different ways in which it might be performed. … My own condition, as far as I am concerned, is not in a very important way different from that of a short-term or partial slave.

Cohen thinks this sort of response will not help Nozick for two reasons. First, as mentioned earlier, Cohen takes Nozick to allow the minimal state to force members to pay for their own protection. So Nozick cannot offer the present argument. Second, Cohen claims Nozick allows for voluntary slavery. If this is so, Nozick “must … explain why there is more slavery in every non-contractual obligation than there is in any

33 But see footnote 29 above.

34 SFE 235.

35 SFE 235.
contractual obligation… regardless of why it was entered.”\textsuperscript{36} It is not exactly clear to me what “more slavery” means. However, I believe it is fair to interpret Cohen as claiming that Nozick cannot find slavery in itself to be unacceptable; and Nozick must explain why some forms of slavery are unacceptable while others are not.

Cohen ends his discussion of self-ownership and slavery here. As I mentioned above, there are two ways of interpreting Cohen’s argument in regards to the link between self-ownership and slavery. He may either wish to show that some forms of what Nozick calls slavery are not really slavery, or he may wish to say that, while they are forms of slavery, they are not really so bad. For now, the correct interpretation of Cohen does matter. What is relevant is the more modest interpretation of Cohen’s project. Perhaps Cohen has aimed to weaken the appeal of self-ownership by showing that its rejection does not license the forms of slavery we find objectionable. If Cohen is right on that front, he can weaken our natural resistance to the idea that some individuals to have partial ownership over others. This is important because, as Cohen himself notes, self-ownership precludes treating individuals in ways that may be required if we are to bring about any set of favored consequences. Specifically, self-ownership precludes forced organ donations. What Cohen does toward the end of his text is argue that we only find these means of treating people unacceptable because of certain contingent facts. What he wishes to show, as I understand it, is that these contingent facts are ultimately morally arbitrary.

\textsuperscript{36} SFE 236.
5.3 Self-ownership and Organ Donations

What Cohen has in mind here is the possibility that achieving certain moral goals might require us to force those with certain organs to ‘donate’ them to those who need those organs. In this portion of his discussion, he aims to show that proponents of self-ownership rely on facts that are morally arbitrary to assert the cost of denying that individuals own themselves. A reliance on contingent facts is a weakness in the argument for self-ownership. The specific fact Cohen takes up in *SFE* is the location of eyeballs. In particular, proponents of self-ownership claim that, if individuals own themselves, we cannot harvest their eyeballs to achieve any social goals. There is a natural moral revulsion against the idea of forced eyeball redistributions; and Cohen himself seems to have it. Still, if we wish to maximize certain egalitarian goals, we may be required to engage in forced eyeball redistributions. What must become of our natural revulsion? We must be talked out of it.

Here is what Cohen has to say about our natural reaction to eyeball redistributions:

Suppose that people are born with empty eye sockets and there is a well-established practice of prenatal implantation of perfect artificial eyes by the state. Sometimes a mishap occurs in which a grown-up loses her eyes, and the only way to endow her with an eye is to take one from a ‘sighted’ person… If an eye lottery is proposed by way of remedy, should we not feel as unhappy about it as we would about such a lottery for natural eyes? If so, the suggestion arises that our resistance to a lottery for natural eyes shows not belief in self-ownership but hostility to severe interference in someone’s life. For the state need never vest ownership of the eyes in persons: they could be regarded as on loan, with one of them being retrievable if your number comes up in a lottery.  

37 *SFE* 243 to 244.
Cohen follows this passage with the following question: “Can believers in self-ownership convince themselves that there is an important difference between the luck of the (eye lottery) and the luck of the genetic draw?” While Cohen rightly believes they can, he characterizes his task as an attempt to cause some to lose confidence in the thesis by showing that something else may account for our aversion to forced eyeball redistribution. Given that goal, what is of interests here are two points Cohen wishes to make. The first is that our belief in self-ownership, if we have it, is motivated by facts that are morally arbitrary. The way our eyes come to be in our eye sockets could be different. After all, through some strange series of events, the scenario Cohen describes could occur in this world. Proponents of self-ownership take eyes to be among the things that are protected by individual rights. But, Cohen argues, it is a contingent matter where those eyes are located. So it may be that our reluctance to engage in eyeball redistributions is ultimately grounded in nothing of moral significance; and we should be willing to accept the view that forced eyeball redistributions are acceptable.

The second point Cohen makes here is that it is really not self-ownership that explains our resistance to forced eyeball redistributions. Instead, it is “hostility to severe interference in someone’s life.” The idea is that if we refuse to accept either natural eyeball redistributions or implanted eyeball redistributions, the explanation can be that

38 SFE 244.

39 SFE 244.

40 SFE 244. It is a little extraordinary that the author of the most influential criticism of the self-ownership thesis here characterizes his own argument as “sub-demonstrative.”

41 SFE 244.
we find it unacceptable to interfere in the lives of others. It need not be self-ownership
that motivations our reaction, for our reaction is the same in both cases and in one, do not
have natural, original titles to the eyeballs. So we do not need the fundamental norm of
self-ownership; the prohibition on severely interfering in the lives of others is adequate
for explaining our reactions here.

The idea Cohen wishes to push, I think, is that we can explain our objection to
severely interfering in someone’s life without appealing to self-ownership. It is unclear
whether Cohen thinks we should jettison our reluctance to interfere severely in the lives
of others, or whether he thinks egalitarian principles can preserve this judgment. Given
that he suggests the state’s distributing eyeballs according to a lottery (in the world with
the eyeball trees) would be fine, I gather Cohen believes it is the former. After all, he
claims that the redistribution of one eye from every two-eyed person in that world would
not be so bad, given that the eyes are acquired accidentally. But once those eyes are
accidentally acquired, it is implausible to call taking one away anything but a severe
interference. Thus, my belief that Cohen is biting the bullet. However, whether my
understanding is ultimately correct or not is unimportant for present purposes. So I now
turn to Cohen’s attempt to show that self-ownership neither preserves nor maximizes
autonomy.

5.4 Self-Ownership and Autonomy

Cohen’s final attempt to reduce the appeal of self-ownership focuses on the
liaison between self-ownership and autonomy. He aims to show that, contrary to what

\footnote{SFE 244.}
Nozick seems to suggest, one can reject self-ownership while preserving autonomy. This topic is not completely distinct from the issues discussed in 4.3. Cohen’s claim that our objection to eyeball redistributions is based not on self-ownership but on “hostility to severe interference in someone’s life” seems to open the door for him to suggest that egalitarian moral theory may also allow him to explain why autonomy is to be respected. The idea that we are hostile to severe interference in the lives of others may also the stage for a discussion of autonomy and its relation to self-ownership.

To motivate this discussion Cohen must show that Nozick has marketed self-ownership as protecting autonomy. In his effort to show this, Cohen interprets several passages from ASU as linking self-ownership to autonomy. Here are those remarks:

In claiming that morality consists largely of side-constraints on action, Nozick writes that “the particular moral content gotten by this argument, which focuses upon the fact that there are distinct individuals each with his own life to lead will not be the full libertarian constraint... Further steps would be needed to reach a prohibition on paternalist aggression... For this, one must focus upon the fact that there are distinct individuals, each with his own life to lead.”

Cohen also notices that in a section entitled “What are Constraints Based Upon?” Nozick writes the following: “I conjecture that the answer is connected with that elusive and difficult notion: the meaning of life. A person’s shaping his life in accordance with some overall plan is his way of giving meaning to his life; only a being with the capacity to shape his life can have or strive for a meaningful life.”

Cohen regards these passages as linking self-ownership with “a concept that has independent

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43 SFE 236.

44 ASU 34; interpolation added.

45 ASU 48.

46 ASU 50.
standing.” Nozick wishes to show that self-ownership is necessary and sufficient for preserving autonomy. Thus, Cohen says “many libertarians say that people control their own lives, or enjoy autonomy, if and only if they possess the rights constitutive of self-ownership.”

Nozick never claims to be discussing autonomy in these passages, and Cohen is aware of this. Not surprisingly, then, Nozick never commits himself to a particular conception of autonomy, so Cohen provides one. He treats autonomy as “the range of a person’s choice.” This view regards autonomy as “a matter of degree, a matter of the quantity and the quality of options that a person has.” In other essays Cohen claims individuals lack freedom with respect to a particular action, which he seems to regard as identical to lacking autonomy, when either of the following conditions holds: (a) the individual lacks the means of performing a particular action or (b) the individual will likely suffer interference from others, if he tries to perform the action. It seems this same characterization is at work in SFE, though Cohen never says this.

Cohen thinks it is important to adopt the characterization of autonomy sketched instead of defining it in relation to “a person’s power of deliberation and self-control.”

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47 SFE 236.

48 See SFE 236.

49 SFE 236.

50 SFE 236.

51 This is the view he sets forth in his unpublished manuscript “Freedom and Money.”
The reason for this is that Cohen does not want to define autonomy in terms of self-ownership, which is essentially what the latter definition does. The idea here is that if we define autonomy as having a moral jurisdiction over our deliberation and self-control, it seems that we regard ‘self-ownership’ and ‘autonomy’ as synonyms. But then the claim that self-ownership is necessary and sufficient for autonomy is an analytic truth. I turn now to his attempt to drive a wedge between self-ownership and autonomy.

The argument begins by noting that autonomy is a matter of degree and quality. An individual can have a greater or lesser number of options; and those options can be more or less significant to the development of a good life. From this observation, Cohen argues that it is possible that self-ownership can be hostile to autonomy. It looks like self-ownership can allow some individuals to reduce the autonomy of those who Marxists call “abject proletarians.” These are propertyless individuals who must sell their labor to capitalists in order to survive. If some individuals are not prevented from exercising self-ownership rights, the abject proletarians might suffer a loss of autonomy, as Cohen defines it. The range of choices the proletarians enjoy would thus be far less than it would be under a political system that did not recognize self-ownership rights.

The crux of Cohen’s claim is that, even in a world of equally talented individuals and certainly in any world in which Nozickian principles are realized, self-ownership can fail to maximize overall autonomy. If Nozick allows for voluntary slavery, or voluntary indentured servitude, there is no a priori reason to believe that a world in which

52 SFE 236.
53 SFE 237.
54 SFE 237.
individuals enjoy self-ownership rights will be a world in which maximum overall autonomy would be enjoyed. The question, then, is how self-ownership can be said to maximize overall autonomy, if it is possible for a world of maximal self-ownership to be a world of decidedly little autonomy. I call this the “Maximization Objection.”

Cohen’s second attempt to drive a wedge between self-ownership and autonomy comes from Raz. The idea here is that self-ownership “cannot account for the desirability of autonomy.”\(^{55}\) Though Cohen reverts to the maximization objection in his actual discussion, there is no reason to follow him in doing so here.\(^{56}\) The point is just that we should like a fundamental moral norm to explain why some other important moral principle is attractive, especially if, as Cohen claims, the fundamental norm markets itself as preserving or protecting the other principle. The present argument claims that self-ownership cannot account for the desirability of autonomy. How would the line of explanation from self-ownership to the importance of having a high quality and quantity of available options proceed? However it might proceed, how could the explanation be taken seriously if the proponent of self-ownership must admit that self-ownership can at least in principle fail to maximize autonomy? After all, self-ownership’s call for side-constraints on actions precludes the coercive imposition of policies aimed at maximizing autonomy as Cohen defines it. I call this the “Explanatory Impotence Objection.”

This concludes my discussion of Cohen’s attempt to show that self-ownership is not intimately tied to autonomy. If this attempt is successful, it will further weaken our

\(^{55}\) *SFE* 238.

\(^{56}\) This is how it appears to me. Cohen follows Raz in claiming that certain putatively collective goods like education and welfare must be provided in order for autonomy to prevail. (*SFE* 238) But this looks like the Maximization Objection and not a separate argument.
reluctance to give up self-ownership. The primary point is that self-ownership enjoys acceptance, not on its own merits, but on the merits of other distinct concepts.

Having constructed Cohen’s objections to the entitlement theory (in chapter 3) and his attempt to reduce the appeal of self-ownership, I turn now to my assessment of Cohen’s arguments against Nozick. In the next chapter I attempt to ascertain whether Cohen’s objections do in the entitlement theory are sound. In the sixth chapter, I consider Cohen’s attempts to reduce self-ownership’s appeal.
CHAPTER 6

A Historical Conception of Justice in Acquisition

In this chapter I take up Cohen’s critique of the Nozickian view of justice in acquisition that I sketched in chapters 1 and 2. The specific question I investigate is whether Cohen establishes that there is no non-arbitrary baseline from which to determine whether an acquisition is just. Here is how I understand the relevant portion of Cohen’s critique. He holds that one could employ Nozick’s hypothesis that the world is naturally unowned, but not accept Nozick’s claim that acquisitions will be just as long as they do not prevent others from bringing their powers to bear on the world acquisitions must not prevent others from bringing their powers to bear on the world. One could hold, for example, that the world is naturally unowned, but insist that acquisitions do not place individuals in Pareto-inferior arrangements. Alternatively, one could employ the hypothesis that the world is naturally equally owned. This would mean that individuals have natural titles to equal portions of the world. Cohen’s introduction of these alternatives is to show that there is no objective reason to select any particular baseline from which to determine whether an acquisition is just.

