

Le Libertarisme

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This is the English version. I will send you the French upon request.

Libertarianism is a family of theories of justice, where justice is understood as the *moral duties that we owe each other* (as opposed to impersonal duties) or as our *enforceable duties*.

Libertarianism is sometimes advocated as a derivative set of rules (e.g., on the basis of rule utilitarianism or contractarianism), but here I reserve the term for the *natural rights* doctrine that agents initially fully own themselves. Different versions libertarianism endorse different moral powers to acquire property rights in natural resources and other unowned resources. Right-libertarianism imposes no or very weak distributive constraints on the moral powers of appropriation, whereas left-libertarianism imposes certain egalitarian constraints on these powers.

1. Full Self-Ownership

Libertarianism is committed to the thesis of full self-ownership (for agents), which holds that each agent, at least initially (e.g., prior to any wrongdoings or contractual agreements), morally fully owns herself. The rough idea is that an agent has all the moral rights over herself that an owner of an inanimate thing (e.g., a car) has over it under the strongest form of private ownership of inanimate things. The rough idea is also that an agent *morally* has all the rights over herself that a slave-owner *legally* has over a slave under the strongest possible legal form of

private slave-ownership.¹

Throughout, we are concerned with *moral* self-ownership as opposed to legal self-ownership. We are concerned, that is, with a particular set of moral rights independently of whether these are recognized by any legal system. The slaves of the antebellum U.S.A. were legal slaves, but morally speaking, on the libertarian view, they fully owned themselves. Indeed, it is because they morally fully owned themselves that legal involuntary slavery was such a great injustice.

What, then, is it to own fully a thing? Ownership of a thing is a set of rights over that thing, and the core right is the right to control *use* of that thing. For these purposes, use of a thing is understood broadly to include all the ways that agents can physically impact upon it. Possession, occupation, intrusion, disposition, alteration, and destruction are forms of use in this stipulative sense.²

Full ownership of an entity consists of a full set of (roughly) the following ownership rights:

- (1) *control rights* over the use of the entity (a liberty-right to use, a power to authorize use by others, and a claim-right that others not use without one's authorization),
- (2) *rights to transfer* these rights to others (by sale, rental, gift, or loan),
- (3) *rights to compensation* when someone uses the entity without one's permission,
- (4) *enforcement rights* (e.g., rights of prior restraint and punishment),
- (5) certain *immunities to the non-consensual loss* of these or other rights.

Full ownership is a logically strongest set of ownership rights that one can have over a thing that is compatible with others having the same kind of ownership rights over everything else in the

world. There is, however, a tension between one person's compensation and enforcement rights and the immunities to loss right of other agents. The stronger the former are for one person, the weaker the latter are for others. As a result, the notion of full ownership is indeterminate with respect to compensation rights, enforcement rights, and immunity to loss. Full self-ownership, however, is perfectly determinate with respect to rights to control use and rights to transfer.³

So far, we have considered the *concept* of full self-ownership. Let us now consider the plausibility of the *thesis* that agents initially fully own themselves.

Most people accept some form of *partial* self-ownership. It can be partial in the sense that only some of the above types of rights are present (e.g., no right to transfer your rights to others). It can also be partial in the sense that the *moral force* of the rights, for a given element, is less than full. The right might be a merely pro tanto (all else being equal), as opposed to a conclusive, right; or it might be conditional in various ways (e.g., on there being no social catastrophe at issue). Libertarians, however, claim that agent fully own themselves in that they have all ownerships rights over themselves, and these are unconditional and conclusive rights.

We shall consider the security rights, the liberty rights, the power to authorize use by others, and the transfer rights that are part of full self-ownership.

1.1 Security Rights

Consider first the *security rights* that are part of the control rights of self-ownership. These are claim-rights against interference with one's person. One's consent is necessary for permissible use of one's person (e.g., touching). The security rights of self-ownership seem to be plausible constraint on how agents may be treated by others. Agents are not merely objects in the world. They have moral standing and are capable of autonomous choices. As a result, they have a kind

of moral protection against interference that limits how they may be used. For example, it is unjust to kill or torture innocent people against their will—no matter how much it promotes other important moral goals (equality, total utility, or whatever). The security rights of full self-ownership reflect this special status that agents have.

Even if one agrees that individuals have the security rights of self-ownership, one might still insist that the rights have only a *pro tanto* (all else being equal) force and/or are only conditional (e.g., when no social catastrophe is involved). Libertarianism (of the pure sort here considered), however, holds that rights are conclusive and unconditional. So understood, the thesis of full self-ownership is subject to the powerful objection that it entails that it is impermissible to slightly injure a person in order to save millions of lives. This is indeed an implication of the view and it is admittedly very difficult to swallow.

1.2 Liberty Rights and Powers to Authorize Use by Others

In addition to *security rights*, the control rights of full self-ownership include *liberty rights* and the associated *powers to authorize use by others*. Let us now consider those.

