

## Libertarian Theories of Intergenerational Justice

Hillel Steiner and Peter Vallentyne

in *Justice Between Generations*,

edited by Axel Gosseries and Lukas Meyer (Oxford University Press, 2009), pp. 50-76.

We here discuss and assess various libertarian positions on intergenerational justice. We do not attempt to defend libertarianism. Instead, we work out the most plausible version thereof and identify its implications for intergenerational justice.

### 1. Justice and Libertarianism

The term 'justice' is commonly used in several different ways. Sometimes it designates the moral permissibility of *political structures* (such as legal systems). Sometimes it designates moral *fairness* (as opposed to efficiency or other considerations that are relevant to moral permissibility). Sometimes it designates *legitimacy* in the sense of it being morally impermissible for others to interfere forcibly with the act or omission (e.g., my failing to go to dinner with my mother may be wrong but nonetheless legitimate). Finally, sometimes it designates *what we owe each other* in the sense of respecting everyone's rights. Of course, these notions are closely related. What we owe each other may, but need not, be partly based on issues of fairness. Legitimacy and permissibility of political structures are largely, but perhaps not entirely, determined by what rights of non-interference individuals have. Nonetheless, these are distinct notions and we shall focus only on what we owe each other.

Justice as what we owe each other is not concerned with impersonal duties (duties owed to no one, i.e., that do not correspond to anyone's rights). If there are impersonal duties, then

something can be just but nonetheless morally impermissible. For brevity, we shall often write of actions being permissible or agents having a moral liberty, but this should always be understood in the interpersonal sense of violating no one's rights.

Libertarianism is sometimes advocated as a derivative set of rules (e.g., derived from rule utilitarian or contractarian doctrines). Here, however, we reserve the term for the natural rights doctrine that agents initially *fully own themselves*. Agents are *full self-owners* just in case they own themselves in precisely the same way that they can fully own inanimate objects. Stated slightly differently, full self-owners own themselves in the same way that a full chattel-slave-owner owns a slave. Throughout, we are concerned with moral ownership and not legal ownership. We are concerned, that is, with moral rights to control the use of resources and related rights rather than the rights that some legal system creates.

Full self-ownership consists of full private ownership of one's person (e.g., body). Full private ownership of an object consists of a full set of the following ownership rights: (1) *control rights* over the use of the object (liberty-rights to use it and claim-rights against others using it), (2) *rights to transfer* any of these rights to others (powers of sale, rental, gift, or loan), (3) *rights to compensation* if someone uses the object without one's permission, (4) *enforcement rights* (rights to use force to prevent the violation of these rights or to extract compensation owed for past violation), and (5) *immunities against the non-consensual loss* of these rights.<sup>1</sup>

All forms of libertarianism endorse full self-ownership. They differ with respect to the liberties persons have to use, or the moral powers they have to acquire ownership of, *natural resources* (and perhaps other resources). In the narrow sense, natural resources are all the resources in the world, in their unimproved form, that were not created by any (non-divine) agent. Natural resources (land, air, water, space, etc.) are contrasted with *artifacts* (improvements

to natural resources, such as improvement to soil or constructions of chairs) and with *beings with moral standing* (which we, for simplicity, assume to be agents). Libertarians assume that agents initially fully own themselves and that, when they own all the factors of production, they initially fully own the artifacts that they produce. The core issue for libertarianism concerns how unowned resources can come to be privately owned. More exactly, the core issue concerns how natural resources *and abandoned artifacts* (artifacts over which no one claims ownership; e.g., the estate of a monk who renounces all rights to earthly possessions) can come to be privately owned. For brevity, in what follows, natural resources should be understood as including any abandoned artifacts.

The best-known versions of libertarianism are *right-libertarian* theories, which hold that natural resources are initially unowned and that agents have a robust moral power to acquire full private ownership of unowned things. *Left-libertarians*, by contrast, hold that natural resources (e.g., space, land, minerals, air, and water) belong to all individuals in some egalitarian manner and thus, for example, cannot be privately appropriated without their consent or significant compensatory payment to them.<sup>2</sup> On this view, natural resources are initially *unowned* in the sense that no one's permission is needed to use or appropriate them, but they 'belong' to all in some egalitarian manner in the sense that those who appropriate (and perhaps those who use) natural resources owe a compensatory payment to those who are left with less than their egalitarian share of the *value* of natural resources.<sup>3</sup>

We here assume that some form of libertarianism is correct and focus on identifying the most plausible version and its implications for intergenerational justice.

There is a version of left-libertarianism, *joint-ownership left-libertarianism*, which holds that natural resources belong to everyone *collectively* (rather than severally and equally) and thus

that private appropriation—and perhaps, much more radically, even use—requires collective consent of some sort (e.g., majority or unanimity). Because it allows no appropriation without the consent of others, it is not a very plausible form of libertarianism: it is doubtful that self-ownership can have much meaning under conditions where each person’s access to natural resources requires collective consent. This problem is particularly acute in the case of multiple generations, where it is strictly impossible to obtain the consent of non-concurrent individuals. For simplicity, we shall therefore set *joint-ownership left-libertarianism* aside. We shall thus focus on *unilateralist* versions of libertarianism, which hold that agents are permitted to use, and have a moral power to appropriate, unowned resources without anyone else’s consent—but perhaps conditional upon making a compensatory payment to others.

Almost all unilateralist libertarian theories are *Lockean* in that they allow unilateral appropriation only on the condition that ‘enough and as good’ be left for others.<sup>4</sup> As we shall see below, there are several ways of interpreting this proviso. There is, however, one unilateralist theory, *radical right-libertarianism* that imposes no proviso on appropriation. It holds that individuals have the power to appropriate unowned things unilaterally simply by claiming them (or mixing-labor with them, etc.). They deny that any further conditions are relevant.<sup>5</sup> Radical right-libertarianism is, we believe, implausible. It holds that there is no injustice in one person destroying the world prior to appropriation by others, nor in appropriating the entire world and leaving everyone else in a miserable situation. In any case, it is clear that, according to radical right-libertarianism, there are no issues of intergenerational justice in the distribution of opportunities to use resources—which is the focus of this paper—and we shall therefore set it aside.

In what follows, then, we shall focus on *Lockean* libertarianism, which, as we shall see,

comes in both left- and right-libertarian versions. Traditionally, the distinction between the two has been drawn in terms of a difference in their respective limits on *powers to appropriate* unowned resources (i.e., acquire rights over previously unowned things). It has been generally assumed that everyone is initially free to *use* unowned resources as they please (as long, of course, as they do not violate the self-ownership, or other established property rights, of others). Under certain assumptions, to be detailed below, this now seems to us to be a mistake (although we have both endorsed this view until now). One can use a resource (e.g., stand on some land) without appropriating it and, we shall now suggest, a proviso is needed on *permissible use* in addition to one on powers of appropriation. Given that this will be relevant for our discussion of intergenerational justice, we shall address this point here.

Consider an agent in a densely populated world who claims no private property rights over any natural resources, but goes around systematically destroying or radically degrading them on a massive scale. Given that there is no appropriation, standard accounts of Lockean libertarianism would see no injustice here, but we believe that this is a mistake. The core issue of importance is not merely when agents may *appropriate* resources; it also concerns issues of *permissible use*. One person's use of natural resources—even without appropriation—must be compatible with some kind of fair opportunity for others to use.