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1 It may help to have a reminder of the relevant concepts at work in the discussion of Pareto comparisons. I offered this account in chapter 3, but I reproduce it here for the purposes of clarity. A distribution $A$ is Pareto-superior to distribution $B$ if everyone is better off in $A$ than in $B$. A distribution $A$ is Pareto-inferior to a distribution $B$ if distribution is Pareto-superior to $A$. A Pareto optimal distribution is a distribution to which there is no Pareto-superior distribution.
To justify this reading of Cohen’s critique, consider the illustration Cohen himself offers.² He has us imagine that some land is held in common. Then, imagine $A$ and $B$, who draw “sustenance from the land without obstructing the sustenance drawing activity of the other.”³ $A$ and $B$ draw $m$ and $n$ bushels of wheat from their separate farming activities. Cohen leaves the values of $m$ and $n$ undefined, because those values are irrelevant to determining whether either is worse off.⁴ Then, $A$ acquires all of the land and leaves $B$ less than enough to live on. This would violate the proviso, if there is nothing else for $B$ to do. But $A$ hires $B$ to work the land, $A$, though the cooperation with $B$, earns an extra $q$ bushels. So the total output is $m + n + p + q$. As Cohen sets up the scenario, $A$ now earns $m + p$ and $B$ earns $n + q$ bushels. So each has more than he would have, had $A$ not appropriated. Nozick, it seems, would therefore say this acquisition is just.

Now, Cohen’s challenge to Nozick is to show why we should assess the transaction by looking at whether individuals do at least as well as they would have had the transaction not occurred. So Cohen has us imagine that $B$ is a superior organizer to $A$. Whereas under $A$’s appropriation, $A$ enjoys $m + p$ bushels and $B$ enjoys $n + q$ bushels, Cohen observes that if $B$ had appropriated the land, the total output and, under at least some divisions, the total number of bushels each comes to hold could have been greater than this. Thus, each would have had more wheat if $B$ had engaged in the acquisition instead of $A$. And Cohen observes that “Nozick’s condition licenses, and protects, ________

² See chapter 3 of this dissertation for my full presentation of Cohen’s argument.

³ SFE 79.

⁴ SFE 79.
appropriations whose upshots make each person worse off than need be… upshots that are… Pareto-inferior."

The idea here is not that Cohen himself thinks just acquisitions may not yield Pareto-inferiority, but that he thinks Nozick has not shown us why they may not. Also, since Cohen goes on to introduce the assumption that the world is naturally equally owned, I take him to hold that Nozick is unjustified in relying on the set of background assumptions he does. Specifically, Cohen claims Nozick blithely assumes that the world is naturally unowned. Given this challenge, I focus in what follows on the question of whether Nozick’s baseline is arbitrary.

6.1 Is Nozick’s Baseline Arbitrary?

Cohen arrives at his conclusion that Nozick’s baseline is arbitrary by showing that there are alternative baselines. The availability of other baselines is a problem for Nozick if there is no good reason to adopt the hypothesis that the world is naturally unowned. But it seems that Nozick has good reasons to adopt this hypothesis. Perhaps Nozick does not stress these reasons, so I adduce them here. The approach initially takes Cohen’s argument as an internal critique of Nozick. I read Cohen as holding that Nozick himself has no good reasons to select the baseline he does.

One reason to take the question of whether an acquisition precludes others from bringing their world interactive powers to bear on the world as crucial to assessing the justice of an acquisition stems from Nozick’s endorsement of self-ownership.

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5 *SFE* 81.

6 *SFE* pages 87 and 94.
Specifically, I wish to suggest that Cohen has forgotten what is involved in self-ownership when he asks why individuals should be subjected to Pareto-inferior arrangements. More guardedly, I suggest that, if Cohen means for his critique of Nozick to be internal, then it is significant that Cohen has forgotten what is involved in self-ownership. My contention is that the question of whether one’s self-ownership has been violated has nothing to do with Pareto comparisons. In the case of $A$ and $B$ presented above, $B$’s self-ownership rights are not violated, even though the upshot of the acquisition is Pareto-inferior to the alternative Cohen suggests. The only standard that Nozick needs to be concerned with is whether uses, acquisitions and the like, violate the self-ownership proviso.

On the standard view of ownership rights, the rights of any $B$ do not entail that no $A$ may use or fail to use his property in a way that fails to keep $B$ in the Pareto-optimal position. Merely failing to yield Pareto-optimal outcomes does not violate the ownership rights others have over themselves. Cohen himself seems to grant this much when he observes that self-ownership is compatible with market harms. Along these same lines, recall my tale of the hand-digger from chapter 4. The hand-digger may complain that he is placed in a Pareto-inferior position when the shovel’s advent makes it harder for him to earn a living. But his ownership rights are not violated when others are not interested in hiring him to do so. Similarly, his ownership rights are not violated by those who develop the technology that allows others not to be interested in hiring the hand-digger.

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7 Preferences are not irrelevant to derivations of basic rights. See Loren Lomasky’s *Persons, Rights, and the Moral Community* OUP 1990, pp. 56 to 83; and Eric Mack’s “Moral Individualism: Agent-Relativity and Deontic Restraints” *Social Philosophy & Policy*, 1989, 7 pp. 81-111.

8 The tale requires modification to make the hand-digger’s complaint true, of course.
Ownership of an object does not require others to put us in the best position to use that object. It requires others only to refrain from stealing, selling, destroying, entering, using or changing the object. For similar reasons, Nozick’s commitment to self-ownership allows him to hold that the acquisitions of any $A$ must not have the same sort of effect on any $B$ as theft or destruction of his physical property would. Acquisitions cannot prevent others from bringing their world interactive powers to bear, because acquisitions that do this are relevantly like interfering with the possessions of others. Thus, it is not arbitrary to select the baseline Nozick does.

I believe there are further good reasons not to appeal to Pareto Principles in assessments of whether acquisitions are just. Two of them are closely related. The first is that, if Pareto comparisons are allowed to work in assessments of whether acquisitions are just, there seems to be no good reason not to employ Pareto comparisons in assessments of whether transfers are just. But allowing such comparisons into assessments of the justice of transfers yields highly counterintuitive results.

To illustrate, suppose I own a wine glass that I do not like. I may sell or destroy the wine glass as I see fit. Even if I see an ad on craigslist indicating that the poster needs just the sort of wine glass I have, say, in order to round out his fancy dining set, I may destroy the glass or sell it to someone else, if I like. While it may be nice of me to furnish him with the glass, I have every right not to do so. So, if my ownership in a wine glass does not require me use my property in a way that contributes to others being in a Pareto superior position, why would self-ownership require me to do that when it comes to acquisitions? But once Pareto comparisons are allowed to work in assessing acquisitions, it is unclear why they should not be at work in assessing transfers.
A closely related point worth stressing here is the nature of Cohen’s challenge to Nozick. He asks why we must consider not only what has happened when an individual engages in an initial appropriation, but what would have happened, had someone else engaged in the acquisition.\(^9\) This idea is closely related to the question of why Pareto comparisons should apply only to acquisitions because both rely on an appeal to counterfactuals. For a distribution to be Pareto-inferior, it must be inferior to some other available distribution. So, in his attempt to show that Nozick’s baseline is arbitrary, Cohen asks us to consider acquisitions that did not, but could have, occurred. But it should be clear that appealing to counterfactual acquisitions to argue against a historical conception of justice is question-begging. Nozick himself says this when he rejects counterfactual analyses in assessing the justice of acquisitions and transfers. He writes that “justice in holdings is historical; it depends upon what actually has happened.”\(^10\) Cohen offers a rebuttal that ignores this premise. Without an argument to show that Nozick should employ such considerations, Cohen simply begs the question against Nozick.

Now, it may be that Cohen thinks his attempt to show that Nozick’s baseline is arbitrary is itself a reason to believe we ought to consider acquisitions that might have occurred. Cohen might take it that Nozick has no good reasons to employ the baseline he does, so Nozick ought to be open to considering alternatives. If that is the case, I think I have shown that Nozick does have good reasons for making use of the baseline he does. One is that there is no good reason to stop assessments of justice at acquisitions. Another

\(^9\) *SFE* 87.

\(^{10}\) *ASU* 152.
is that ownership of things is incompatible with employing Pareto-comparisons to determine whether the uses of those things are legitimate. In making this point, Nozick says that a thief’s observation that his victim could have given him his property as a gift has no force in determining whether the theft was illegitimate.\footnote{ASU 151.} If counterfactual analyses are allowed to function in assessing the justice of transactions, and in particular if those transactions are coupled with Pareto analyses, the thief’s observation might have force.\footnote{I am following Edward Feser’s general discussion from Feser 2005.} For the thief might be like the wine glass collector mentioned above; and his theft might yield a Pareto-superior outcome to the situation in which he does not steal the wine glass.

Of course, Nozick could hold that on the market individuals are likely to sell their goods to the person who gains the most \textit{not counting the cost of that gain} from getting the object. This is because the person who will gain the most for getting a particular object will often be the highest bidder. So markets might strongly tend to yield outcomes Pareto-superior to other economic arrangements. But there is no reason to hold that legitimate transfers must yield Pareto-superior results.

A final issue worth raising here is that it is unclear Cohen is actually challenging the question of justice in \textit{acquisition} in his examples.\footnote{In Cohen’s scenarios involving \(A\) and \(B\), his objection seems to be that Nozick allows at least one party to be worse off than he needs to be. For example, Cohen observes that, had the better organizer engaged in the appropriation, \(A\) and \(B\) might each have had more than if the worse organizer}
appropriated. But the real issue here is not with the acquisition at all. It turns out to be with who does the organizing and how the resulting shares are divided.

This point is worth considering, because it shows that Cohen is really asking a question about legitimate uses of property. Once the question is properly seen as one of legitimate uses of property, the earlier example of the wine glass becomes even more problematic for Cohen. If Cohen wishes to know why we should believe people may use their property in ways that fail to yield Pareto-optimal outcomes, the burden falls to Cohen to provide any reason to believe otherwise. We do not think those who hold property must use it ways that yield Pareto-optimal outcomes. It is unclear why it matters whether the property is fresh from an original acquisition or held through transfer. People who hold property cannot use it in certain ways, but ways that fail to yield Pareto-optimal outcomes are not among them.

Cohen might wonder, of course, why Nozick’s proviso should allow one individual to be in a position to use his property in a way that puts others in worse conditions than they need to be. I think, though, that Nozick’s answer is that this is what is entailed by ownership rights of things in the first place. I said this in the above discussion. Failing to put another person in the best or even a better available position is not a violation of that person’s rights. Cohen might be out of sympathy with this answer, but it is at least part of the answer Nozick must give.

The arguments I have offered thus show why Pareto comparisons are legitimately excluded from Nozick’s assessments of justice in acquisition. I have aimed to show that a Nozickian has good reasons not to employ Pareto comparisons in determining whether acquisitions are just. I have said nothing about the hypothesis that the extra-personal
world is naturally unowned. In particular, I have said nothing about why Nozick is justified in employing that hypothesis as opposed to any other. I address this issue in the following section.

6.2 On the Hypothesis that The Extra-Personal World is Naturally Unowned

Hillel Steiner has endorsed what is sometimes called a “Starting Gate Theory.”14 This is the view that a principle of equality should govern our rights of initial appropriation. The claim is that we all have natural rights to the same amount of raw resources. After that, we may employ our legitimate holdings in roughly the ways Nozick thinks we can. So here the principles governing the assessment of acquisitions are not cast in terms of the hypothesis that the extra-personal world is naturally unowned. Instead, the hypothesis is that each individual has a natural title to equal portions of natural goods. Cohen cites Steiner in SFE, so he might wonder what Nozick has to say to rule out Steiner’s hypothesis.

It is true that Starting Gate Theories employ hypotheses different from Nozick’s. But the fact that these theories employ a different hypothesis cannot in itself be a reason to reject Nozick’s hypothesis. If it turns out that there are no good reasons to believe rival hypotheses, it seems that we should accept the hypothesis that the world is naturally unowned.

The crucial premise in Steiner’s argument, which I discussed in chapter 1, is that individuals need antecedent titles to all the portions of the natural world they use in making acquisitions. If people lack such antecedent titles, their acquisitions are not

14 Cohen himself calls them this in SFE 110. Hillel Steiner seems to be the most famous defender of this kind of theory of justice in acquisition. See chapter 2 of this dissertation for a discussion of Steiner.
ultimately vindicable; that is, there will remain the question of what right the individuals
had to each portion of the world he used – including the thing he acquired – in the first
place.

Steiner’s argument is important because it seems to meet a challenge I raised in
the first section of this chapter. I claimed that there are no good reasons to apply Pareto
comparisons to acquisitions, but not to transfers. *Mutatis mutandis*, the challenge to
Steiner would be that there are no good reasons to provide principles of equality to
acquisitions, but not transfers. Steiner has an answer to that challenge: we need titles to
everything we originally acquire in order for those acquisitions to be just – in order to get
the entitlement game going. Once we have titles to things, though, we can transfer them
as we see fit. Of course, Steiner’s theory does not require that acquisitions yield equality.
Instead, acquisitions must just allow others the *opportunity* to harvest, as it were, their
equal initial shares. If others do not do so, for whatever reason, Steiner’s strictures on
appropriations are not violated.