If you fully own yourself, then you have a full liberty right to use your person. This does not mean that justice permits you to do anything that you want with your person. Clearly, using your fist to punch me in the nose is not permitted. Having a full liberty right to use your person only means that no one else has any claim-right on your use of your person *as such*. Any action you perform may be wrong because it impermissibly uses other objects (such as my nose!). You have nonetheless a full liberty respect to the use of your fist in the sense that no one's permission is needed in order for your use of your fist *as such* to be permissible.

The liberty rights of initial full self-ownership reflect the view that others initially have

no claim against us concerning the use of our person. Initially, we do not require their permission, nor are their interests relevant, in order for us to justly use our person as such—although, of course, we need their permission to use resources that they own.

Having full liberty rights to use one's person has the counterintuitive implication that we have no (initial) duty to provide personal assistance to others. Unlike the security rights issue above, the issue here concerns the *duties of the agent* to provide personal services, whereas the security rights issue concerned *the permissibility of others* using the agent's person. The most problematic case is where we could avert a *social catastrophe* (e.g., the death of millions of people) at only a small personal cost (e.g., the effort of pushing a button so that a terrorist bomb does not go off). This is indeed a powerful objection.

Let us now consider full power to authorize use by others that is included in full control self-ownership. This is like the full liberty to use except that it concerns use by others with the owner's authorization (as opposed to use by the owner). The consent of the owner is not only necessary for the just use of her person (as entailed by the full security right above), it also sufficient. No one else's consent (individual or group) is necessary for the just use of her person (as such). For example, although it violates the security right in full control self-ownership, if someone else cuts one hair without one's consent, it does not do so, if it is done with one's consent.

It must be admitted that the security rights, the liberty rights, and powers to authorize use of full control self-ownership have some significant counterintuitive implications. On the other hand, all theories have some such implications, and the normative separateness of persons reflected in full security rights (and associated authorizing power) and full liberty rights has great theoretical appeal.

Even if agents have full *control* self-ownership, it does not follow that agents fully own themselves. The determinate core of full self-ownership includes one additional right that must be defended: the full power to transfer those rights to others.

1.3 Full transfer rights

The claim that agents have the full power to transfer their rights of self-ownership to others generates two main possible objections. One is that this entails that there are no morally valid restrictions of *gifts* of one's person (e.g., a kidney) even when this upsets equality of opportunity (or related concerns). The other is that voluntary enslavement is mistakenly deemed morally valid. The latter is more powerful, and I shall address only it.

The transfer rights included in full self-ownership include the moral powers to sell, rent, loan, or give away one's control rights over oneself. This includes, as an extreme case, the right to sell, rent, loan or donate oneself into slavery. *Involuntary* enslavement, of course, is a gross violation of full self-ownership, but *voluntary* enslavement is something that full self-ownership allows. Intuitively, of course, this seems problematic.

If one thinks that a main concern of justice is to protect the *having* of effective autonomy, or to *promote* the having, or exercising, of effective autonomy, then voluntary enslavement will indeed be problematic. On the other hand, if one thinks that a main concern of justice is to protect the *exercise* of autonomy, it is not. A well-informed decision to sell oneself into slavery (e.g., for a large sum of money to help one's needy family) is an exercise of autonomy. Indeed, under desperate conditions it may even represent an extremely important way of exercising one's autonomy.⁴ Just as suicide can sometimes be an important way of exercising one's autonomy, so too can transferring away some of one's rights of self-ownership.

In sum, the thesis that agents initially fully own themselves seems sufficiently plausible to be taken seriously. We shall now consider the second main claim of libertarianism: that agents have moral powers to use and appropriate natural resources.

2. Rights to Use and Appropriate Natural Resources

Full self-ownership gives agents certain rights over themselves. This leaves open, however, what rights agents have to use or appropriate natural resources and other unowned resources. *Natural resources* are those things that have no moral standing (e.g., are not sentient) and have not been transformed by any (non-divine) agent. Thus, land, seas, air, minerals, etc. in their original (humanly unimproved) states are natural resources, whereas such things as chairs, buildings, and land cleared for farming are *artifacts* (composed partly of natural resources).

One possible view holds that initially no one has any liberty right to use, or any moral power to appropriate, natural resources. A radical version of *joint-ownership left-libertarianism*, for example, holds that individuals may use natural resources only with the collective (e.g., majority or unanimous) consent of the members of society. Given that all action requires the use of some natural resources (land, air, etc.), this leaves agents no freedom of action (except with the permission of others), and this seems implausible. A less radical version allows that agents are at liberty to *use* natural resources, but it holds that they have no moral power to *appropriate* natural resources without the collective consent of the members of society (e.g., Grunebaum 1987). Although this leaves agents a significant range of freedom of action, it leaves them only limited security in their possessions of external things (except with the consent of others). Agents are permitted to cultivate and gather apples, but others are permitted to take them when this violates no rights of self-ownership (e.g., when they can simply take them from the collected

pile).