The need for a proviso on permissible use—and not merely on powers of appropriation—has been recognized and defended by Eric Mack (1995).<sup>6</sup> For example, in one of his many insightful cases, a group of people, without engaging in appropriation, form a human circle around another without touching her. This encircling makes it impossible for that person to move without infringing the self-ownership of the encirclers. Thus, if the encirclers are using resources (e.g., the land they are standing on) permissibly—and thus forfeiting none of their self-ownership

rights for wrongful action—the encircled person is not permitted to move about. This implausible result leads Mack to endorse a proviso on permissible use of external resources. Roughly, it prohibits actions that severely disable another person’s ‘world interactive powers’. We fully agree that some such proviso is needed (although, as will become apparent below, we would reject the particular proviso that he defends).<sup>7</sup>

Thus, although there are forms of libertarianism that invoke neither a proviso on appropriation (radical right-libertarianism) nor a proviso on use (almost all standard versions of libertarianism), we believe that a plausible version will invoke a proviso on both use and appropriation.<sup>8</sup> In what follows, we shall therefore assume that some such proviso is needed and focus on what form it should take.<sup>9</sup>

## 2. Necessary Conditions for Having Rights

Libertarianism holds that individuals of a certain sort have rights of self-ownership and also have certain rights (powers) to appropriate unowned things. There is, however, room for differing views about what kinds of beings have these rights. All agree that agents who now exist now have rights. There is disagreement, however, about whether dead people and future people have rights.

This disagreement can be traced to the presence of two longstanding broad views of the nature of rights.<sup>10</sup> On the *choice-protecting* conception, rights protect choice-making capacities and, thus, only beings that are capable of making choices can have rights. Moreover, the relevant choice-making capacities are typically understood in a fairly robust manner. Thus, they are lacked—not only by rocks and plants, but also—by lower animals, and young children. On the *interest-protecting* conception, rights protect the interests of individuals, and thus only beings

that have interests can have rights. Rocks do not have rights. Nor do plants on most views (since the relevant interests are restricted to those of sentient beings). Children and many animals, however, do have rights on this conception.

Historically, libertarianism has always been based on the choice-protecting conception. Moreover, this conception has almost always been understood as implying that, for any given time, only those who are capable of *then* making choices *then* have rights. Thus, normal young children who will eventually be able to make (rationally robust) choices as adults are deemed not to have rights when they are young. On this view, at a given time, neither the deceased nor future people have rights.

If future people have no rights now, then it seems that there are no duties of justice owed to them now. There may be impersonal duties with respect to future people, but, since these are not duties *owed to them*, they are not duties of justice. Admittedly, this view imposes some intuitive strain. Suppose, for example, that there is a fully determinate (specific) autonomous agent who will come into existence, as such (and thus with full rights), tomorrow. Suppose that I now set a time-bomb that, with certainty, will kill this agent tomorrow. My action today sets off a causal process that, with certainty, will kill her. It seems at least arguable that my action today wrongs her (violates her rights)—even if, at the time of my action, she has no rights (because she does not then exist). After all, when the bomb goes off, she has a right not to be killed and the bomb, which I set, kills her.<sup>11</sup>

This is a complex and controversial issue, and we shall not attempt to resolve it here. We simply note that, if rights are restricted to choice-protecting rights, then it may well be that there are no issues of intergenerational justice between members of generations that do not temporally overlap one another.

Consider now the interest-protecting conception of rights. It has typically allowed that, at a given time, *t*, those who will definitely exist with significant interests at later times have rights at *t*, since those interests can be affected by what is done at *t*. Thus, if rights are understood in interest-protecting terms, then there may well be duties of justice to sentient fetuses and future people. To the best of our knowledge, however, no libertarian has endorsed the interest-protecting conception of rights. One main problem is that rights, so understood, permit, and may even require, others to use force against an autonomous agent against his will, when it is for his own benefit (e.g., forcibly preventing someone from smoking, or forcing someone to participate in exercise programs). Few, if any, libertarians can endorse that. The resulting conception of self-ownership is far too weak.

There is, however, a hybrid view—articulated by Vallentyne (2007)—that is relevant to the subject of this essay. Let us call it the ‘choice-prioritizing theory’. It holds that rights protect *both* choices and interests, but that the protection of choices is *lexically prior* to the protection of interests. More specifically, it asserts that an individual, Holder, has a right that another, Agent, not perform action X just in case each of the following is a sufficient condition for the wrongness of Agent X-ing: (1) Holder has validly (e.g., freely and informedly) *dissented* from the performance of this action (i.e., expressed his opposition thereto), or (2) Holder has not validly *consented* and Agent’s X-ing is *against Holder’s interests*. Like the choice-protecting theory of rights, the choice-prioritizing theory allows that, for autonomous beings, their valid consent and dissent trump all countervailing concerns for their interests, but it also allows that non-autonomous beings with interests (e.g., children and animals) can have rights. The choice-prioritizing view thereby implies that, if Holder has a right against Agent performing action X, and Holder has neither validly consented to, nor validly dissented from, Agent X-ing, then



Holder's interests are relevant for determining whether his rights are violated by that action. Thus, it has the plausible implication that saving someone's life by pushing her out of the way of an on-coming truck (of which she is unaware) does not violate her rights, even though she did not consent to such force.

If the choice-prioritizing conception of rights is adopted, then future people can have rights because they can have interests. Indeed, with respect to future people, the choice-prioritizing conception is equivalent to the interest-protecting conception (since they have no relevant choices).

We shall not attempt here to resolve the complex issue of what features are necessary to be a rights-holder. If future people do not have rights, then we owe them no duties of justice. We shall therefore simply assume for the sake of argument that future people have rights and discuss the implications for justice according to different versions of libertarianism.

There is, of course, an analogous issue about whether dead people have rights. The standard choice-protecting view denies that they have rights because they no longer have any capacity for choice.<sup>12</sup> The interest-protecting and choice-prioritizing views could also deny that they have rights on the ground that they not now have the potential for experience (whereas future people do now have that potential). Although this is a somewhat controversial issue, for simplicity, we shall assume (as we each believe) that dead people have no rights.<sup>13</sup> We shall thus focus our attention on intergenerational duties of the current generation to future generations.

### 3. Our Core Case

We are now ready to begin our examination of the implications of Lockean libertarianism for intergenerational justice. We shall focus on the justice of the distribution of rights over external

(natural and artifactual) resources, and we shall set aside injustices that arise from the violation of self-ownership. All forms of libertarianism agree that a violation of self-ownership is unjust. Thus, if future people will have rights of self-ownership, and setting a time-bomb now will, at some later date, but with certainty, kill them (and thus violate their self-ownership), then this counts as a form of intergenerational injustice. In what follows, however, we focus solely on the distribution of rights over external resources.

Throughout, we shall assume that generations are defined in the very strict sense as maximal sets of individuals born exactly at the same time. Obviously, in practice, looser definitions may be useful, but for present purposes it will simplify matters if all members of a given generation can be assumed to be born at exactly the same time.

Throughout, for simplicity, we shall assume that the only beings that have rights are agents (i.e., psychologically autonomous beings) who pop into existence without going through pre-agency childhood. Moreover, we assume that there is no uncertainty about what people will exist or how their interests will be affected, if a given action is performed. Obviously, these assumptions side-step very important issues relevant to a theory of intergenerational justice. Dealing with the core issues is sufficiently complex, however, even with these simplifying assumptions.

We shall start with an extremely simple case and then serially introduce additional complexities. More exactly, we shall start with *the core case*, which is one where

- (1) Agents take no interest in other agents and thus there are no gifts or bequests.
- (2) There is no procreation: individuals come into existence by natural forces and thus no agent bears any causal responsibility for the existence of other agents.
- (3) There is a fixed natural number—assumed, for simplicity, to be two or three (depending on

the example)—of non-overlapping generations.

(4) All generations have the same number of agents.

What constraints might a Lockean libertarian place on use and/or appropriation of unowned resources? As indicated above, we believe that some constraints must be placed on use—and not merely on appropriation. Suppose, for example, that the members of the first generation appropriate no resources, but destroy or radically degrade almost all natural resources (e.g., through massive pollution and radical deforestation)—with the net effect that members of the second generation are left with miserable, and much worse, opportunities to use natural resources. Standard versions of Lockean libertarianism—even left-libertarian versions—see no injustice in this, since no one has appropriated more than her fair share. We believe that this is implausible. Some constraints on permissible use are needed.