Despite meeting one of my challenges, there is a significant problem for Steiner.
There are good reasons to reject Steiner’s Starting Gate Theory. I rehearsed Eric Mack’s
criticism of Steiner (ch.1), but it is worth remembering that one failure of Steiner’s
theory is that there is no good reason to believe we need antecedent entitlements to the
specific components of worldly resources we acquire in order for our acquisitions to be
just. If this is right, Steiner’s position fails to provide a reason to adopt a hypothesis other
than Nozick’s.

There are other things to say on Nozick’s behalf. These all appeal to common
practice and common language. I mentioned in chapters 1 and 2 that Marxists are often
averse to this kind of appeal. And Cohen never completely relinquished his aversion to appealing to common language, at least not as far as I can tell. Still, it is worth noting what we say when asked who owns things to which no individual or incorporated entity has laid a claim. We say “No one owns it.” We do not say “Everyone owns it.” If individuals wish to acquire something that is unowned, they attempt to seek out the local rules of just acquisition, should any be in place, and acquire in accordance with those rules. Specifically, we do not need to determine whether there might be better owners of the thing in question. We just have to go through the right procedures.

I do not think this kind of observation would move Cohen, but if we take Nozick to be offering a theory that accommodates what we actually do, then there are good reasons to believe we think the world is naturally unowned. This assumption fits better with our language and practice than do the rivals Cohen suggests. If Nozick wishes to offer a revisionist theory of justice in acquisition, he would need to justify the employment of a hypothesis different from the one he does. But this is not Nozick’s goal.

To conclude, it is important to see that Cohen provides no reason to adopt any of the alternative hypotheses he canvasses. In fact, he claims that none is more arbitrary than Nozick’s. But if Nozick’s hypothesis is the natural starting point and it fits with the rest of his theory of justice in holdings and the fundamental moral norm undergirding his views, it is hard to say that it is arbitrary for Nozick to adopt the hypothesis he does. So I conclude that it Cohen fails to show that Nozick has no good reason to adopt the view that the world is naturally unowned.

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15 He does make one appeal to common language in SFE, but he is quick to point out that this kind of argument is inconclusive! See SFE page 63.
To this point in the discussion, I have read Cohen as offering an internal critique of Nozick. On this reading, Cohen raises the Pareto issues to suggest there is injustice if individuals are subjected to Pareto-inferior outcomes. More guardedly, Cohen thinks Nozick has no reason not to find rights violations in such outcomes. In response to this line, I made the point that ownership of an object simply doesn’t entail the right to require others to avoid uses yielding Pareto-inferior outcomes. This is true even of our ownership over our selves. But this could have missed Cohen’s point. Cohen might be offering an external objection to Nozick. Cohen might wish to show that a good theory of justice would see Pareto-inferior outcomes as unjust. Now, Cohen’s work on Pareto comparisons is tricky and controversial. In particular, he seems to wish to reshape the structure of Pareto principles. Looking at Cohen’s work here might help assess his criticism of Nozick insofar as that criticism is external to Nozick’s position. So I will say a bit about this reading of Cohen in the following section.

6.3 Cohen and Pareto Comparisons

Suppose Cohen is arguing that a good theory of justice should not brook Pareto-inferior outcomes. He might then argue that Nozick does tolerate Pareto-inferior outcomes. So since Nozick’s theory brooks Pareto-inferior outcomes, is not a good theory. The basic idea I push in this section is that this is an odd criticism for Cohen to make. It is odd because in his book *Rescuing Justice and Equality (RJE)*, published thirteen years after *SFE*, Cohen thinks that justice must be rescued from an argument based on Pareto comparisons.

Here is the structure of an argument that Cohen says moves many defenders of robust egalitarianism to tolerate some inequalities. First, there is an argument for a robust
form of equality of distribution. From here, there is a second argument to “a Pareto-
superior unequal distribution… in which all people, and therefore, in particular, the people
now at the bottom are better off than they were in the initials state of equality.”\textsuperscript{16}

The fundamental point I want to bring to light is Cohen’s statement of his own
thesis in that discussion. He writes: “I do not challenge the Pareto Principle, that Pareto-
superior distributions are always to be preferred. My object is to show that the two stage
argument does not establish the justice of the inequalities.”\textsuperscript{17} While Cohen does not
challenge the claim that Pareto-superior distributions are always to be preferred, he
challenges the claim that the inequalities we might see in Pareto-superior distributions are
just. He writes: “[Y]ou cannot begin with equality because all inequalities are morally
arbitrary in origin, and therefore unjust, and then treat an unequalizing Pareto-
 improvement as lacking all stain of injustice.”\textsuperscript{18} The idea is that the reasons to endorse
egalitarianism in the first place include a commitment to the idea that morally arbitrary
factors should be prevented from leading to inequalities.\textsuperscript{19} So the move to the Pareto-

\begin{itemize}
\item\textsuperscript{16} RJE 86 to 87. One could see Nozick’s Chamberlain argument as a version of this argument. Nozick does not argue for equality, of course. He allows his opponents to assume we have achieved it though.
\item\textsuperscript{17} RJE 87. Cohen says here that he does not challenge the claim that Pareto-superior distributions should always be preferred. This does not mean that he accepts that claim. Cohen’s discussion of this issue seems, on the one hand, to reject Pareto-comparisons as relevant to assessing the justice of distributions, while on the other seeking to engage in severe revisions of how we think about Pareto-comparisons. I do not enter that discussion here, because it seems irrelevant to assessing his criticism of Nozick. Either way, Cohen at least aligns himself with Nozick in rejecting the claim that Pareto-comparisons, as usually understood, should bear on our assessment of whether a distribution is just.
\item\textsuperscript{18} RJE 170.
\item\textsuperscript{19} For a good discussion of this issue, see Richard Arneson’s “Luck Egalitarianism: a Primer” available here: http://philosophyfaculty.ucsd.edu/faculty/rameson/LUCKEGA%20LOUP%20-%204%20Arneson.pdf.
\end{itemize}
superior condition is unjust because it arises, or is very likely to arise, from morally arbitrary factors.

Whether Cohen is right is not the issue here. What does matter is that Cohen aligns himself with Nozick in rejecting the claim that any Pareto-improvement will be just. He aligns himself with Nozick precisely because they both take the arguments that lead to their fundamental moral norms to be incompatible with the belief that Pareto-superior outcomes are required by justice. So Cohen could not hold that a good theory of justice must not tolerate Pareto-inferior outcomes. He cannot say this, because his own theory tolerates them.

Before concluding this discussion of Pareto-comparisons, it is important to note that there are two ways of discussing Pareto-optimality. On one rendering, Pareto-optimality obviously cannot function as a necessary or sufficient condition for justice in holdings, at least from Nozick’s perspective. This way of talking about Pareto-optimality is what Nozick called a “current time slice” analyses. On a current time slice view, one must “look only at who ends up with what.”20 Nozick ultimately deems current time slice views of justice “end-state theories of justice.”21 Thus, he clearly rejects this sort of analysis; and requiring holdings to match a particular pattern at any particular time – even the weak Paretian pattern - is incompatible with a historical conception of justice.22

Despite the fact that Nozick rejects end-state theories of justice, he does make the

20 ASU 154.
21 ASU 155.
point that Pareto comparisons might speak in favor of the entitlement theory. For example, if one is employing Pareto comparisons not to snapshots of holdings, but to lifetime allotments of goods, there are reasons to believe that the market yields Pareto superior outcomes. In fact, Nozick notes that “principles are to be satisfied over time, during which new possibilities arise.”23 We could manufacture a Pareto-superior distribution in the present moment while inadvertently eliminating opportunities for everyone to be better off over the course of their lifetimes. This is why Eric Mack accuses Cohen of not even beginning to shoulder the burden of showing that “a significant number of participants in a market economy will suffer…negative externalities that, on net, outweigh the direct gains from participation *and* the positive externalities from these transactions.”24 Along these same lines, it is the belief that markets generate the best outcomes over time that led many early free market economists to endorse both something like the entitlement theory as a means of satisfying *utilitarian* moral principles.25 Nozick could satisfy those concerned about Pareto comparisons by stressing these different means of applying such comparisons.

This chapter has focused on Cohen’s criticism of Nozick with respect to justice in acquisition. I do not think Cohen has managed to show that Nozick is unjustified in taking the world to be naturally unowned. Also, Cohen does not manage to show that Nozick has no good reason to keep Pareto comparisons out of his analysis of justice in

23 *ASU* 164.


acquisition. There is more to the entitlement theory, of course. In the next section I turn to justice in transfer. I focus on Cohen’s attempt to show that there are good reasons to expect injustices to arise from transfers that seem justice-preserving.
CHAPTER 7

Cohen on Justice in Transfer

This chapter is an assessment of Cohen’s critique of the historical conception of justice in transfer. Cohen urges two lines of argument to show that we should reject the notion of justice-preserving transfers. The first focuses on negative externalities. Transfers that seem justice-preserving can bear negatively on the situation of non-participants – those who do not engage in or receive something in the transfer. When transfers have this sort of effect on non-participants, we can, according to Cohen, rightly expect the results of those transfers not to be just.

I show that Cohen’s argument here is a confession that Nozick is correct: patterned theories in general - and egalitarianism in particular - do not give us the sorts of entitlements we believe we should have as a matter of justice. I draw out the implications of Cohen’s argument to show he is committed to the idea that there is nothing the individual can do to insulate his holdings against the activities of others.¹ What is more, Cohen does not give us good reason to expect non-participants to enjoy positive externalities as a result of the Chamberlain example. Even the examples Cohen uses to illustrate the potential for some to suffer negative externalities can reasonably be expected to carry positive externalities. Given that it is fairly standard to believe that

¹ This is a criticism raised by Nozick on ASU 256.
market interactions generate lots of positive externalities, Cohen’s externalities argument does not do enough to undermine Nozick’s argument.

The second line of argument Cohen offers focuses on rationality. Cohen claims that committed egalitarians would be irrational to move away from equal distributions. He also claims that our standard lack of commitment to egalitarian principles is irrational. Nozick, Cohen claims, illicitly exploits this irrational lack of commitment to make the Chamberlain example a plausible challenge to egalitarianism. But, once it is seem that we are irrational to be indifferent to inequalities, the allure of the Chamberlain example dissipates.

In assessing this argument, I point out that Cohen himself claims that we do not care about egalitarian outcomes. This poses an obstacle Cohen must overcome: he must show that our lack of concern does not reflect a commitment to living in a non-egalitarian society. He must overcome this obstacle while explaining why a theory of rationality requires the willingness to expose all of one’s holdings to a redistributive procedure; he must show why we would be rational to give up the ability to protect our holdings against the risky actions of others. But the prospects of developing such a theory of rationality are dim.

Of course, Cohen’s primary argument is that committed egalitarians would be irrational to move away from egalitarian distributions. Here I observe that Nozick does not need to deny this. Instead, Nozick needs merely to show that those who do not have a preoccupation with equality have no reasons to hope their transfers maximize or preserve equality. Cohen’s response to this point would have to be in the form of a theory of
rationality whose prospects for success I called “dim” in the last paragraph. So I think Cohen’s appeal to rationality fails to stave off Nozick’s criticism.

7.1 Externalities

Nozick says “some things individuals may choose for themselves no one may choose for another.”² Cohen asks us to “remember this when we come to scrutinize the Wilt Chamberlain transaction, for widespread contracting of the kind which occurs in the parable might have the effect of seriously modifying, for the worse, the situation of members of future generations.”³ What Cohen attempts to show is that Chamberlain-esque transactions can significantly alter, for the worse, the bargaining positions of third parties. Cohen attempts to do this in order to show that Nozick’s argument against socialism is inconclusive. Specifically, Nozick has not taken seriously enough the possibility that transfers like those in the Chamberlain case can seriously worsen the condition of third parties.

Now, Nozick is aware that transfers might have effects on third parties.⁴ But he tells us that “after someone has transferred something to Wilt Chamberlain, third parties still have their legitimate shares; their shares are not changed.”⁵ Cohen does not deny that the things individuals hold are not changed after the Chamberlain transfers. Instead, if Nozick asserts that this is all that matters, he begs the question against socialism. To

² ASU 159.
³ SFE 22.
⁴ ASU 169.
⁵ ASU 161.
show this, Cohen writes that “(A) person’s effective share depends on what he can do with what he has, and that depends not only on how much he has but on what others have and how what others have is distributed… Third parties, including the as yet unborn, may therefore have an interest against the contract.” In particular, the Chamberlain’s children might come to have bargaining power greater than others. Those subject to the superior bargaining power of others might see their conditions seriously worsened. Thus, those people have an interest against the Chamberlain exchanges. Presumably this interest against the transfers is to be sufficient to show that the transfer is not justice-preserving.