Given the central importance of security with respect to some external resources, it is implausible that agents have no power to appropriate without the consent of others. A plausible account of liberty rights and powers of appropriation over natural resources must, it seems, be *unilateralist* in the sense that, under a broad range of circumstances, (1) agents are initially permitted to *use* natural resources without anyone's consent, and (2) agents initially have the power to *appropriate* (acquire rights over) natural resources without anyone's consent.

According to a unilateralist conception of the power to appropriate, agents who first claim rights over a natural resource, and who satisfy certain fair-share conditions. We shall consider several versions.

Radical right libertarianism (e.g., advocated by Rothbard 1978 and Narveson 1988) holds that that there are no fair-share constraints on use or appropriation. This view, it may be argued, implausible. No human agent created natural resources, and there is no reason that the lucky person who first claims rights over a natural resource should reap all the benefits that the resource provides. Nor is there any reason to think the individuals are morally permitted to ruin or monopolize natural resources as they please. Some sort of fair-share condition, it seems, restricts use and appropriation.

The standard fair-share condition on appropriation is the *Lockean proviso*, which requires that "enough and as good be left for others".⁵ Indeed, as long as this clause is allowed to be interpreted loosely (as we shall), the Lockean proviso simply is the requirement that some kind of fair-share condition be satisfied. Throughout, we'll interpret the Lockean proviso (following Nozick) to allow that individuals may appropriate more than their fair-share of natural resources as long as they compensate others for their loss from the excess appropriation. The Lockean

proviso, that is, is a requirement that a fair-share of the *value* of natural resources be left for others.

Lockean libertarianism allows unilateral use and appropriation, but it requires that some version of the Lockean proviso be satisfied. One version is *Nozickean right-libertarianism* (Nozick 1974), which interprets the Lockean proviso as requiring that no individual be made worse off by the use or appropriation compared with non-use or non-appropriation. Use or appropriation of natural resources, however, typically brings significant benefits even after providing such compensation. It may be argued that there is little reason for those who first use or claim rights over a natural resource to reap all the excess benefits that the resource provides.

Left-libertarianism is version of Lockean libertarianism that holds that natural resources initially belong to everyone in some egalitarian manner.⁶ There are least two main versions.

Equal share left-libertarianism—such as that of Henry George (1879) and Hillel Steiner (1994)—interprets the Lockean proviso as requiring that one leave an equally valuable per capita share of the value of natural resources for others, where value is understood as *competitive value* (based on demand and supply; e.g., market clearing price or auction price). Equal share libertarianism, it may be argued, is not sufficiently egalitarian. Although it requires that the competitive value of natural resources be distributed equally, it does nothing to offset disadvantages in unchosen internal endowments (e.g., the effects of genes or childhood environment). Equal share libertarianism is thus compatible with radically unequal life prospects.

Consider, then, *equal opportunity left-libertarianism*, such as that of Otsuka (2003). It interprets the Lockean proviso as requiring that one leave enough for others to have an *opportunity for wellbeing* that is at least as good as the opportunity for wellbeing that one obtained in using or appropriating natural resources. Unlike the equal share view, those whose

initial internal endowments provide less favorable effective opportunities for wellbeing are entitled to larger shares of natural resources. This version of libertarianism is a kind of liberal egalitarianism.

3. Conclusion

Full self-ownership captures important aspects of liberty and security in the theory of justice. To make this liberty and security effective (and not merely formal), a plausible version of libertarianism must be unilateralist and permit the use and appropriation of natural resources without the consent of others. If, in addition, the proviso on use and appropriation is sensitive to some kind of substantive equality, the result is a form of left-libertarianism.

There are many important aspects of libertarianism that I have not addressed: (1) Is the value of natural resources in a given country to be divided among those in that country or among all those in the world? (2) What is the status of children and animals in libertarian theory?⁷ (3) What is the status of future people?⁸ (4) What is the status of the state in libertarian theory?⁹ (5) What compensation rights and enforcement rights do individuals have? These are all worth careful exploration.

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¹ For a superb analysis of the concept of self-ownership, see Cohen (1995), especially ch. 9.

² Rights can be construed as protecting choices or as protecting interests. For simplicity, I here assume that they protect only choices. My own view is that rights protect both choices and interests with the former being lexically prior.

³ For a defense of the view that full ownership is partially indeterminate but has a determinate core, see Vallentyne, Steiner, and Otsuka (2005).

⁴ For further defense for the right of voluntary enslavement see, Nozick (1974, p. 331), Steiner (1994, pp. 232-34), and Vallentyne (2000).

⁵ Locke (1689) was not a Lockean libertarian in a strict sense. He disallowed appropriation that would lead to spoilage, he rejected the right of voluntary self-enslavement, and he held that one had a duty to provide the means of subsistence to those unable to provide for themselves.

⁶ Left-libertarian theories have been propounded for over three centuries. For selections of the writings of historical and contemporary writings, see Vallentyne and Steiner (2001a, 2001b).

⁷ See, for example, Vallentyne (2002, 2003).

⁸ See, for example, Steiner and Vallentyne (2007).

⁹ See, for example, Vallentyne (2007).