A Lockean proviso on use and appropriation requires, in some loose sense, that ‘enough and as good’ be left for others. There are different ways of making this more precise, but the standard approach, followed here, is to require that the *value of the initial opportunities* to use resources that are left for others be high enough. There are three main ways of doing this. One focuses solely on the initial opportunities to use *natural* resources.<sup>14</sup> A second focuses, more inclusively, on the initial opportunities to use *external* (natural and artifactual) resources (i.e., all resources other than the internal resources of one’s person).<sup>15</sup> The third focuses, still more inclusively, on the initial opportunities to use *all* (natural, artifactual, and internal) resources.<sup>16</sup> Although this third approach takes internal endowments (i.e., the resources that are constitutive of persons) into account when evaluating the relevant initial opportunities, it, like the first two, holds that agents fully own themselves. A person with malfunctioning kidneys has a greater

entitlement to external resources, but she has no entitlement to anyone's kidney. The exact significance of the differences between these three versions will become clearer below when we discuss gifts. For the sake of generality, we formulate the proviso so as to be compatible with any of the three versions. For simplicity, however, we shall tend to focus on the narrow natural resource interpretation.

Let us start by considering a weak version of the Lockean proviso. It appeals to the idea of a 'decent' share of opportunities to use natural resources. There are many possible criteria of decency that might be invoked, but the core idea is that a decent share enables individuals to have some *minimally adequate* or *sufficient* quality of life. For example, it might ensure that they can satisfy all their basic needs. Consider, then:

**Decent Share Proviso:** An agent has a presumptive moral liberty to use, and has the moral power to appropriate, an unowned resource if and only if this (1) gives her no more than decent initial (lifetime) opportunities to use natural resources, or (2) adversely affects no other agent who is left with less than decent initial (lifetime) opportunities to use natural/external/all resources.<sup>17</sup>

Here and throughout, an agent, A, has *presumptive* moral liberty to use an object just in case no one has a claim right *over the object* that A not use it. For example, others do not have a presumptive moral liberty to use the car that I own (because of my claim rights over it), but I have a presumptive moral liberty to use that car (because no one has a claim right that I not use it). A presumptive moral liberty to use an object merely establishes that using it without anyone's consent does not *necessarily* violate anyone's claim rights. Of course, many uses of the object

will violate the claim rights of others (as when I violate your self-ownership by hitting you with my car).

The proviso above and those below should be understood as satisfied when a person uses (or appropriates) more than the specified share of the specified resources but offsets the consequent disadvantage to others by leaving enough other resources for them to use.

We believe that, at least if the threshold for decent opportunities is set low enough (e.g., at the level needed for a life worth living), the Decent Share Proviso is correct in the necessary condition that it imposes. We believe, however, that this condition is not a sufficient condition for permissible use or appropriation. Suppose, for example, that natural resources are bountiful enough to give everyone a wonderful life and one person radically devastates them but leaves enough for each person to have a decent life. We believe that such use is not permissible. Natural resources belong to all of us in some egalitarian manner, and such a person is using more than her fair share.

Consider, then:

**Egalitarian Proviso:** An agent has a presumptive moral liberty to use, and a moral power to appropriate, an unowned resource if and only if this adversely affects no one who is left with less than an equally valuable initial (lifetime) opportunities to use natural/external/all resources.<sup>18,19</sup>

We believe that something in the general area of this proviso is plausible, but we shall not attempt a full defense here.<sup>20</sup> The core point is simply that natural resources, by definition, were not created by any human agent, and thus it is plausible that everyone has some kind of equal claim to having an opportunity to use them. This also seems true of abandoned artifacts (e.g.,

from earlier generations). Thus, a plausible version of Lockean libertarianism will be egalitarian about initial opportunities to use natural resources. It will, that is, be left-libertarian.<sup>21</sup> Obviously, even this is not uncontroversial, but we shall assume it in what follows.

As noted earlier, ‘natural resources’ is being understood in an extended sense to include any abandoned artifacts (e.g., from previous generations). Thus, the narrow natural resource interpretation of the Egalitarian Proviso requires that one disadvantage no one by leaving her less than an equally valuable share of strict natural resources plus abandoned artifacts. It is not sufficient, that is, to leave others an equally valuable share of strict (unimproved) natural resources (and, for example, leave them none of the abandoned artifacts). One must pass on a fair share that includes abandoned artifacts as well.<sup>22</sup> (Below, we shall consider the exact status of bequests.)

Given the Egalitarian Proviso, we can draw the following conclusions about the core case. For simplicity, we shall focus on the narrow natural resources interpretation. Assuming, as we are, that there are only a finite number of generations (and thus of individuals), individuals may use up their per capita share of the value of the opportunities to use natural resources. Thus, oil may be used up, but, subject to one qualification, only up to the per capita share. The qualification is that more oil may be used up if enough other resources are left to compensate for the additional use. Thus, for example, if an individual uses up less than her share of water, she may use up more than her share of oil—as long as she uses up no more than her per capita share of the value of *totality* of natural resources. Moreover, any artifactual resources that an individual leaves can compensate towards any excess use of natural resources. Thus, for example, if an individual leaves improved land or factories, that may—to the extent that they can be used by others—partially compensate for an excess use (or appropriation) of oil.

It's worth noting that the Egalitarian Proviso leaves no room for a 'just savings principle' of the sort suggested by Rawls (1971: section 44) and others. Such a principle requires that, until society reaches a certain minimal level of prosperity, individuals have an obligation to invest some of their wealth to improve the prosperity of later generations (who will have greater prosperity than the generation in question). Neither libertarianism in general, nor the egalitarian component of left-libertarianism, supports any duty to invest so as to make others better off than oneself. This seems eminently plausible to us.<sup>23</sup>

We shall now consider an implication of the Egalitarian Proviso (interpreted narrowly in terms of natural resources only) that has been questioned by Axel Gosseries. Consider a case where there are just two individuals whose existence is predetermined and who do not overlap. There are only two natural resources: 100 units of oil and environmental warmth. Due to natural forces, warmth is diminishing. Warmth is not affected by human activity (e.g., because of low population size and primitive technology). Both individuals regard the cooling as a reduction in the value of opportunities to use natural resources that would be exactly compensated by 100 units of oil. Thus, both individuals are indifferent between the warmer temperatures of the first person with no use of oil and the colder temperatures of the second person with the use of 100 units of oil. The Egalitarian Proviso holds that the first person must leave all the oil to the second person (since otherwise he would be disadvantaging her by leaving her with less than an equally valuable share).

Gosseries (2001: 307-11) has suggested that a plausible interpretation of the Lockean proviso will not require individuals to compensate later individuals for the negative effects of *naturally* caused degradations (such as the cooling of the planet in our example). Gosseries claims that the Lockean proviso only requires compensation for the negative effects of one's

actions (or one's existence) *relative to inaction (or non-existence)*. Since, naturally caused degradations occur even if one does not exist, one owes no compensation for such effects. Thus, in our example, the first person may use 50 units of oil and leave 50 for the second person—even though this will mean that the second person's opportunities to use natural resources are less valuable. Glossaries' interpretation of the Lockean proviso is thus incompatible with the Egalitarian Proviso interpretation.