To assess Cohen’s externalities argument, one question to consider is whether Cohen shows that there are reasons to believe Chamberlain-esque transfers will seriously worsen the condition of future generations. Here I follow Eric Mack’s observation that Cohen does not attempt to provide such reasons. Cohen also does not take seriously Nozick’s claim that a system of private property and entitlements will increase the stock of common goods and opportunities individuals will enjoy. Nozick’s claim is not particularly controversial. Nozick himself rightly calls this claim “very familiar.”

Yet, Cohen does not give us reasons to expect the condition of third parties to be relevantly worsened by the Chamberlain transfers. He seems to regard his merely suggesting that this could happen as sufficient to show that injustices could arise from the Chamberlain examples. Cohen holds that Chamberlain might gain bargaining power over others or use his wealth to buy houses and leave them uninhabited with speculative

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6 SFE 27.
7 ASU 177.
8 ASU 177.
intent. But even these observations do not show that injustices will arise from the transfers – not unless we see unequal bargaining power and speculation as unjust in the first place. Besides, Cohen ignores the fact that Chamberlain’s causing a housing shortage would cause some of the people who do not watch Chamberlain play to enjoy positive externalities. Among other things, because shortages tend to increase the value of the things of which there is a shortage, it would increase the value of the houses other people own and that of the houses of people who do play to see Chamberlain play. Some of those people would presumably be the ones who did not engage in the Chamberlain transactions. Also, a high demand for houses would induce investors to allocate funds to building new houses. This would increase the pool of open jobs.

Cohen seems to envision widespread market transactions as not merely limiting some options available to individuals, but as driving many people to the position of the abject proletarian. Nozick allows the actions of some to limit, in some ways, the options open to others. My buying a house precludes someone else from doing it. But Nozick does not think that sort of harm violates anyone’s rights. On a broader scale, Nozick does not believe widespread market transactions will run afoul of the Lockean proviso. So Cohen must do more in this regard than suggest that Nozick could be wrong.

The way to think of this last point is as follows. Imagine that Cohen says we could all enjoy increased freedom and general well-being if we lived in a heavily redistributive, egalitarian-minded society. Then, imagine that a defender of Nozick points out an instance in which an individual refuses to engage in highly demanding and useful work, given that it is not also highly remunerative. So the person in question refuses to become a doctor. Specifically, imagine that being a doctor is not highly remunerative
because of limitations on what doctors may charge for their services. Nozick’s showing that this is possible would be insufficient to warrant the conclusion that there are good reasons to expect the society in question to suffer serious losses in freedom and well-being.

There are other reasons to wonder about the externalities argument. The externalities argument seems to be a confession on Cohen’s part that he accepts part of Nozick’s criticism of socialism (and patterned theories in general). Recall that Nozick claims that the pattern theorist promises more than he can deliver. The idea is that when people hold what justice demands they hold, they will be able to employ those holdings in certain ways without introducing injustice into the world. Cohen’s concern with externalities is an open denial that a just set of holdings entitles individuals to employ their holdings - without introducing injustice into the world - the way we usually believe they can. So Cohen seems to bite the bullet in this regard. But he may take it that there are good reasons to deny that individuals may employ their holdings in certain ways without introducing injustice into the world. One of those reasons is supposed to be the externalities argument, of course.

Another question to have about the externalities argument is whether it trades in part on ignoring its own implications. Remember the alternative to the Chamberlain example Eric Mack offers. There, the individuals engage in autarkic changes to their own holds. Discrete individuals consume some of their holdings, save and increase some others, manipulate what remains to increase its exchange value and so on. We can imagine inequalities arise such that the egalitarian should find the resulting distribution unjust. Now, it is one thing to hold that we need to set right the results of market
transactions. Perhaps Cohen is sufficiently averse to the market that he does not mind denying that what look like innocuous market transactions are justice-preserving. But the alternative to the Chamberlain example shows that if externalities matter because of their effects on bargaining power, then even the autarkic manipulation of one’s own holdings can fail to be justice preserving. Everything the individual might do – which includes doing nothing - with his holdings is subject to the distributive goals of egalitarianism. It is unclear whether Cohen wishes to bite this bullet. But his concern with the notion of effective shares, which is a concern with a person’s ability to trade with others, seems to leave him no choice but to do so.

Cohen claims the Chamberlain example shows, at best, that there is some role for entitlements in a theory of justice. So he might want to say that egalitarian concerns cannot touch an individual’s justly held goods, provided that individual holds them through autarkic manipulation. But I do not think he can say this for two reasons. The first is that is no obvious story to tell about why it matters whether a person came to have his holdings through trade or autarkic manipulation. But second, Cohen openly says there are good reasons to limit how much a person can hold, no matter how that person came to have those holdings. So he might wish to hold that there is no way an individual can, as a matter of justice, insulate his holdings from the activities of others.

Assuming Cohen wishes to go the route just suggested, one can see that there are good reasons for those who are not already egalitarians not to be convinced by the externalities argument. More accurately, there are good reasons to find Cohen’s

9 SFE 24.

10 SFE 25.
rendering of the externalities argument unconvincing.\textsuperscript{11} This is because Cohen runs concerns with externalities over concerns with protecting one’s holdings against the activities of others.

Looking at the incongruity between Nozick’s claim that the shares of third parties are unchanged and Cohen’s claim that the effective shares of third parties are changed is instructive. What is interesting is that Nozick and Cohen are both interested in allowing the individual to be insulated from the activities of others. Cohen wants individuals to have their bargaining positions protected. Thus, he focuses on what he calls “effective shares.” Nozick writes that in socialist societies there is “no way to divest oneself of these risks or to choose to carry some such risks but not others... as one can do in a capitalist society.”\textsuperscript{12} The idea here is that individuals should be able to decide whether they will expose their entitlements to being curtailed by the activities of others, to the risky activities of others. People should be able to choose whether they will engage in risky ventures. Nozick’s complaint against Marxism is its apparent requirement that “everybody shares in the risks of the investment decisions of the central investment manages.”\textsuperscript{13} Nozick is understating his own point here. It is not merely risky activities which individuals share under egalitarianism. Cohen’s externalities argument commits him to the view that, as a matter of justice, individuals share in all the activities of others.

\begin{footnotesize}
\begin{enumerate}
\item What I mean here is that there might be a way of dealing with externalities while allowing people to protect some of their holdings from the calculations of equality, utility or the like. I think that a project committed to allowing individuals to protect their holdings in this way would be one at odds with the most popular theories of justice though. I say this because once people designate some of their property as protected, however that might be done, they will have erected an obstacle to the achievement of any particular pattern.
\item ASU 256.
\item ASU 256.
\end{enumerate}
\end{footnotesize}
Cohen’s interest is in preserving equal bargaining positions. Thus, he introduces the idea of an effective shares and how such shares depend on what others have. Cohen’s focus on bargaining position commits him to the idea that just holdings do not give individuals entitlements to employ their holdings in certain ways but, rather, entitlements to preserve their bargaining positions. This commitment leads Cohen to suggest that injustice can arise from the Chamberlain transfers.

Noticing this commitment is crucial, because the externalities argument should convince those who are not already committed to egalitarian theories of justice only if one both agrees with Cohen that preserving bargaining positions is vital to a theory of distributive justice and grant that individuals are somehow rational to have the equality of their bargaining positions preserved, even if that means losing out on enjoying at least some of the holdings they use to shape their lives. One must grant Cohen the first point because the externalities argument hinges on the notion of protecting effective shares. One must grant Cohen the second because it would be problematic for a theory of justice if that theory required irrational behavior. In fact, Cohen himself attempts to show that committed egalitarians who engage in Chamberlain-esque transfers are irrational. But Cohen needs to argue for egalitarianism and part of that argument must be an attempt to show that preserving roughly equal bargaining positions is what rationality requires. Cohen does not explain why justice should be fundamentally concerned with protecting effective shares as opposed to, well, anything else. Cohen does employ a conception of rationality in his response to Nozick. I take up that portion of Cohen’s discussion in the following section.
It is my view that the externalities argument is at best inconclusive as response to the Chamberlain example. Cohen merely suggests that individuals might suffer negative externalities as a result of the Chamberlain transfers, but Cohen ignores the positive externalities that follow from his own examples of what Chamberlain might do with his wealth. What is more, Cohen openly accepts Nozick’s claim that socialism does not give individuals entitlements to their own holdings. Cohen also has no choice but to grant that there is no way to isolate one’s claims to one’s holdings from being diminished by the activities of others. The idea might be that rationality requires not having the right to insulate one’s holdings against the activities of others. I now turn to Cohen’s discussion of rationality.

7.2 Rationality

The question of rationality arises in Cohen’s discussion in a somewhat roundabout way. He aims to refute Nozick’s endorsement of a principle of justice-preserving transfer by seeking a “state of affairs which would be accounted unjust but which might be generated by” a transfer that is allegedly justice-preserving. Cohen offers two separate arguments to find such a state of affairs. Here is the first argument:\footnote{SFE 22.}

1. (2), an account of justice in transfer, allows for the justice of voluntary slavery.
2. Slavery is unjust.
3. Thus, (2) is false.

Here is the second. Nozick’s endorsement of a historical conception of justice in transfer commits him to the judgment that a society with no slaves, on the one hand, and

\footnote{SFE 22.}
a society consisting largely of voluntary slaves, on the other, can be equally just. Cohen finds premise (2) absurd. However, he thinks Nozick could defuse both these arguments. This is where an appeal to rationality enters the discussion. Cohen writes that “Nozick could claim that rational persons in an initially just situation are unlikely to contract into slavery, except, indeed, where circumstances are so special that it would be wrong to forbid them to do so.”

Cohen’s motivation for suggesting Nozick would wish to show that a voluntary slave society could be as just as a free society lies in the following passage from *ASU*.

> [I]t must be granted that were people’s reasons for transferring some of their holdings to others always irrational or arbitrary, we would find this disturbing…We feel more comfortable upholding the justice of an entitlement system if most of the transfers are done for reasons. This does not mean necessarily that all deserve what holdings they receive. It means only that there is a purpose to someone’s transferring a holding to one person rather than another; that usually we can see that the transferrer thinks he’s gaining, what cause he thinks he’s serving, what goals he thinks he’s helping achieve, and so forth. Since in a capitalist society people often transfer holdings to others in accordance with how much they perceive these others benefitting them, the fabric constituted by the individual transactions and transfers is largely reasonable and intelligible.

Cohen parleys this appeal to rationality into a response to the Chamberlain example. The idea is that egalitarians can resist the Chamberlain case because the transacting agents would be irrational in a way that Nozick himself finds disturbing. Cohen claims that “we should not be content if what (a transacting agent) thinks he is getting is good, but what he actually gets is bad, by his own lights.” The way Cohen...

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16 *SFE* 22.

17 *SFE* 22.

18 *ASU* 159.

19 *SFE* 23.
goes about trying to determine whether an agent gets something bad by his own lights is by taking hold of Nozick’s claim that we should find it disturbing if “we cannot see what the… contracting parties think they are gaining by them.”

It is important to see that Cohen is assuming that the individuals engaging in the Chamberlain transactions are committed to egalitarian principles of justice. Cohen is making this assumption because Nozick invites the friends of patterned theories of justice to do so. With this assumption in place, Cohen offers the following response to the Chamberlain example:

It is easy to think carelessly about the example. How we feel about people like Chamberlain getting a lot of money as things are is a poor index of how people would feel in the imagined situation. Among us the ranks of the rich and the powerful exist, and it can be pleasing, given that they do, when a figure like Chamberlain joins them. Who better and more innocently deserves to be among them? But the case before us is a society of equality in danger of corruption. Reflective people would have to consider not only the joy of watching Chamberlain and its immediate money price but also the fact, which socialists say they would deplore, that their society would be set on the road to class division. In presenting the Chamberlain fable Nozick ignores the commitment people may have to living in a society of a particular kind, and the rhetorical power of the illustration depends on that omission.

\[\text{20} \text{SFE 22, emphasis original.}\]

\[\text{21} \text{ASU 161.}\]

\[\text{22} \text{SFE 26.}\]
The Chamberlain fans believe they are paying just a quarter to see Chamberlain play, but they are on their way to class division and disparities in bargaining power. Given that the fans deplore inequalities in bargaining power and class divisions, they are irrational to move away from equal amounts of holdings. So, Cohen concludes, the transfers cannot be justice-preserving. They cannot be justice-preserving because the fans have not really thought through the consequences of their transfers. The transfers are irrational or disturbing, as Nozick might put it.

Now, as this appeal to rationality is a response to Nozick, one thing worth observing is that Nozick never says disturbing transactions are unjust. Cohen himself tells the reader that Nozick never says this.²³ I think it is clear from the lines that follow Nozick’s remark about “disturbing” transactions, that Nozick does not take such transactions to be unjust. In fact, even if people’s transactions were always arbitrary and irrational, there is no direct textual evidence to show that Nozick would find those transfers unjust. What Nozick is doing in the passage Cohen cites is introducing the reasons for endorsing the entitlement theory. People acquire things in order to pursue their ways of living. So if we see a given distribution of goods arising from free choices, we will be able to figure out why people engaged in those transfers. Thus, Nozick says “The system of entitlements is defensible when constituted by the individual aims of individual transactions. No overarching aim is needed, no distributional pattern is required.”²⁴ When Nozick says this he is arguing that holdings in a free society will be

²³ SFE 22.