Gosseries assumes that an interpretation of the Lockean proviso must focus solely on the impact of one's actions (or existence) relative to inaction or non-existence. He is right that this is the standard way of interpreting Locke and of developing a Lockean position. He is also right that so understood, the effects of naturally caused degradation are irrelevant. Such a position, however, is (as Gosseries recognizes) implausible. Everyone has an equal claim to the benefits of natural resources. The first person thus violates the rights of the second person if he leaves her only 50 units of oil (given her colder temperatures). This case is no different from a case where two contemporaries live on different islands and know that the first island's natural resources are more valuable than those of the other. Suppose that the only non-island-based natural resource is fish and that the more valuable first island is 'upstream' from the second. Suppose that the stream provides a total of 100 fish and that both agree that 100 fish exactly compensates for the less valuable island-based natural resources on the second island. It is quite implausible to claim that the person on the first island may take 50 of the fish. This leaves the second person with a less valuable share of natural resources. It is the value of the overall bundle of natural resources that individuals have that matters and the mere fact that some differences in opportunities to use particular kinds of natural resources are *naturally* imposed is irrelevant.

If Lockeanism is committed to focusing solely on the effects of one's action (or



existence) relative to inaction (or non-existence), it is thus implausible. Lockeanism need not, however, be construed so narrowly. As we construe it, it allows that the relevant test of whether a fair share is left for others and that can depend on the acts of nature (and perhaps on the acts of other agents). The Egalitarian Proviso is compatible with this broader conception of Lockeanism, and provides, we believe, a plausible interpretation. It does not fetishize natural resources. It allows that they may be degraded if this makes for a better life. No individual, however, may degrade or use up more than her per capita share of natural resources without suitable offsetting compensation.

#### 4. Generations of Different Sizes

Let us now relax the assumption that each generation has the same number of agents—but continue, for simplicity, to focus on the case where there are just two generations. For concreteness, suppose that the first generation has 10 people and the second generation has 20. Suppose that the first generation uses up half of the value of natural resources and leaves no offsetting artifacts. Is this just?

One view—tentatively endorsed by Gosseries (2001: 311)—is that justice is a relation between generations as collectivities. In this example, since there are just two generations, the first generation is permitted to use up half of the value of natural resources. If there were three generations, then each generation would be permitted to use up one third of the value of natural resources. On this view, there is no injustice in the above example.

We believe that this view is mistaken. Justice—and libertarian justice in particular—is matter of relations between individuals—not relations between generations viewed as collectivities. Thus, the equal opportunity test should be applied to individuals, not to

generations. In the example, there are 30 people. Each is thus permitted to use up  $1/30^{\text{th}}$  of the value of natural resources. In aggregate, the first generation (with 10 people) is thus permitted to use up one third of the value of natural resources. The Egalitarian Proviso, as we have formulated it, requires that an agent leave each other agent opportunities to use unowned natural resources that are at least as valuable as the ones that she has. Thus, it correctly applies the egalitarian test to individuals and not to generations.

## 5. Overlapping Generations

Let us now drop the assumption that there is no overlap between generations. Suppose, for example, that there are just two generations, that everyone lives for 100 years, and that the second generation comes into existence 50 years after the first. Does this change anything important?

One significant change is that, when there is overlap, the choice-protecting conception recognizes duties of intergenerational justice. When there is no overlap, it arguably does not recognize any such duties because the members of the subsequent generation do not exist at any time at which the members of the current generation perform actions. When there is overlap, however, then members of the subsequent generation exist, with rights, at the time of action of members of the first generation. Thus, the fact of overlap makes a very significant difference on the choice-protecting conception of rights.

The implications of the choice-prioritizing conception and the interest-protecting conception, however, are not affected, since they can recognize duties of intergenerational justice even when there is no overlap. For these conceptions, overlap requires no change in principles, but it does introduce two important changes in empirical implications.

The empirical implications concern ownership rights. When there was no overlap, the agents of the first generation could fully appropriate natural resources. They merely had to ensure that, at death, the value of the natural resources and artifacts that each left for each member of the next generation was at least as great as the per capita value of the natural resources that had been initially available to each of them. However, when generations overlap, the equal entitlements of the second-generation members take effect prior to the death of the members of the first generation. Thus, although there is no problem (as in the non-overlap case) with the first generation initially appropriating *all* natural resources, their ownership of these natural resources is not unconditional. When the second generation comes into existence, the members of the first generation may lose some of their rights over resources—if they are now disadvantaging someone by taking more than their per capita share. More specifically, if there are  $n$  members of the first generation and  $m$  members of the second generation, and the initial value of natural (and abandoned artifactual) resources was  $V$ , then each member of the first generation must relinquish rights over (natural or artifactual) resources to the extent that their rights over natural resources exceed the value  $V/(n+m)$ . Suppose, for example, that the initial value of natural resources was 90 units, that there were 10 members of the first generation, and that there are 20 members in the second generation. Prior to the arrival of the second generation, each member of the first generation could appropriate natural resources worth up to 9 ( $90/10$ ) units without the need to compensate others (as long as they do not degrade those resources). Once the second generation arrives, however, compensation is then required from those who have appropriated natural resources in excess of 3 ( $90/30$ ) units of value.

In short, when generations overlap, the fair shares for the purposes of appropriation are recalculated when new right-bearing individuals come into existence, and individuals with

excess shares must relinquish them or provide compensation. The new fair share is no different from that which they would have to leave at their death in the case of non-overlap (on the assumption that future individuals have rights). The only difference is that it must be provided during the agents' lifetimes when new individuals come into existence.

The second important empirical implication that arises where generations overlap is that there is the opportunity for members of different generations to cooperate in mutually beneficial ways. Where the generations do not overlap, first generation individuals have no incentive to leave more than the required minimum share of natural resources for the later generation. With overlapping generations, however, agreements can be made that make both parties better off and have the effect of enhancing the likelihood that artifactual wealth is passed on to later generations. For example, it might be that, for a given generation, the costs of their limiting global warming outweigh the benefits, but that (given the positive externalities of such limitation), *for the totality of overlapping generations at a given time*, the benefits of their limiting global warming outweigh the costs. Each generation will therefore have an incentive to limit global warming if overlapping generations also do so. The net effect over time of such limitation is that later generations will benefit from the limitations of much earlier non-overlapping generations.

## 6. Procreation

So far, we have been assuming that there is no uncertainty about who will exist. Moreover, we have also been assuming that agents come into existence simply as the result of deterministic natural forces and without any role for the choices of other agents: agents are not procreated. Things become very complex when there is indeterminacy about who will exist, and it is beyond

the scope of this paper to address this issue generally. Instead, we shall now introduce only an extremely limited—and highly artificial—form of indeterminism about who will exist. We shall assume that there is one person who has one opportunity to add one additional person to the world by making an appropriate procreative choice (as well as the opportunity not to do so).<sup>24</sup> For simplicity, we shall, however, continue to assume that agents pop into existence fully formed (without first going through non-autonomous phases). The question on which we focus is that of who is responsible for providing the offspring's fair share of opportunities to use natural/external/all resources: the procreator or the members of society in general? Although this does not raise issues of intergenerational justice in the collective sense, it does raise such issues in the individualist sense, since it is concerned with the issue of what duties individuals owe members of later generations.

To start, we note that libertarianism—like many other views—denies that there is any general duty to procreate. First, no matter how wonderful a possible person's life might be, one owes her no duty (of justice) to bring her into existence. For, if she does not come into existence, she never acquires the features necessary for having rights (autonomy or interests), and hence her non-existence does not violate any of her rights (since she has none). Second, under normal conditions (e.g., absent any contractual obligation), one owes no duty of justice to others to procreate.<sup>25</sup>

The question that we shall address is this: Who has the duty to provide the fair share of opportunities for procreated individuals? No one? The parents? All members of society? Some combination of these? The issue, of course, is extremely complex. For simplicity, we shall consider only the easiest case—one where parents *intentionally* procreate offspring with no unexpected results. Other cases may require a more nuanced treatment and we shall not here

attempt to address such cases.

The mere fact that an individual was procreated (as opposed to coming into existence merely by forces of nature) does not eliminate or reduce her right to an equal share of opportunities to use the relevant resources. Hence, some others have a duty to provide her fair share. The question is whether her parents have a special duty to provide this fair share or whether it falls to the members of society generally. We assume that, at a minimum, the members of society owe this duty to the offspring to the extent that it is not possible for the parents to provide the fair share (e.g., because they are dead or too poor). Individuals, that is, do not lose their right to their fair share of resources simply because their procreators fail to provide it. The core question, then, is whether the duty to provide the fair share falls *in the first instance* to the parents or to the members of society.

The argument in favor of the view that procreators—rather than members of society in general—have a duty to provide the fair share to their intentionally procreated beings is reasonably straightforward. For simplicity, assume that the only relevant resources are natural resources. Suppose that we have only a single generation consisting of two people. The total value of natural resources is 60 and thus each has a right to a share worth 30. Suppose that one agent, A, then intentionally uses up 20 of his units of value, and is left with 10 units. He cannot now plausibly claim that each person has a right to an equal share of the remaining 40 units—that is, that he, like his contemporary, is now entitled to 20 ( $40/2$ ) units. The right to an equal share is not, after all, a right to an *on-going* equal share. It is a right to an equal *initial* share. The right of his contemporary to 30 units is not affected by A's decision to use up some of his units. The contemporary still has a right to 30 units and A has a right to only 10 units.

Suppose now that, instead of using up 20 units, A intentionally procreates an additional

(adult) agent. Again, it would be implausible for A to claim that he, like the two others, is now entitled to 20 (60/3) units. The right of his contemporary is to a certain initial share and that is not affected (at least not in the first instance) by A's decision to procreate. Thus, A's contemporary still has a right to 30 units. The new third agent has the same rights as anyone else. In particular, he has the right to the same initial share as the other two. That right was a right to 30 units. Thus, the new third agent has a right to 30 units. The procreating first agent thus has no rights to any of the natural resources and, indeed, has an obligation to transfer his 30 units to his offspring.<sup>26</sup>

It's important to note that the above case is quite different from the case where the third person was destined (inevitably) to come into existence by natural forces (and not by procreation). In this case, each individual has a right to 20 (60/3) units of natural resources. Where an individual intentionally procreates, however, she is responsible for the existence of procreated being and is thus accountable for providing the same share to her as the share of other individuals.

We conclude that it is procreators who have the duty, in the first instance, to provide the fair share to their intentionally created offspring.<sup>27</sup> The rights of offspring to their fair share are, however, also held against all the pre-existing people. The latter have the duty to provide the fair share, if (but only if) procreators cannot be made to do so.

## 7. Gifts and Bequests

So far, we have assumed that agents take no interest in each other and thus make no gifts—whether they be bequests (gifts from dead people) or *inter vivos* gifts. We shall now relax this assumption. The question is whether a plausible form of left-libertarianism will place restrictions

on gift-giving in order to reduce its disruptive effects on initial equality of opportunity. Although this issue arises even within a given generation, it is particularly acute when there are gifts between generations.

As background, we note that no plausible version of left-libertarianism (or any theory of justice) will prohibit, as a matter of public policy, gift-giving outright. Gift-giving is something that most people find intrinsically valuable (e.g., birthday gifts to children). Prohibiting gifts outright would not only deprive almost everyone of this benefit, it would also significantly reduce the incentive for individuals to accumulate wealth and leave it for the benefit for others. If legal restrictions are placed on gift-giving, they will take the form of a tax liability and not a prohibition. Moreover, the tax liability will be only for gifts that disrupt initial equality of opportunity. Thus, for example, gifts to a person who has less than average initial opportunity will not generate a tax liability. Finally, the enforced tax rate will typically be less than 100%, for it will be set at a rate that will maximally benefit those who have less than equal initial opportunities. It might be set, for example, at a rate that will maximize tax revenues from gift taxation. (This is normally not 100%, since such a rate provides no incentive to accumulate wealth and make gifts.)

Let us start by addressing bequests. Bequests in the strict sense are gifts from dead people. Because dead people have no rights, there is no right to make bequests. This is straightforward on a choice-protecting conception of rights, since dead people no longer have the capacity to exercise their wills. It is arguably also true on the choice-prioritizing and interest-protecting conceptions. Of course, there is a clear sense in which the interests that people had prior to death can be advanced or thwarted after their death, but the question is whether this sense is relevant for justice. We claim that it is not. The only relevant interests, we claim, are



those that presuppose the potential for sentience. Since dead people have no such potential, they have, we claim, no interests in the relevant sense.<sup>28</sup>

Bequests in the strict sense need to be distinguished from quasi-bequests, where these are understood as transfers of rights that take place during the lifetime of the donor, but which are conditional and temporarily delayed. A quasi-bequest has roughly the following form: I now transfer to you the conditional right of ownership over my car that takes effect when and only when I die and you are alive. Unlike genuine bequests, a quasi-bequest immediately deprives the bequeather of some of the ownership incidents they would otherwise continue to possess up to the moment of their deaths. Thus, for example, having quasi-bequeathed my car to you, I no longer have the power to sell it or the liberty to destroy it. Given that almost all real-life ‘bequests’ can be made to take the form of quasi-bequests, the absence of a right of bequest in the strict sense has little practical import in most cases. It does, however, have some import: any resources that agents own at the time of their death are abandoned assets and become part of the pool of natural resources (in the extended sense).

Of course, agents may still be able to transfer their assets by *inter vivos* gift. In the remainder of this section, then, we shall focus on *inter vivos* gifts. Such gifts can take place between members of the same generation, as well as between members of different, but overlapping, generations. (By definition, *inter vivos* gifts are not possible between members of non-overlapping generations.)

If an agent fully owns a given resource, he is morally free to destroy it if he wishes. Moreover, he has—as part of his full ownership of the resource—a full formal right to transfer his rights over the resource to someone else. In order for a right to be transferred to someone, however, the recipient must have the moral power to acquire the rights involved. (One cannot

transfer property to a mosquito merely by so willing.) The crucial question here is what kinds of rights agents have to acquire property by gift.

From a libertarian perspective, there are two main kinds of right to acquire property: (1) rights of initial appropriation, which govern the conditions under which an agent can acquire rights over a previously unowned thing; and (2) rights of transfer, which govern the conditions under which an agent can acquire rights over a previously owned thing with the consent of the previous owner. (We here ignore, for simplicity, rights of rectification, which govern the conditions under which agents can acquire rights over a previously owned thing in virtue of the previous owner having violated their rights.) Neither of these rights follows from full self-ownership or from the full ownership of the thing transferred. Full self-ownership tells us nothing about the moral power to acquire other things. Full ownership of a particular thing includes the full right to transfer it to others if they consent *and have the moral power to acquire rights by transfer*. That leaves open, however, whether agents have such moral powers.

We assume—as do all libertarians—that agents have an unrestricted moral power to acquire rights by transfer in cases where there is an exchange of rights with equal competitive value (as in typical cases of market exchange).<sup>29</sup> The question here is whether agents also have an unrestricted moral power to acquire rights transferred *by gift* (e.g., where there is only a one-way transfer, or where there is an exchange of rights of unequal competitive value).<sup>30</sup> The standard libertarian assumption is that agents do have such a power, but this is required neither by the libertarian thesis of full self-ownership, nor by any particular view about the moral powers of appropriation (initial ownership). It is thus open to libertarians to adopt a restricted view of the power to acquire rights by gift. Right-libertarians, of course, will find such an adoption implausible, but left-libertarians need not.