²⁴ ASU 159.
intelligible; he is not saying that they will be unjust if they are not intelligible, nor is he arguing that those holdings will be just because they are intelligible.

One of Cohen’s explicit claims is that the Chamberlain fans would be irrational to engage in transactions that endanger the egalitarian society in which they want to live. It is irrational, Cohen says, not to be concerned with who gets our money when we buy things.\(^{25}\) Before considering what Nozick would need to say about this specific line of though, it is important to see that Cohen completely ignores the possibility that our lack of concern with Chamberlain’s newfound wealth might reflect a commitment to living in a society of a certain kind. And it is problematic for Cohen if this commitment is to living in an anti-egalitarian society. Cohen stresses the role a theory of rationality plays in his argument for egalitarianism, or at least against rival theories. He tells us that “it is no doubt true in our society that people rarely care who gets the money they forego to obtain goods. But the… common unconcern is irrational.”\(^{26}\) But is it? What if this unconcern reflects a commitment to living in a society that reflects the principles underlying the entitlement theory and not egalitarianism? Cohen must prove our common unconcern for who gets the money we forego to enjoy certain goods is irrational. But he has just erected a serious obstacle to that project. Cohen owes us, at the very least, an explanation of why our present commitments matter so little to judging whether transfers are rational, but the hypothesized commitments of egalitarians matter so much.

Cohen’s response to this challenge would probably be that an egalitarian theory of rationality is ultimately defensible, while its rivals are not. This sort of response is

\(^{25}\) SFE 25.

\(^{26}\) SFE 25.
available to Cohen but he does not defend it anywhere in SFE or his other works. It is equally important to see that egalitarian-minded theories of rationality are very controversial and generally rejected.²⁷

To illustrate a standard challenge to the view that the pursuit of equality is rational, consider the following scenario. A can work alone and harvest 25 bushels of wheat. B can work alone and harvest 5 bushels of wheat. If the two cooperate, they can harvest 50 bushels of wheat. An egalitarian theory of rationality would have to say that each would be rational to demand a 25/25 distribution of bushels. It is one thing to hold that justice demands this sort of distribution, but it is another to say that rationality demands it. Among other things, it is unclear why A would not be rational to demand an increase in his haul of bushels.²⁸

Cohen’s fundamental point, as I mentioned above, is that committed egalitarians would be irrational to engage in the Chamberlain transactions. So if A and B both cherish equality, they are each rational to demand the equal distribution. Cohen’s view is that if the transacting agents are irrational, the upshots of the transfers might not be just. I think that on this front, Nozick does not need to show that there is no way to develop a coherent picture of egalitarian justice and a corresponding theory of rationality. He does not need to deny that, if people cherish equality above all else, it is irrational for them to move away from equality. Nozick just needs to show that it is not rationally required of

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²⁷ Ed McClennen might be the most well-known proponent of such a theory of rationality. See his *Rationality and Dynamic Choice* (New York and Australia: Cambridge University Press, 1990). McClennen openly complains his views are not taken seriously.

²⁸ I ignore the possibility that the cooperation makes A’s work so easy and/or quick that he gains time or leisure through the interaction.
one to develop a commitment to equality, given the concerns we actually have. Still, there is more to say on Nozick’s behalf. Cohen’s point that committed egalitarians are irrational to move away from equality seems plausible only if we ignore that he would need to say *Chamberlain* would be irrational to keep the money he accumulates after the transfers. It would be irrational for someone who prizes equality of bargaining positions to allow himself to enjoy a bargaining position superior to that of others. It is one thing to hold that, if Chamberlain were thoroughly interested in egalitarianism that he should use his holdings to achieve egalitarian goals. It is another to hold that he would be irrational to enjoy an improved bargaining position. After all, part of the rationale Cohen and other egalitarians offer for requiring equal shares is that one should not wish to be subject to the superior market power of others.

The natural egalitarian explanation for why Chamberlain should not be allowed to keep his wealth is not that doing so prevents him from being subject to the superior bargaining power of others. Instead, it is that he received the money he now holds via the irrational actions of others. If one receives money via the irrational actions of others, one should return or redistribute that money because one’s holdings are not just. But once considerations of justice are involved, the egalitarian has assumed more than Nozick offered.

Nozick has invited the proponent of patterned theories to imagine that their favored pattern is realized. Cohen seems to take this invitation to mean that we may assume not merely that everyone is committed to preserving the pattern, but that all the

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29 David Gordon reports that Nozick told him the Chamberlain example is to illustrate “that preserving a pattern often requires very strong restrictions on what people can do, not that supporters of a pattern are logically required to accept changes in it. See Gordon’s review of SFE.”
arguments required to justify the pattern have been made. Cohen seems to take the liberty of assuming a highly controversial theory of rationality and justice has won the day. It may thus be that, if this happens, there is little one can do to offer an internal criticism of egalitarianism – at least via the Chamberlain example. But for Cohen to assume that Nozick licenses him to assume an egalitarian theory of justice and rationality is correct is to assume too much. And I am claiming here that Cohen does exactly this in the long passage cited above.

Cohen indicates that he is making this sort of illicit assumption in Rescuing Justice and Equality when he writes that “Nozick takes D₁ as established, and he succeeds in disestablishing it only because he ignores what established it.” Cohen makes a similar argument, which I discussed in chapter 5, about Pareto comparisons. Cohen claims one “cannot begin with equality because all inequalities are morally arbitrary in origin, and therefore unjust, and then treat an unequalizing Pareto-improvement as lacking all stain of injustice.” But, as I said above, Nozick is not interested in showing that there is no way to develop a coherent picture of egalitarian justice and a corresponding theory of rationality. Nozick’s interest is in showing the commitments of those who accept those pictures. The argument I am pushing is that Nozick was not seeking to show that egalitarianism cannot embrace the conclusions with which he saddles them. Any theorist can say that, if his principles lead to a certain implausible conclusion, he is required to embrace them. It is just that embracing those conclusions renders the theory unattractive and implausible. So Cohen accepts Nozick’s


31 Ibid 170.
criticism without offering an explanation for why we ought to accept a theory with implausible and unattractive components.

My view is that Cohen’s externalities argument and the related appeal to rationality he offers are unconvincing. Part of the problem lies in Cohen’s own commitment to egalitarianism. It may be that some other theory could provide a better rendering of the two arguments Cohen offers, but his own commitment to egalitarianism undercuts his arguments against Nozick. The gist of what I have argued here is that Cohen’s position is more susceptible to the challenges he wages against Nozick than the position Nozick defends. I think that, at least as far as Cohen’s criticism goes, the entitlement theory retains its initial plausibility. The self-ownership thesis underpins Nozick’s version of the entitlement theory. Cohen attempts to reduce the appeal of that thesis. I assess Cohen’s efforts on this front in the following chapters.
CHAPTER 8

Self-Ownership and Slavery

This chapter assesses part of Cohen’s attempt to reduce the appeal of the self-ownership thesis. Here the focus is on Cohen’s attempt to show that the rejection of self-ownership does not license slavery. Cohen’s discussion focuses on an argument he attributes to Nozick. I offered this argument in chapter 4, but I reproduce it here, as it is the focus of the present discussion.

(1) If X is non-contractually obligated to do A for Y, then Y has a right of disposal over X’s labour of the sort that a slave-owner has.¹
(2) If Y has a right of disposal over X’s labour of the sort that a slave-owner has, then X is, pro tanto, Y’s slave. Therefore.
(3) It is morally intolerable for anyone non-contractually to be, in any degree, another’s slave. Therefore.
(4) It is morally intolerable for X to be non-contractually obligated to do A for Y.

It is a little odd that Cohen would offer this argument. As far as I can see, there is nothing in Nozick that suggests he accepts the first premise as it stands. After all, Nozick could hold that some obligations, such as those of virtue or minimal decency, exist irrespective of any contracts we make. Cohen does not point to any actual statements of this thesis in Nozick, or anywhere else for that matter. Given my reservations about

¹ The phrase ‘non-contractual’ is Cohen’s. I believe it may be misleading. After all, Nozick does not deny that we have obligations to our children, for example. We do not have contracts with our children though. Nozick’s claim might be more accurately stated by Ayn Rand. She holds that there are no positive obligations. See the ‘Obligation’ entry in The Ayn Rand Lexicon ed Harry Biswanger, Meridian Books, 1988. Of course, Rand doesn’t say we need to make the explicit decision “I am taking on an obligation.” The idea, as I understand it, is that certain courses of action entail obligations, and when we choose those actions, we choose the entailed obligations.
whether Nozick actually endorses this argument, I treat Cohen’s discussion as follows.

In the first section of this chapter, I assume Nozick would defend something relevantly like this argument. Cohen holds that premises (1) and (3) are false. So in the first section, I seek to show that Cohen fails in his attempt to show us that those premises are false. In particular, his argument focuses on an issue that seems irrelevant to slavery. Cohen holds we are not slaves provided others have no right to release us from our obligations. I argue that there are no good reasons to believe that the difference between a slave and non-slave is a matter of whether some other individual has a right to release the putative slave from his obligations.

In the second section of this chapter, I turn to an objection Cohen considers to his own argument. Cohen calls this the Enforcement Objection. I show that the Enforcement Objection is doubly useful. First, it draws to light the distinction between the rights of individuals that are correlated with claims of justice in holdings and those that are not. Second, and closely related, the enforcement objection allows Nozick to hold that we might have obligations of virtue or station that are unenforceable. Since the Enforcement Objection is so useful for Nozick, I defend it against the challenge Cohen poses. This allows for the reformulation of an argument relevantly like the one Cohen challenges here. Accordingly, I offer a reformulation that better fits with some of Nozick’s actual complaints against patterned theories of justice.

8.1 Self-Ownership and Slavery

Cohen’s first move in his attempt to reduce the appeal of self-ownership shows that premise (1) from Nozick is false: If X is non-contractually obligated to do A for Y, then Y has a right of disposal over X’s ‘labour of the sort that a slave-owner has.”
Accordingly, Cohen aims to show that “when X is non-contractually obligated to Y, it does not follow that anyone has a slave-owner-like right to dispose over X’s labour.”\(^2\) He presents several considerations to establish this conclusion. Initially, he suggests one could have an obligation of which no one, not even the object of that obligation, has a right to absolve that individual. This first attempts to defeat (1) seems to trade on the belief that Y’s not having the ability to waive X’s obligation renders the relation between Y and X non-slave-like. Or, put differently, Cohen must believe the ability to waive the obligations others have to us is what renders those obligations non-slave-like.

I am suspicious of this argument for several reasons. The first is that there is no obvious reason why waivability matters here. One individual could be the slave of another, even if the latter lacks the ability to waive the obligations the slave has. It seems perfectly acceptable to say “He is my slave and I cannot free him from his duties.” The alternative Cohen suggests is that we should say “He is not my slave, since I cannot free him from his duties.” The reason Cohen’s alternative seems fishy is that the ability to free individuals from their obligations is not what makes them slaves. Cohen’s position entails that slaves without full-on masters are not slaves at all.

Consider an often ignored challenge Nozick presents to those who endorse theories of justice like Cohen’s. This is Nozick’s tale of a slave.

Stage one: You are the slave at the mercy of a brutal master, who forces you to work for his purposes and beats you arbitrarily.
Stage two: The master decides to beat you only for breaking the rules, and even grants you some free time.
Stage three: You are part of a group of slaves subject to this master. He decides, on grounds generally acceptable, how goods should be allocated among you all.
Stage four: The master requires his slaves to work only three days per week,
granting them the other four days off. They can do as they wish during their free
time.
Stage five: The master now allows the slaves to work wherever they wish. His
main caveat is that they must send him three-sevenths of their wages, corresponding
to the three days’ worth of work they once had to do on his land every week. In an
emergency he can force them to do his bidding once again, and he retains the power
to alter the fraction of their wages to which he lays claim.
Stage six: The master grants all 10,000 of his slaves, except you, the right to vote.
They can decide among themselves how much of their (and your) earnings to take
and what outlets to fund with the money. They can decide what you are and are not
allowed to do. We can suppose for the sake of argument that the master irrevocably
grants this right to the slaves. You now have 10,000 masters, or a single 10,000-
headed master.
Stage seven: You are granted the freedom to try to persuade the 10,000 to exercise
their vast powers in a particular way. You still do not have the right to vote, but you
can try to influence those who do.
Stage eight: The 10,000 grant you the right to vote, but only to break a tie. You
write down your vote, and if a tie should occur, they open it and record it. No tie
has ever occurred.
Stage nine: You are granted the right to vote. But functionally, it simply means, as
in the eighth stage, that in the case of a tie, which has never occurred, your vote
carries the issue.