Indeed, given that left-libertarians impose something like the Egalitarian Proviso on use and appropriation, it seems natural for them to impose comparable conditions on acquisition by transfer as well. For clarity, let us rename and restate the former condition:

**Egalitarian Proviso on Use and Appropriation:** An agent has a presumptive moral liberty to use, and a moral power to appropriate, an unowned resource if and only if this adversely affects no one who is left with less than an equally valuable initial (lifetime) opportunity to use natural/external/all resources.

As noted above, there are three versions of this proviso depending on what kinds of resources—natural, external (including artifacts), or all (also including the internal endowments of agents)—are relevant for the equally valuable initial opportunity to use test. For simplicity, we have tended to focus on the natural resources version. We shall now see these different versions of the proviso have different implications for the right to acquire gifts.

Consider, then a comparable proviso on acquisition of rights by transfer:

**Egalitarian Proviso on Transfers:** An agent has the moral power to acquire by transfer rights over an owned resource if and only if this adversely affects no one who is left with less than an equally valuable initial (lifetime) opportunity to use natural/external/all resources.

No matter which kind of resources (natural, external, or all) are deemed relevant, this proviso imposes no restrictions on exchanges of equally valuable rights (as in many market exchanges)—since such exchanges do not adversely affect anyone else’s share of opportunities.

Moreover, if only opportunities to use *natural* resources are deemed relevant, then the transfer proviso will also impose no restrictions on gifts. Gifts of internal endowments (e.g., kidneys) or of artifacts do not adversely affect anyone's initial opportunities to use *natural* resources. Moreover, gifts of natural resources do not either: If one person transfers her share of natural resources to another, this does not adversely affect anyone's initial opportunities to use natural resources (if they had a fair share before the transfer, they do after as well). Thus, the Egalitarian Proviso on Transfers imposes no restrictions on acquisition by gift—or any other kind of transfer—if the relevant resources are limited to natural resources.<sup>31</sup>

Consider now the version of the transfer proviso that considers initial opportunities to use natural resources *and artifacts* (i.e., all external resources). The transfer proviso does not restrict gifts of *internal* endowments (e.g., kidneys). Moreover, if individuals all have equally valuable initial opportunities to use external resources, it imposes no restrictions on gifts (since the initial opportunities remain equal). The transfer proviso does, however, restrict the moral power to acquire by gift, when this gives the recipient more than her per capita share of initial opportunities to use external resources (and adversely affects someone with less than her per capita share). For example, if everyone has her per capita share of natural resources and no one other than Silver Spoon starts life with any artifactual gifts, then Silver Spoon may acquire artifactual gifts only to the extent that others also do (e.g., a gift tax would tax away all but her per capita share of natural resources). In this respect, the transfer proviso functions exactly as the use and appropriation proviso (applied to external resources): one has the power to acquire up to one's per capita share, but no more (without compensating by giving up some of one's internal resources).

Finally, consider the version of the egalitarian proviso that considers initial opportunities

to use *all* resources (natural, artifactual, and internal). Unlike the previous version, this version can also restrict gifts of internal endowments (e.g., kidneys). The general logic, however, is much the same. If individuals all have equally valuable initial opportunities to use resources generally, it imposes no restrictions on gifts (since the initial opportunities remain equal). It does, however, restrict the moral power to acquire by gift when this gives the recipient more than her per capita share of initial opportunities to use resources (and adversely affects someone with less than her per capita share).<sup>32</sup>

With respect to *inter vivos* gifts, then, left-libertarian theory is indeterminate. A version that is concerned only with the distribution of initial opportunities to use *natural* resources will not impose any restrictions on gifts, but versions that are concerned with initial opportunities to use external or all resources will impose some restrictions on gift. We shall not attempt to resolve this issue here.

## 8. Conclusion

For simplicity, we have assumed that agents pop into existence fully formed and thus have not addressed any of the issues relevant for individuals who pass through a phase of childhood. We also assumed, for the sake of argument, that interests can ground rights—either by standard interest-protecting rights or by choice-prioritizing rights. If only the capacity for choice can ground rights, then it is arguable that future people have no rights and thus there are no issues of intergenerational justice between non-overlapping individuals. Finally, we have addressed only the highly artificial case where the existence and nature of each individual either (1) is fully certain and unaffected by any human choice or by acts of nature, or (2) is fully determined by intentional procreative acts (and not by anything else). We have thus not attempted to address

non-intentional procreation nor the deep and complex issues that arise when non-procreative acts affect who is later procreated (given the non-identity problem and the contingency of existence).

We have sketched the outlines of libertarian views on intergenerational justice. We have assumed (with motivation) that right-libertarianism and joint-ownership left-libertarianism are implausible and have explored versions of left-libertarianism—which impose egalitarian requirements on the distribution of initial opportunities to use natural/external/all resources. Because left-libertarianism is individualist, it requires (roughly) that the use and appropriation of unowned resources leave other individuals with an equally valuable initial opportunity to use the relevant resources (natural, external, or all). It requires, that is, that one leave an appropriate *per capita* share for others. It does *not* require that the *total* value of the initial opportunities be the same for different generations (perhaps of different sizes). Moreover, those who intentionally procreate individuals owe others a duty to provide the fair share to their offspring—although others have a duty to provide a fair share should the procreators fail to do so. Finally, because left-libertarianism requires only that no one be disadvantaged by being left with less than her per capita share of the relevant resources, it does not require members of the current generation to make any sacrifices for the benefit of members of later generations, if the latter will, in any case, have better initial opportunities to use the relevant resources.

Let us close with a speculation about the real life applications of left-libertarianism to the issues of natural resources depletion (e.g., oil) and degradation (e.g., global warming). Let us assume, as seems plausible, that members of the current generation are, in aggregate, using far more than their per capita share of natural resources. Does left-libertarianism view this as an injustice? Not necessarily. First, the degradation and depletion of natural resources is an individual matter and some individuals may be using less than their fair share even if most use

more. Second, even those whose are using more than their fair share of natural resources may leave adequate compensation for the members of future generations. The value of resources that they add to the world for all to use—technology, knowledge, and improvements to natural resources (e.g., trees or fish) in the commons, for example—may compensate for their excess degradation or depletion.

We don't know enough about the facts of the situation, but we speculate that *on average* the (expected) initial opportunities to use natural (or external, or all) resources available to members of future generations are at least as great as those had by members of the current generation. We speculate that this is so because we believe that the current generation will pass on significant benefits of knowledge, technology, and abandoned but valuable resources. If that is so, then, although there may be (as there surely are) *individual* cases of injustice towards members of future generations, such injustices are not *widespread and systematic*. This, however, is simply speculation about a very complex issue.<sup>33</sup>

## References

- Bruce Ackerman (1980). *Social Justice in the Liberal State* (New Haven: Yale University Press).
- Richard Arneson (1991). 'Lockean Self-Ownership: Towards a Demolition', *Political Studies* XXXIX: 36-54. Reprinted in Vallentyne and Steiner (2000b).
- Richard Arneson (2000). 'Perfectionism and Politics', *Ethics* 111: 37-63.
- Gustaf Arrhenius (2000). *Future Generations: A Challenge for Moral Theories* (Ph.D. Dissertation, Uppsala University).
- Charles Blackorby, Walter Bossert, and David Donaldson (2005). *Population Issues in Social-Choice Theory, Welfare Economics, and Ethics* (New York: Cambridge University Press).
- John Broome (2004). *Weighing Lives* (Oxford, Oxford University Press).
- Paula Casal and Andrew Williams (2004). 'Equality of Resources and Procreative Justice' in Justine Burley, ed., *Dworkin and His Critics* (Oxford: Blackwell, 2004), pp. 15-169.
- Robert Elliot (1986). 'Future Generations, Locke's Proviso and Libertarian Justice', *Journal of Applied Philosophy* 3: 217-27.
- Joel Feinberg (1984). *Harm to Others* (New York: Oxford University Press).
- Barbara Fried (2004). 'Left-Libertarianism: A Review Essay', *Philosophy and Public Affairs* 32: 66-92
- Axel Gosseries (2001). 'What Do We Owe the Next Generation(s)', *Loyola of Los Angeles Law Review* 35: 293-355.
- Axel Gosseries (2003). 'Intergenerational Justice', in H. LaFollette (ed.) *The Oxford Handbook of Practical Ethics* (Oxford: Oxford University Press), pp. 459-484.
- Axel Gosseries(2004). *Penser la justice entre les générations: De l'affaire Perruche à la réforme*



- des retraites* (Paris: Alto Aubier)
- Matthew Kramer, Nigel Simmonds, and Hillel Steiner (1998). *A Debate over Rights: Philosophical Enquiries* (Oxford: Oxford University Press).
- Eric Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy and Policy* 12 (1995): 186-218.
- Lukas Meyer (2003a). 'Intergenerational Justice', *The Stanford Encyclopedia of Philosophy* (Summer 2003 Edition), Edward N. Zalta (ed.), URL = [<http://plato.stanford.edu/archives/sum2003/entries/justice-intergenerational/>](http://plato.stanford.edu/archives/sum2003/entries/justice-intergenerational/).
- Lukas Meyer (2003b). 'Obligations Persistentes et Réparation Symbolique', *Revue Philosophique de Louvain* 101: 105-22.
- Lukas Meyer (2003c), 'Past and Future. The Case for a Threshold Notion of Harm', in *Rights Culture, and the Law*, ed. Lucas Meyer, Stanley L. Paulson, and Thomas W. Pogge (Oxford: Oxford University Press), pp. 143-160.
- Jan Narveson (1988). *The Libertarian Idea* (Philadelphia: Temple University Press).
- Robert Nozick (1974). *Anarchy, State, and Utopia* (New York: Basic Books).
- Michael Otsuka (2003). *Libertarianism without Inequality* (Oxford: Clarendon Press).
- Eric Rakowski (1991). *Equal Justice* (New York: Oxford University Press).
- John Rawls (1971). *A Theory of Justice* (Cambridge, Mass.: Harvard University Press).
- Melinda Roberts (1998). *Child versus Childmaker: Future Persons and Present Duties in Ethics and the Law* (New York: Rowman & Littlefield Publishers).
- Eric Roark, (2006). 'A Defense of Left-Libertarianism That Will Satisfy a Real Egalitarian', unpublished, University of Missouri.
- Murray Rothbard (1978). *For a New Liberty: The Libertarian Manifesto*, revised edition (New

- York: Libertarian Review Foundation).
- Murray Rothbard (1982). *The Ethics of Liberty* (Humanities Press).
- A. John Simmons (1992). *The Lockean Theory of Rights* (Princeton: Princeton University Press).
- A. John Simmons (1993). *On the Edge of Anarchy* (Princeton: Princeton University Press).
- Hillel Steiner (1994). *An Essay on Rights* (Cambridge, MA: Blackwell Publishing).
- Hillel Steiner (1997). 'Choice and Circumstance', *Ratio X*: 296-312.
- Hillel Steiner (1999). 'Silver Spoons and Golden Genes: Talent Differentials and Distributive Justice', in *The Genetic Revolution and Human Rights: 1998 Oxford Amnesty Lectures*, (ed.) J. Burley, (Oxford: Oxford University Press). Reprinted in *Children and Political Theory* edited by David Archard and Colin MacLeod (Oxford: Oxford University Press, 2003).
- Nicolaus Tideman (2000). 'Global Economic Justice', *Geophilos* 00: 134-146.
- Bertil Tungodden and Peter Vallentyne (2006). 'Paretian Egalitarianism with Variable Population Size' in *Intergenerational Equity and Sustainability*, edited by John Roemer and Kotaro Suzumura, (Palgrave Publishers Ltd.), ch. 11.
- Peter Vallentyne (2002a). 'Equality and the Duties of Procreators', in *Children and Political Theory* edited by David Archard and Colin MacLeod (Oxford: Oxford University Press).
- Peter Vallentyne (2002b). 'Brute Luck, Option Luck, and Equality of Initial Opportunities', *Ethics* 112: 529-557.
- Peter Vallentyne (2003). 'The Rights and Duties of Childrearing', *William and Mary Bill of Rights Journal* 11: 991-1010.
- Peter Vallentyne (2007). 'Libertarianism and the State', *Social Philosophy and Policy*, 24 (2007): 87-205.
- Peter Vallentyne and Hillel Steiner, eds. (2000a). *The Origins of Left Libertarianism: An*

*Anthology of Historical Writings* (New York: Palgrave Publishers Ltd.).

Peter Vallentyne and Hillel Steiner, eds. (2000b). *Left Libertarianism and Its Critics: The Contemporary Debate* (New York: Palgrave Publishers Ltd.).

Peter Vallentyne, Hillel Steiner, and Michael Otsuka (2005). 'Why Left-Libertarianism Isn't Incoherent, Indeterminate, or Irrelevant: A Reply to Fried', *Philosophy and Public Affairs* 33: 201-15.

Philippe Van Parijs (1995). *Real Freedom for All* (New York: Oxford University Press).

Clark Wolf (1995). 'Contemporary Property Rights, Lockean Provisos, and the Interests of Future Generations', *Ethics* 105: 791-818.

---

<sup>1</sup> Although full ownership determinately includes full control rights and full rights to transfer, there is some indeterminacy concerning compensation rights, enforcement rights, and immunity to loss (since one person's compensation rights and enforcement rights conflict with another person's immunity to loss). This is not relevant for the present paper, but we address it fully in Vallentyne, Steiner, and Otsuka (2005).

<sup>2</sup> For more on left-libertarianism generally, see Vallentyne and Steiner (2000a, 2000b). For a critical assessment of left-libertarianism, see Fried (2004) and Vallentyne, Steiner, and Otsuka (2005).

<sup>3</sup> That is, we here rely on the following distinction: *owned* means protected by a property rule (i.e. consent is required for others' use), whereas *belongs to* means protected by a property rule or by a liability rule (consent is not required for others' use, but compensation is owed by them for use or appropriation). Unowned resources are resources that are not protected by a property rule, but they initially belong to all because they are protected by a liability rule.

---

<sup>4</sup> For superb analysis of Locke's own quasi-libertarian views, see Simmons (1992, 1993).

<sup>5</sup> See, for example, Narveson (1988) and Rothbard (1978, 1982).

<sup>6</sup> It is also implicit in Tideman (2000).

<sup>7</sup> Although Mack calls this 'the self-ownership proviso' and takes it to be part of the theory of self-ownership, we believe that it is just a proviso on the use of external resources. It places restrictions on the use of resources even when it does not violate self-ownership strictly understood (i.e., are not what Mack calls 'invasive' violations).

<sup>8</sup> Strictly speaking, we deny that a proviso on appropriation (acquisition of ownership of previous unowned things) is needed. Instead, all *ownership* of natural resources (even that acquired by transfer) is *conditional* on continued satisfaction of a proviso. For simplicity, however, we shall formulate the proviso on ownership as a proviso on appropriation.

<sup>9</sup> Mack believes that once an adequate proviso on use is imposed, no further proviso on appropriation is needed. As indicated in the previous note, there is a sense in which we agree with this. Mack, however, denies that there is any proviso on ownership generally (and not merely appropriation), and we disagree with this. The issue is complex, but if use is understood (as we do) narrowly as physical use, then this seems mistaken. Suppose that I appropriate the entire world except for a small plot around each other person. Even if my use disadvantages no one (e.g., I use only a small plot of land that no one else would use in any case), my ownership does (since they are not permitted to use other plots of land that I own without my permission).