The question is this: at which point did this become something other than the tale
of a slave?³

In this passage Nozick is primarily questioning the idea that democracy yields
freedom. But, along the way he clearly raises problems for other moral-cum-political
ideas. One thing Nozick’s tale brings to light is the inadequacy of Cohen’s answer to the
interrogative that ends the passage. According to Cohen, at stage one, if the ‘master’ has
no right to free the ‘slave’ from his obligation, and if in fact the ‘master’ must beat the
‘slave,’ there are neither masters nor slaves in Nozick’s tale. Cohen can say this, but it
would be to bite the bullet for no reason other than to resist giving up the argument
against premise (1). It seems like Cohen has to give the wrong answer to Nozick’s
challenge. Even if we disagree with Nozick that the answer to his question is “Never,” we

³ ASU pp. 290-292.
must disagree with Cohen that the answer is “There never were, if the master couldn’t waive the obligation.”

A further unresolved question about Cohen’s discussion is why he focuses on waivability. Why would waivability matter when, say, discretion over destruction does not? Among the standard rights entailed by a property right is discretionary control over whether the object will be destroyed. So, why does Cohen not argue that, if it is unacceptable to kill the slave, his obligation does not make him a slave? This would yield the odd conclusion that Greek slaves weren’t really slaves, so there is that reason to avoid focusing on the right to destroy. 4 The idea might be that waivability relates directly to a particular obligation; but it is still unclear why that is sufficient for showing that one is not a slave.

Eric Mack notes that, for Cohen, only a correct belief that one is obligated not to waive the (apparent) slave’s duty makes the (apparent) slave not really a slave. 5 It is not enough for one to believe there is a legitimate obligation in place; it must actually be the case. Mack is suspicious of this argument because Cohen has to believe the following: Imagine two states of affairs, A₁ and A₂, in which the state subjects some individuals to what we would call slavery. For Cohen, if the slavery is imposed for the sake of equality in A₁ so that its imposition is obligatory, it is not slavery, while it is in A₂, if the slavery is imposed for some other reason. As it stands, there is no reason to believe this.

4 There were clear strictures on the conditions under which Athenians could kill slaves. See Euthyphro for example. Also, in 1753, the state of Maryland passed robust laws against manumitting one’s slaves. Presumably, Cohen would not want to say that there were no slaves in Maryland. This might be unfair, of course, for I have strayed into a discussion of legality as opposed to morality.

5 Mack, Eric “Self-ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-Ownership Thesis” PPE, 263.
An alternative means of challenging (1) is introduced in Cohen’s discussion of (3). Recall that premise (3) says it is morally intolerable for anyone to be, in any degree, another’ non-contractual slave. Cohen suggests that even if the object of the obligation does have a right to absolve the individual of his obligation, it is false that the right-holder has the right of disposal a slave-holder has. One reason the right-holder may lack the right of a slave-holder is that some rights individuals might have over others do not impose severe burdens. I believe Cohen shifts here from denying that one person’s having a non-contractual obligation to serve another is slavery to holding that, even if the burden is a form of slavery, it’s not intolerable for a person to have some such obligations. It is not obvious that Cohen is doing this though, for reasons that will become clear in a moment.

To make this point, Cohen observes that there is a massive normative difference between slavery and the brief detainment of an innocent person during a period of social unrest. To detain an innocent individual under these conditions is to exercise some of the rights a slave-owner might exercise over his slaves. But this treatment is hardly objectionable. Thus, we should not believe (3).

Now, Cohen seems to make use of this same idea, viz. that some slave-like obligations aren’t particularly burdensome, to show that we should reject (1). However, showing that an obligation is not overly burdensome is insufficient to show that the obligation is not slave-like. If Cohen wishes to show that an obligation is not so bad to the conclusion that the obligation is not slave-like, he needs the further premise that all slave-like obligations are overly burdensome. But this seems to say that being burdensome is a necessary condition for an obligation’s being slave-like. So we could
imagine a clever master who assiduously calculates just how much he needs to reduce the burdens his slaves endure so that, per Cohen, they are no longer slaves. When the master reduces the burdens to the right level, Cohen would need to say that he liberates all his slaves.

I do not find this reading of Cohen plausible. There are two reasons I do not find it so. The first is just that it is implausible in itself. There would need to be some good argument to justify the belief that the slaves in the story I just told are no longer slaves, but it is hard to see what that story would be. Second, Cohen never eliminated all of his Marxist views. In particular, he never abandoned his general objection to certain kinds of power relationships, not to mention his specific objection to one individual’s being subject to the directions of another. If Cohen really objects to these sorts of relationships, he cannot defend the argument in question. So he must be after the alternative thesis that some obligations are unobjectionable, because they are not severe, even if they are slave-like.

If Cohen is endorsing this thesis, he still seems to have failed to establish his conclusion. It is unclear that one can move from Cohen’s observation that there is a massive normative difference between two kinds of treatment to the conclusion that one of the forms of treatment is tolerable. Tristan Rogers has observed that the fact that there is a massive normative difference between the two is compatible with the judgment that both are wrong. There is a massive normative difference between punching an innocent

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person on the shoulder, on the one hand, and killing and dismembering a child, on the other; but both are normatively wrong. We can hold that unprovoked violence is wrong, even if the former case is not as bad as the latter. So Cohen's appeal to the degree of wrongness fails to show that there is *nothing* wrong with the lesser wrong. The appeal to wrongness does not, in itself, show that the lesser wrong is intolerable. But what Cohen must show is that there is nothing really wrong with the treatment in the lesser wrong in order to refute (3).

Now, there might be better ways of challenging the premise in question. I do not wish to delve into those, because it seems Cohen's challenge misses the point of what Nozick actually says. Cohen focuses on detaining another individual against that person's will. However, I think that to offer a rebuttal to (3), Cohen would need to add that the person doing the detaining has a *right* to do so. I think Cohen needs this because the argument Cohen attributes to Nozick is primarily concerned with granting some individuals unchosen property rights over others. The argument is not offering a full account of all impermissible actions. It is focusing on granting individuals a specific set of discretionary control over others. Nozick could find brief detainment objectionable for other reasons, but the argument in question does not provide them.

Nozick objects to one person's having a non-contractual right to force others to provide services. This is clear in the following passage from Nozick:

> If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a property right in you. Just as having such
partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it.\(^8\)

Nozick’s complaint here is with having any sort of property rights over others who have not chosen to be subject to those rights. This is why he is careful to mention partial control over others. So for Cohen to challenge what Nozick actually says, he needs a case in which two conditions hold. First, one individual has a right to treat another in a certain way and, correlatively, the person subject to that right has an obligation to obey.

The move to the question of having rights over others is, in a sense, something Cohen anticipates. He calls this sort of response the Enforcement Objection. I consider this objection and defend it in the following section.

### 8.2 The Enforcement Objection

The question the Enforcement Objection raises, as Cohen sees it, is whether the state’s claiming the right to enforce certain non-contractual obligations shows that the state “arrogates to itself the sort of right over (one’s) labor a slave-owner has.”\(^9\) Cohen answers that it does not, though he relies on his earlier argument to show that the inability to waive an obligation is sufficient for showing that there is no slave-like right. The state’s lacking the ability to absolve citizens of obligations shows that the citizens are not in a slave-like relation to the state.\(^10\) The idea he suggests is that, “we could all have

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\(^8\) *ASU* 172.

\(^9\) *SFE* 234.

\(^10\) *SFE* 234.
enforceable obligations to each other which imply no slave-owner-like rights of disposal in anyone over anyone’s labor.”\footnote{SFE 234.}

I have already shown that waivability is irrelevant to whether one is a partial slave to others. So Nozick’s position is even more powerful than Cohen lets on. If the only way to defeat the conclusion that rejecting self-ownership licenses slavery is to employ the claim that one must be able to waive the obligations of others in order for one to be in a slave-like owner relation with them, Nozick can deny both that we have the kinds of obligations Cohen wishes us to have \textit{and} that the state could enforce them, even if we did.

Cohen could say that if we all have slave-like obligations, none of us is a slave. I find this response unconvincing though, for it is reminiscent of an idea considered earlier. Imagine two states of affairs A and B, in which individuals are subjected to slave-like obligations. For Cohen, if the obligations are shared in A, there are no slaves in A, while if the obligations are not shared in B, there are slaves. It is unclear why the fact that slave-like obligations are shared shows that we are not slaves.

Cohen believes the Enforcement Objection would have little force coming from Nozick. After all, Cohen claims, Nozick’s minimal state may force some individuals to pay for their own protection. Even if this forced payment is justified, Cohen writes that “It is impossible that an hour’s labor that ends up as part of somebody’s welfare payment is like slavery, while an hour’s labor that ends up as part of a policemen’s salary is not, when focus is on the condition of the putative slave himself.”\footnote{SFE 235.} But this observation is
based on an error. Nozick does not allow for *forcing* individuals to pay for their own protection.\(^\text{13}\) Instead, he allows for preventing some individuals from paying rival protective agencies for protection, provided those individuals are compensated for the prevention. Nozick does not allow for forcing people to engage in activities or to deliver products; though he does allow preventing people from engaging in certain activities.

Now, Nozick needs an explanation why the legitimate prevention of some activities is not tantamount to slavery, but it seems Nozick has both an explanation and common sense on his side. We all believe that there are lots of cases in which individuals may prevent others from violating their rights. We do not think those cases are cases of slavery. After all, if rights are side-constraints, Nozick cannot believe it is unacceptable to prevent people from doing things that violate those constraints. Nozick’s concern, at least in the argument in question, is with forcing people to do things.\(^\text{14}\)

The Enforcement Objection paves the way to a reformulation of the argument Cohen attributes to Nozick. I believe this argument is more in the spirit of what Nozick says.

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\begin{align*}
(1a) & \text{ Full slavery is the condition in which one person has full ownership rights over another’s labor.} \\
(2a) & \text{ If } Y \text{ has any set of property rights over } X \text{’s labor of the sort that a slave-owner has, then } X \text{ is, to that degree, } Y \text{’s slave} \\
(3a) & \text{ It is morally intolerable for anyone to be non-contractually, to any degree, another’s slave. Therefore.}
\end{align*}
\]

\(^\text{13}\) As I understand it, some folks who are relevantly like Nozick have been tinkering with this idea. See Eric Mack’s “Nozickian Arguments for the More-Than-Minimal State” in *Cambridge Companion to Nozick’s Anarchy, State and Utopia* Bader and Meadowcraft, eds. (Cambridge University Press, 2012); and Mark D. Friedman *Nozick’s Libertarian Project: An Elaboration and Defense* (London: Continuum International, 2011).

\(^\text{14}\) Nozick characterizes his own objection to states more extensive than the minimal state as follows. “Any more extensive state will violate people’s rights not to be forced to do certain things.” *ASU* ix. I leave aside the complication that forcing an abstention might be a way of forcing people to do things.
It is morally intolerable for anyone to have any set of non-contractual property rights over another’s labor.

I believe this argument is valid, though it requires explanation. The argument treats the set of non-contractual property rights any Y over any X (or over any x’s labor) enjoys as sufficient for the condition of slavery in any X. Any time the necessary condition arises without contract, it is morally intolerable. So, any time the sufficient condition arises without contract, it too is morally intolerable.

This argument avoids focusing on the existence of all non-contractual obligations. The focus on that sort of obligation is not in any fundamental way a problem for Nozick. Nozick can say that we might have neighborly obligations to warn our neighbors when we will burn leaves in our yards or have a party that will occupy lots of street parking spaces. What is at the root of Nozick’s complaints is the existence of non-contractual rights over others; and not all obligations are entailed by rights. I believe this is a more accurate exposition of Nozick’s complaints when he says “If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a property right in you.”

So my view is that when Cohen claims “the slavery argument is here supposed to be an argument for the principle of self-ownership,” he is right. But he botches the construction of the argument. The slavery argument is to show aversion to one person’s

\[15\] ASU 172.

\[16\] SFE 235.
having non-contractual rights over the time and labor of another. This aversion is to point to an endorsement of the principle of self-ownership.
CHAPTER 9

Self-Ownership and Autonomy

This final chapter addresses Cohen’s discussion of self-ownership and autonomy. Cohen’s basic claim is that proponents of self-ownership overstate the relation between self-ownership and autonomy. As Cohen puts it, proponents of self-ownership “say that people control their own lives, or enjoy autonomy, if and only if they possess the rights constitutive of self-ownership.”¹ The overstatement of the link between self-ownership and autonomy actually accounts for some of the appeal of self-ownership, Cohen says. Since autonomy is attractive, self-ownership benefits from being tied to it. Cohen holds that self-ownership is not necessary and sufficient for autonomy; nor does respect self-ownership maximize autonomy. What is more, he claims, self-ownership cannot explain why autonomy is desirable.

My assessment takes the follow form. First, I consider whether Nozick commits himself to the claim that respect for self-ownership maximizes autonomy. Cohen claims Nozick says this, or at least strongly implies it. I argue that Nozick cannot make this claim. Specifically, since Nozick allows individuals to abdicate their autonomy, and he cannot believe that having the right to abdicate one’s autonomy maximizes autonomy, Nozick cannot be endorsing the maximization of autonomy. The second line of

¹ SFE 236.
discussion takes up Cohen’s claim that self-ownership cannot explain why autonomy, as Cohen defines it, is desirable. I claim that, while self-ownership itself may not offer such an explanation, the reasons that lead Nozick to endorse self-ownership provide the explanation Cohen seeks. Beyond this, I argue that there are good moral reasons to believe that autonomy should not be maximized. I claim that self-ownership explains why we should not seek to maximize autonomy as Cohen defines it.²

9.1 Maximizing Autonomy

Cohen claims that proponents of self-ownership at least imply that self-ownership somehow protects autonomy. Recall that Cohen regards autonomy as “the range of a person’s choice” and this range is “a matter of degree, a matter of the quantity and the quality of options that a person has.”³ I mentioned in chapter 4 that Cohen finds a reference to autonomy implicit in the following passage, among others, from Nozick.