<sup>10</sup> For an extensive account of this disagreement, see Kramer, Simmonds, and Steiner (1998).

<sup>11</sup> For further discussion of this issue, see Feinberg (1984: 97), Meyer (2003c, sec. II) and Gosseries (2004: ch. 1).

---

<sup>12</sup> It is worth noting here that, while standard (i.e. right-) libertarianism has thus denied that future people have rights, it has typically affirmed that the deceased *do* have rights—most notably, the right of bequest (discussed below).

<sup>13</sup> For more discussion of this issue, see Feinberg (1984: ch. 2), Steiner (1994: ch. 7(C)) and Gosseries (2004: ch. 2).

<sup>14</sup> See, for example, Steiner (1994), although the idea is invoked for a proviso on appropriations (but not on use).

<sup>15</sup> As far we know, this position has not been defended by anyone. It seems, however, worthy of exploration.

<sup>16</sup> See, for example, the equal opportunity for wellbeing approach of Otsuka (2003), although the idea is invoked for a proviso on appropriations (but not on use). Related approaches (although not in the context of a proviso on appropriation or use) are developed by Ackerman (1980) and Van Parijs (1995).

<sup>17</sup> The focus on *decent* lifetime opportunities to use natural resources is similar in spirit to the focus on severely disabling another person's 'world interactive powers' in the self-ownership proviso of Mack (1995). For related discussion of provisos on use or appropriation in the context of libertarian theory, see Elliot (1985), Wolf (1995), Gosseries (2001), and Gosseries (2004: ch. 3). For doubts about there being a principled (non-arbitrary) way of setting the decency level, see Arneson (2000; e.g., p. 56).

<sup>18</sup> For simplicity, we here ignore complexities that are needed to deal with cases where inevitably someone will be left with less than equally valuable share but there is more than one way of doing this (e.g., where 0-6-6 and 0-3-9 are the only two feasible distributions). We also here

---

ignore a possible weaker version of the Egalitarian Proviso on Use: One might allow agents to leave less than an equally valuable opportunity to use external resources where this is necessary for the agent to have a life-opportunity worth having. The idea is that where an equal opportunity would leave everyone with an opportunity worse than death, then agents are permitted to use resources to obtain a life-opportunity worth having—even if this leaves much less for others. For defense of this idea, see Roark (2006).

<sup>19</sup> We take the Egalitarian Proviso to be in the same spirit as the following: ‘[M]embers of each generation [must] ensure that, at their deaths, resources that are at least as valuable as those they have acquired lapse back into a state of non-ownership.’ (Otuska 1998: 89). ‘[E]ach entering citizen receives a share of material wealth that is *equal* to that of others who are roughly contemporary and *no less* than that received by his predecessors.’ (Ackerman, 1980: 208). It is also roughly the view expressed in fn. 2 of Rakowski (1991: 150).

<sup>20</sup> We here leave open the important issue of whether the value an agent’s initial opportunities to use natural resources is her *total* lifetime opportunity, her *average* opportunity per unit of time lived, or something else. We are inclined to believe that each agent should indeed have equally valuable (total lifetime) opportunities—independently of how long he/she lives, but this will play no role in the argument that follows.

<sup>21</sup> Left-libertarianism is a form of liberal egalitarianism: its distinguishing feature is that it holds that agents are full self-owners and that this can place limits on the permissible means of achieving the relevant equality.

<sup>22</sup> As Gosseries (2001: 306) notes, the need to include abandoned assets from previous generations is not taken into account adequately in the following passages (which may not reflect

---

the authors' considered views): '[T]he continued legitimacy of private ownership from the standpoint of self-ownership depends on each person in each successive generation obtaining the equivalent of a per capita share of unimproved, undegraded land.' (Arneson 1991: 53). '[A]s I will argue, the egalitarian proviso, when fully spelled out, requires that the members of each succeeding generation have at least as great an opportunity to own worldly resources as did the first generation to acquire resources out of the state of nature.' (Otsuka, 1998: 88; he later qualifies this statement to avoid limiting attention to the first generation).

<sup>23</sup> It should be noted that Rawls emphasizes that: 'Justice does not require that early generations save so that later ones are simply wealthier. Savings is demanded as a condition of bringing about the full realization of just institutions and the fair value of liberty.' Nonetheless, we find it implausible that justice requires the worst of members of society (viewed intergenerationally) to make a sacrifice that benefits the better off. For discussion of savings requirements from several moral perspectives, see Gosseries (2001) and Gosseries (2004: ch. 4).

<sup>24</sup> We do not here attempt to deal with the very important issues that arise from the non-identity problem in the context of person-affecting principles of justice. Some excellent books on this issue and population ethics generally include Roberts (1998), Arrhenius (2000), Broome (2004), and Blackorby, Donaldson, and Bossert (2005). For a view about how egalitarians should respond to the non-identity problem while endorsing a person-affecting view of morality, see Tungodden and Vallentyne (2006).

<sup>25</sup> For discussion of non-libertarian reasons why one might owe a duty to others to procreate, see section 2 of Meyer (2003a).

<sup>26</sup> Whether further transfers are warranted, from procreators who use higher-valued genetic

---

information to procreate, may depend on whether such information counts as a natural resource; see Steiner (1994, chs. 7(B), 8), Steiner (1997) and (1999).

<sup>27</sup> We here leave open the more difficult issue of non-intentionally created offspring. The view that parents have the duty to provide the fair shares to their offspring is advocated by Ackerman (1980: 200), Rakowski (1991: 153), Casal and Williams (2004), and Tideman (2000). For a general discussion of the rights and duties of procreators from a quasi-libertarian perspective, see Vallentyne (2002a). For a discussion of the rights and duties of custodial parents, see Vallentyne (2003).

<sup>28</sup> For an argument that there are duties owed to someone that survive that person's death (and moral standing), see Meyer (2003b)

<sup>29</sup> Of course, not all apparent market exchanges, or even all market exchanges, involve the exchange of rights with equal competitive value. When I buy the normal apple from my niece (or from a charity) for \$100, I am making a gift of the amount by which the competitive value of the apple is less than \$100.

<sup>30</sup> Gifts, which involve a transfer of rights, are distinct from *favors*, which involve the use of one's property to benefit others where recipient has no right to such use (e.g., my mowing your lawn or my granting you (revocable) permission to use my lawn mower). A person's full ownership of a thing (herself or some artifact) gives her the right to use it to perform favors for others, and since the beneficiary requires no special moral power to benefit from favors (since, unlike gifts, there is no transfer of rights), there is no room within libertarian theory to restrict favors. It should be noted, however, that one of us (Steiner) is uncertain whether the gift-favor distinction can invariably be drawn in such a way as to support *both* the claim that no special



---

power is needed to acquire rights to benefits that have been bestowed by favors, *and* the claim that such a power is needed to acquire rights transferred by gift. Particularly problematic, in this regard, are bestowals of personal services, e.g. a dental treatment or a shoeshine.

<sup>31</sup> We here rely on our assumption that individuals have a right to equally valuable *initial* opportunities to use natural resources. Although this is sensitive to initial chances of later brute luck events, it is not sensitive to whether these events occur. A different (but closely related) view is the requirement that individuals have a right to equally valuable *brute luck* opportunities to use natural resources. (See Vallentyne 2002b for more on the difference between these two views.) On this view, gifts of natural resource that are a matter of brute luck (and not all are) do upset the relevant equality.

<sup>32</sup> For discussion of related issues, see Ackerman (1980: 201-207) and Rakowski (1991: ch. 7).

<sup>33</sup> For useful comments, we thank Dani Attas, Axel Gosseries, Eric Heidenreich, Jason Glahn, Lucas Meyer, Mike Otsuka, Eric Roark, Alan Tomhave, Jon Trerise, Andrew Williams, and an anonymous reviewer.