Thus we have a promising sketch of an argument from moral form to moral content: the form of morality includes F (side constraints); the best explanation of morality’s being F is p (a strong statement of the distinctness of individuals); and from p follows a particular moral content, namely, libertarian constraints. The particular moral content gotten by this argument, which focuses upon the fact that there are distinct individuals each with his own life to lead, will not be the full libertarian constraint. It will prohibit sacrificing one person to benefit another. Further steps would be needed to reach a prohibition on paternalistic aggression: using or threatening force for the benefit of the person against whom it is wielded. For this, one must focus upon the fact that there are distinct individuals each with his own life to lead.⁴

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² I drop this qualifier in the remainder of this chapter. I do this for several reasons. One of them is that I have no well developed conception of autonomy. So I wish to avoid the suggestion that I have some clearly superior way of thinking about autonomy. Still, I think it is fair to argue that, if autonomy is what Cohen says it is, it’s not very attractive. I think it is fair to argue this even if I have no alternative analysis to suggest. It may be that autonomy just isn’t desirable, or just isn’t as attractive as self-ownership.

³ SFE 236.

⁴ ASU 34.
For what he takes to be evidence of Nozick’s commitment to the claim that self-ownership is necessary and sufficient for enjoying autonomy, Cohen also directs the reader to Nozick’s discussion of the basis of side-constraints. There, Cohen seems to be picking up on Nozick’s idea that side-constraints protect individuals in their efforts to give their lives meaning.  

Now, in neither of the Nozick passages just mentioned does Nozick himself say that self-ownership is a necessary and sufficient condition for autonomy. Cohen knows this and is careful to note that the long Nozick passage cited above may be taken in two ways. On one hand, it may be a “persuasive redescription of what self-ownership rights come to.” Cohen is not interested in handling this interpretation of the passage, because on this reading, there is no argument in the passage for self-ownership. Accordingly, Cohen focuses on regarding this passage as linking self-ownership to “an idea which has independent standing;” and that idea is autonomy.

Cohen holds that those who believe self-ownership is necessary and sufficient for autonomy cannot endorse “the preposterous claim that a person has no autonomy if his self-ownership is to any extent incomplete.” So, here Cohen rejects as preposterous the biconditional he claims proponents of self-ownership endorse. Despite setting the reader

\[5\] ASU 48 to 51.
\[6\] SFE 236 FN 6.
\[7\] This is right as far as it goes. However, Nozick clearly hints at what a derivation of self-ownership rights would look like. In this passage, he begins explaining why we should believe individuals own themselves.
\[8\] SFE 236 fn 6.
\[9\] SFE 237.
up for an investigation of whether that biconditional holds, Cohen focuses his discussion on the thesis that “there is more autonomy under universal complete self-ownership than under any alternative dispensation.”

To challenge the thesis in question, Cohen indicates at least two conditions under which respect for self-ownership will fail to maximize autonomy in at least some ways. First, respect for the self-ownership of the non-poor might fail to maximize the autonomy enjoyed by the very poor. Redistribution might be required to allow the poor to enjoy autonomy. Here, Cohen is not holding that a commitment to self-ownership will fail to maximize overall autonomy. He cannot be, because he cannot move from the observation that autonomy is not maximized in one sector of the population to the conclusion that there is not maximal autonomy in the population as a whole. After all, Cohen must be willing to reduce the autonomy of the wealthy for a gain in the autonomy of the very poor. Still, Cohen's second point is that “self-ownership might fail to maximize autonomy… even in a world of equally talented individuals.” In chapter 4 I called this basic line of argument the “Maximization Objection.” I will now assess the Maximization Objection. I attempt to show that Nozick cannot be marketing self-ownership as a means of maximizing autonomy, whether that is a matter of maximizing total autonomy or maximizing autonomy for the poor.

The first question we should have is whether Nozick could market his position as maximizing total autonomy. There is a good reason to doubt he can do this, because Nozick thinks we can sell (almost) all our rights over ourselves. The bundle of rights

\[^{10}SFE\ 237.\]

\[^{11}SFE\ 237.\]
Nozick thinks we have over ourselves includes the right to sell many of those rights. Thus, Nozick writes that some individuals could raise money by “selling shares in themselves.” Among the shares that could be sold are “the right to decide which occupation he would have a try at making a living in, the right to determine what clothing he would wear” and so on. Nozick allows this selling of rights over oneself to be pretty extensive and never in *ASU* does he limit exactly how many of them one might may sell.

Nozick seems to grant that individuals can sell whatever rights they have over themselves that constitute or preserve autonomy. So, Nozick cannot hold that a regime of self-ownership will necessarily maximize autonomy. More guardedly, if Cohen is right that autonomy is a range of a person’s choices, and people at least have the right to reduce that range down to (very close to) nothing, then Nozick cannot say that self-ownership maximizes autonomy. Once people make their choices, in any event, it is at least possible for those choices to each individual’s choice to fail to maximize his own autonomy. It is an empirical question which rights self-owners will choose to retain, sell, waive and so on. In fact, Cohen himself notes that Nozick would regard voluntary slavery as acceptable, so it is hard to see Nozick making the claim that self-owners each enjoy more autonomy than under any rival arrangement.

It might be too fast to conclude that Cohen’s argument cannot be an internal criticism of Nozick. Perhaps from some external perspective there are reasons to wish to maximize autonomy as Cohen defines it. We should want some sort of explanation for

\[12\] *ASU* 282.

\[13\] *ASU* 282.

\[14\] *SFE* 22.
the passages Cohen finds in Nozick. That explanation should preserve the truth of what Nozick says without reverting to the claim that self-ownership somehow maximizes autonomy. Fortunately for Nozick, such an explanation is to be had.

In the passage Cohen takes to link self-ownership and autonomy, Nozick is not talking about autonomy. He is explaining what concerns might get us to something like self-ownership. This is why he points to the link between the separateness of persons and robust rights. He explicitly says that (less-than-full-libertarian) side constraints reflect the fact that individuals have their own values to pursue. He then points to how those self-ownership-like rights can become full-on self-ownership rights.

Cohen says he reads the passage in question as linking self-ownership and autonomy because Nozick associates self-ownership with the ability to lead one’s own life. But nowhere in the passage does Nozick suggest that a commitment to self-ownership will maximize autonomy in any fashion. Instead, Nozick suggests the fact that people are of separate value functions as a crucial premise in an explanation of why morality is rights-based. So I think Cohen mistaken when he claims the passage in question either links self-ownership to autonomy or is a persuasive redescriptions of what self-ownership rights come to. Instead, it is an explanation of the basis of side constraints. In the beginning of the section containing the passage in question, Nozick says “moral side constraints upon what we may do, I claim, reflect the fact of our separate existence.”

15 SFE 236.
16 SFE 236.
17 ASU 33.
In the last several paragraphs I have argued that Nozick neither can nor does market self-ownership as maximizing autonomy.\textsuperscript{18} Nozick can say that enjoying what Cohen calls autonomy is “an enormous, positive, non-accidental externality of a regime of libertarian rights.”\textsuperscript{19} But Nozick cannot and cannot market a regime of self-ownership as necessarily maximizing autonomy.

Cohen has a second concern with the alleged link between self-ownership and autonomy. The concern is that self-ownership cannot explain why autonomy is desirable. I called this the “Explanatory Impotence” objection in chapter 4. In the following section I assess this objection.

9.2 Self-Ownership and the Value of Autonomy

Cohen’s second challenge to Nozick in regards to autonomy is what I called the “Explanatory Impotence Argument” in chapter 4. Cohen thinks a fundamental moral norm like the self-ownership thesis should be able to explain why autonomy is important. Part of the difficulty Cohen sees here comes from an argument offered by Raz. Raz observes that a commitment to self-ownership seems to preclude the forcible extraction of funds for “certain social conditions, including the availability of collective goods such

\textsuperscript{18} As an interesting historical note, F.A. Hayek, who endorses a theory of justice very much like Nozick’s warns against defining liberty in the terms Cohen does. Hayek warns against conflating freedom with liberty, which is “the power to satisfy our wishes, or the extent of the choice of alternatives open to us.” \textit{The Constitution of Liberty}, The Definitive Edition, (Chicago: University of Chicago Press 2007) p. 65. While this chapter is discussing the link, or lack thereof, between self-ownership and maximizing autonomy, Hayek’s observation is instructive. It is instructive because Hayek is relying on something very much like the self-ownership thesis. I say ‘very much like’ because of Hayek’s consequentialist leanings. Hayek is asserting the wrongness of violations of negative freedom and rejecting the claim that positive freedom must be served.

as educational and welfare institutions.\textsuperscript{20} Those social conditions are necessary for possessing autonomy. Thus, the proponent of self-ownership seems caught making claims that seem at odds. First, self-ownership somehow tells us why autonomy matters. Second, the means necessary for providing the conditions necessary for the enjoyment of autonomy are impermissible.\textsuperscript{21} So, if self-ownership tells us why autonomy is important, self-ownership should not also preclude the provision of the necessary means for enjoying autonomy.

I confess that I find the Explanatory Impotence objection is a little odd. Specifically, I wonder whether the objection is phrased in a way that is fair to Nozick. What I mean is that a large part of the Raz-Cohen objection seems motivated by a disagreement proponents of the market have with, well, opponents of the market. The proponent of self-ownership, who is here a proponent of the market, can grant that the conditions Cohen and Raz find necessary for the enjoyment of autonomy are actually necessary for autonomy. The disagreement is really over whether the conditions in question need to be funded by the threat of force. But Cohen cannot merely assert that force is needed to provide the conditions in question.\textsuperscript{22}

Despite this concern, Cohen does not need the bit about self-ownership’s being an obstacle to the provision of the necessary conditions for autonomy. Instead, he could just hold that self-ownership provides no obvious explanation for why autonomy is desirable.

\textsuperscript{20} \textit{SFE} 238.

\textsuperscript{21} \textit{SFE} 238.

\textsuperscript{22} For a nice sketch of how markets can and have provided ‘public goods,’ see Roderick Long’s “Funding Public Goods: Six Solutions” Formulations, Fall 1994. That journal is now defunct, so see this link: http://www.freenation.org/a/f2114.html.
It is important to see that Nozick never markets self-ownership as explaining why autonomy is desirable. Variants of the word ‘autonomy’ appear only four times in ASU; and each occurrence is in chapter 7, which is a criticism of Rawls. Nozick criticizes Rawls for treating humans as autonomous creatures, on the one hand, while failing to consider that holdings will likely arise as a result of autonomous choices, on the other. But Nozick never himself invokes autonomy to defend his position.

One might wonder why self-ownership must offer such an explanation. Cohen does not tell us. So Nozick could just admit that self-ownership offers no such explanation. Other fundamental moral norms do not claim to explain why autonomy is desirable. As I understand it, most Marxists use autonomy to explain why equality is desirable. But they do not use equality to explain why autonomy is desirable. Cohen himself presents and defends an idea like this; and it is an idea he claims is found in Marx. Cohen holds that “the transfer of a product is unjust if and only if it occurs for the wrong reason. If an unreciprocated product transfer reflects nothing but (unmanipulated) preferences in a straightforward way, the transfer is not unjust. But it is unjust when and because it is caused by unequal asset endowment.”

Cohen is in part explaining why transfers that fail to yield equality are not necessarily unjust. But there is a point relevant to autonomy here. As I understand this passage, Cohen holds that unreciprocated transfers are not unjust, if they occur merely because of the transacting agent’s (unmanipulated) preferences. This sounds like an

23 See 214 to 215. Those pages, along with note 6 of that chapter, which is found on 345, exhaust Nozick’s direct uses of ‘autonomy’ or its variants.

24 SFE 197.
autonomous decision on the part of the agent. And it seems that Cohen finds transfers resulting from other factors to be unjust. Specifically, transfers resulting from unequal asset endowments are unjust. They are unjust because one of the members did not make an autonomous choice to make the transfer. So Cohen endorses egalitarianism as a means of preventing transfers from occurring for the wrong reason. This is not an explanation of why autonomy is desirable; it is an explanation of why equality is desirable given a certain view of autonomy. What remains unclear to me is why self-ownership must explain why autonomy is desirable, when egalitarianism is not required to do so.

Still, suppose self-ownership does not itself explain why autonomy is desirable. Even if a moral theory must offer an explanation for the value of autonomy, it is unclear why that explanation must come from self-ownership as opposed to the facts that help generate belief in self-ownership in the first place. What I mean is that Nozick tells us rights are based on the fact people give their lives meaning in certain ways. People have different values to pursue and they have different ways of pursuing those values. Perhaps the different ways of pursuing values are themselves part of what gives a life meaning.

Now, I do not see why these facts fail to explain why autonomy is desirable. Remember that Cohen says autonomy is “the range of a person’s choice” and this range is “a matter of degree, a matter of the quantity and the quality of options that a person has.”\(^{25}\) It seems that autonomy, so defined, is valuable because it gives a people lots of nice ways of giving their lives meaning. This is an explanation of the value of autonomy in terms of the considerations that lead us to endorse self-ownership.

\(^{25}\) SFE 236.
The only problem I can see Cohen having with this explanation is that self-ownership can fail to maximize autonomy. A regime of self-ownership is one that could, at least in principle, see the people within it with less autonomy than a rival. But this objection would not say that there is no explanation of the value of autonomy in the proponent of self-ownership’s position. Instead, the complaint is that if it is important, autonomy should be maximized. I think such an assertion would be both question-begging and dubious. A set of considerations can explain why some condition is desirable without yielding the conclusion that this condition (e.g., marriage) ought to be maximized. And I also think that autonomy, as Cohen defines it, should not be maximized. I think that self-ownership explains why we should not wish to maximize autonomy. I will try very briefly to make this case in what follows.

Cohen himself at least implies that autonomy could be increased via forced eyeball redistributions. He notes that leftists who deny self-ownership lose confidence in this denial “when they are asked to consider who has the right to decide what should happen, for example, to their own eyes.” Cohen then has us imagine a scenario in which eyeballs are not naturally located in eye sockets. Here, there is “a well-established practice of perinatal implantation of perfect artificial eyes by the state.” Because grown-ups sometimes lose their eyes, the state might have to take an eye from a sighted person to ensure that everyone can see. Under these circumstances, the state might regard the

26 I do not mean to imply that some version of autonomy should be maximized. I have the reference to Cohen’s definition in here simply because that is the focus of this discussion.

27 SFE 70.

28 SFE 244.
eyes individuals hold as on loan. They may then transfer eyes from the sighted to the unsighted. Cohen then asks whether the “difference between congenital and state-implanted eyes makes a big difference to the acceptability of the proposed lottery precisely because the former are owned by the sighted person and the latter are not.”

Cohen seems to suggest that something like autonomy, as he defines it, is invoked to justify the eyeball lottery even in our world, where eyes are naturally located in eye sockets. It seems that improving the range and attractiveness of the options available to the unsighted is a way to increase their autonomy.

But if we are averse to the eyeball lottery in our world, one explanation for this is that we believe people own their eyeballs. One reason that, even if the eyeball lottery increases autonomy, we should not force people to ‘donate’ their eyeballs is self-ownership. Now, it is important to note that Cohen himself seems to grant that self-ownership is at least one explanation for why we believe forced eyeball redistributions are unacceptable. So the primary point I wish to make here is granted by Cohen. His alternative explanation for our resistance to the eyeball lottery is “hostility to severe interference in someone’s life,” instead of a belief in self-ownership. If we are averse to interfering severely in someone’s life, even if doing so maximizes autonomy, we are still averse to maximizing autonomy.

Even if our objection is to severe interference in the lives of others, Cohen’s line of argument seems unconvincing. Eric Mack suggests Cohen might wish to show that we can block forced eyeball redistribution on the grounds that those redistributions amount

\footnotetext{29}{SFE 244.}

\footnotetext{30}{SFE 24.}
to severe interference in one’s life. \textsuperscript{31} But Mack asks what sense this argument makes in the context of the eye lottery argument. \textsuperscript{32} He writes:

If I am persuaded that I do not have a general right over myself, over my body, talents, and labor because I possess these merely as a matter of brute luck and I can have no legitimate claim on what I have as a matter of brute luck, how can I turn around and assert a right of bodily integrity or a claim against severe interference with my body, my talents, my labor? After all, it is merely by brute luck that I have this body with two healthy eyeballs or with terrific hand-eye coordination or with an inventive brain some of the inventive tissues of which could be transplanted into someone else’s presently dull brain. \textsuperscript{33}

It is not obvious to me that Cohen does want to block forced eyeball redistributions. He might claim that in a world in which individuals are adequately committed to egalitarianism there would be no need to require them. However, that is beside the point if we are asking what justice requires when individuals refuse such redistributions. Even if he does want to block forced eyeball redistributions, his argument is unconvincing. On the one hand, he claims we are not entitled to most of the things that comprise us, including our eyes; accordingly, he attempts to show that we shouldn’t be so averse to forced eyeball redistributions. On the other hand, he seems to suggest that rejecting ownership rights over one’s body will not lead to redistributing the eyes that we do not deserve because we can still invoke some rule against severe interferences.

Within Cohen’s later works there is a natural rejoinder to my argument. Cohen might argue that redistributing eyeballs violates what he calls a “personal prerogative.” \textsuperscript{34}


\textsuperscript{32} See chapter 4 of this dissertation and Cohen’s SFE 244.

This prerogative allows the individual “a right to be something other than an engine for the welfare of others.”\textsuperscript{35} This prerogative is to allow individuals certain choices in their lives, and those choices are not always to be held hostage to concerns of egalitarian welfare. As Cohen puts it, “it allows individuals to pursue self-interest to some reasonable extent.”\textsuperscript{36}

In Cohen’s writings it is often unclear how much individuals would be allowed to pursue their own interests. It is unclear because, after he notes that enforcing strict equality would violate personal prerogatives, he quickly observes that individuals with significant commitments to equality might choose to work in ways that do promote maximal overall equality.\textsuperscript{37} Cohen also thinks there is no good argument on the grounds of justice to offer incentives to those who do the kinds of work that improve the welfare of others.\textsuperscript{38}

Still, what we can extract from Cohen is that the personal prerogative might preclude forced eyeball redistributions. What we might do instead is tax sighted individuals more than those who have no eyes. The idea would be to move toward a more equal distribution of welfare, without violating the personal prerogative. This response would enter both to block the suggestion that egalitarians cannot explain our hostility to

\textsuperscript{34} Rescuing Justice and Equality Harvard University Press, 2008 p. 10

\textsuperscript{35} Ibid. p. 10.

\textsuperscript{36} Ibid. p. 73.

\textsuperscript{37} Cf. SFE pp. and Rescuing Justice and Equality pp. 70-71.

\textsuperscript{38} Rescuing Justice and Equality p. 68.
severe bodily interference and to show that there are ways of achieving egalitarian goals consonant with that hostility.

The suggested response fails to convince though. It remains unclear what counts as pursuing one’s self-interest to a reasonable extent. However, it seems clear that there are conditions under which egalitarians will be required to engage in severe bodily interference to achieve their goals. Eric Mack claims that egalitarians will be required to prevent individuals from leaving egalitarian arrangements and living off on their own.39 The demands of egalitarian justice seem to preclude allowing individuals to opt out of egalitarian arrangements. It seems to preclude this opting out, no matter how repugnant and stifling the potential emigrants find the egalitarian arrangement.

One could claim that Jeremiah Johnson is pursuing his self-interest to an unreasonable extent and he can therefore be precluded from leaving the egalitarian world. But there is just no reason to believe there is something unreasonable about living on one’s own; or, there is no reason to believe Johnson’s choice is unreasonable that does not require us to hold personal prerogative hostage to the demands of egalitarian justice. One could also claim that precluding emigration does not amount to severe bodily interference, but again, there is just no reason to believe this. After all, if one really precludes emigration, severe bodily interference or at least the threat of it will be required even on the most literal interpretation of the phrase ‘bodily interference.’

This concludes my treatment of Cohen’s claims about the liaison between self-
ownership and autonomy. The proponent of self-ownership ought not to market this
principle as maximizing autonomy; and Nozick never does. What is more, self-ownership
can explain why autonomy is desirable; but at least as important is the fact that self-
ownership explains why autonomy should not be maximized.
CHAPTER 10

Conclusion

This dissertation has defended both the doctrine of historical entitlement and the self-ownership thesis. One of the basic ideas I have urged is that justice is fundamentally historical in nature. The other idea I have pushed is that if we are dissatisfied with how people employ their just holdings, there are limitations on the ways we may try to remedy the situation. In alleviating our dissatisfaction, we may not violate people’s legitimate titles and we may not violate people’s rights. I want to use this conclusion to diagnose a potential weakness in my own discussion. Then I want to suggest that defending the entitlement theory and self-ownership against Cohen’s famous criticisms gives us reasons to think that weakness is less severe than it might seem. Because this is a conclusion, I have presented all the arguments I plan to make. I thus take myself to be explaining how the field looks to me.

Here is the weakness: I have said very little in this dissertation about the grounds for believing that individuals have robust rights. On one hand, this is not a real shortcoming. Cohen rightly observes that there is a lot of pre-philosophical appeal in the idea that the individual enjoys a natural authority over his or her own talents. Rights are a familiar part of moral reasoning, even if the precise reasons why we have them are not ultimately clear. However, the lack of a story about why people have robust rights is a shortcoming insofar as I have also relied on the judgment that it is wrong to force people
to do certain things, even if the reasons motivating those forcings seem admirable. So I have treated entitlements and rights as stringent constraints on how we may treat people, but I have not said exactly why these constraints obtain or should be so stringent if they do obtain.

Part of the answer is that these constraints are not so severe. Here is a brief tale of an entitlement-generating activity. Suppose I justly hold some money and a grocery store justly holds some apples. If I purchase an apple from the store, it looks like I justly hold an apple and the store justly holds the money I transferred to it. The explanation for why I justly hold the apple and why the store justly holds the money I gave it stems from the fact that we transferred our respective just holdings to each other in the right way. The way to figure out if someone’s holdings are just is to see if their holdings are the results of transfers relevantly like my trip to the grocery store or not. It is, in fact, quite nice that the apple is now mine as a matter of justice. It is also quite nice that others may neither snag the apple when I leave it on my window ledge, nor forcibly take the apple from me. One man’s constraints are another’s protection.

I know this is not the objection most people will pose to the entitlement theory and the self-ownership thesis. Opponents are after different cases. Surely those worst off, for example, have claims against the very wealthy. Why may we not simply force the very wealthy to give us access to their holdings so that we might redistribute some of it? Why may we not injure them if they refuse? Precluding us from doing this in the pursuit of our goals is objectionable to the opponent of the entitlement theory.
The worst off, the entitlement theorist says, might have claims against the very wealthy. But if they do, it is not simply because they are worst off. The question of how things came to be that way is of fundamental importance here. I believe this restatement of the entitlement theory is plausible, and I know opponents will see it as a mere restatement. However, if we look at global justice, most people and certainly most non-philosophers, begin to endorse something very much like the entitlement theory.

The entitlement theorist enjoys an advantage over rivals on two levels. First, there is no apparent inconsistency in the entitlement theorist’s view. While it might be nice, decent or virtuous to aid people who aren’t doing well, the entitlement theorist can hold that neither the worse off who are near nor the worse off who are distant are entitled simply on the basis of being worse off to greater holdings as a matter of justice. The pattern or end-state theorist has to explain why they offer differing judgments in the two cases.

The second advantage the entitlement theorist enjoys lies in his ability to take seriously the facts of modern human interaction. Given my dietary habits and the ethnic diversity of my family, the supply chain that gets my lunch to me runs much more through India than it does through Indiana. Proponents of patterned theories of justice often introduce claims about cooperation and the like to explain why they believe those who live in the same nation have claims of justice against each other while those in different nations do not. When the cooperation does not take place in the way the patterned theorist claims, the explanation fails.
This excursion into global justice is not simply to pick out an area of fertile hunting ground for the entitlement theorist. Instead, it is to illustrate that on some level most theorists—and most non-philosophers—accept the entitlement theory’s claim that justice in holdings is not a matter of matching a particular pattern. Justice in holdings is determined by what transactions individuals have actually made. The considerations that are introduced to undermine the entitlement theory are actually employed by pattern theorists. The constraints are employed when the friend of a pattern seeks to explain why justice demands that his favored pattern should not be pursued on the global level.

An ultimate defense of the entitlement theory and self-ownership will show that the pattern theorist is right to implement constraints against global redistribution, but wrong to abolish those constraints at the local level. I began this conclusion by promising to show where a remedy to a specific problem is to be found. The problem is that I did not explain why we must take constraints posed by justice and rights to be so stringent. So far, I have actually suggested there is no weakness. I said the constraints are nice and that everyone employs them on some level. The constraints require justification. The ultimate reasons for imposing those constraints on the pursuit of people’s goals are to be found in a satisfactory derivation of basic rights. This dissertation has only pointed at some promising work in this regard. But since we all take seriously, at least on some level, the entitlement theory and robust individual rights, my hope is that this defense of those doctrines gives us all good reasons to look further at derivations of basic rights. It is also my hope that a good rebuttal of Cohen provides us with reasons to take the
doctrine of historical entitlement and self-ownership seriously all the time, instead of just when staving off alleged requirements of global redistribution.
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Biography

Lamont Rodgers was born in Coaldale, Pennsylvania and grew up in Lehighton Pennsylvania. He graduated from Kutztown University of Pennsylvania in 2000 with a B.A. in philosophy. Following this, he earned an M.A. in philosophy from the University of Houston in 2003. He later completed another M.A. in philosophy (2009) from Tulane University, before completing his Ph.D. from that institution in 2013.