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The spell of the self-ownership thesis: an attempt to break it

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Abstract

The thesis of self-ownership (SO) asserts that each individual qua exclusive proprietor of his own self possesses “original moral rights over his own body, faculties, talents and the fruits of his labour” (Nozick 1974, Cohen 1995). Nozick in his famous *Anarchy, State and Utopia* argues that the rights of self-ownership entitle each individual to make use of his own body as he sees fit and to impose upon others the obligation to respect these rights. The same prerogatives extend to the extra-personal objects one legitimately possesses. Libertarianism, in its traditional vest is essentially a moral and political theory that stresses the inviolability of individuals’ natural rights of ownership. The term “natural” is owed to the fact that these rights belong to the individuals independently of a civil framework of legal rules and their binding force “obtains and can be recognized as valid by moral and rational people quite apart from any provisions of positive law” (Waldron 1988: 64). More precisely, libertarians of the right and the left hold property rights to be the non-acquired rights individuals have over their bodies. Such rights determine what individuals may do to others. The chief purpose of this thesis is to interrogate the possibility of building up a theory of justice and a theory of private property on the grounds of the principle of SO. First I am going to cast doubt on the foundation of SO rights and then I am going to present the difficulties in making property rights over extra-personal resources a corollary of property rights over one’s body. By these means I hope to offer valid reasons against the use of SO as a starting point in a theory of justice.

List of abbreviations

- SO Self-ownership thesis: the normative claims individuals have property rights over their bodies that set constraints on the conduct of others.
- ASU *Anarchy, State and Utopia*, Nozick's book from 1974.
- G Kant I., Allen W. Wood, and Jerome B. Schneewind. *Groundwork for the Metaphysics of Morals*. Yale University Press, 2002.
- TTO *Two treatises of government*, (1689), Locke, John, and Peter Laslett, student edition, Cambridge University Press, 1988.
- ATJ *A Theory of Justice* (1971), Rawls J., Oxford University Press, London, Revised Edition 1999.

INTRODUCTION

0.1 The Self-Ownership thesis: what it is and some historical background

This thesis aims to offer a critical analysis of the self-ownership thesis (SO) which lies at the heart of many contemporary libertarian theories of justice. SO assigns to each individual property rights over his own body and over the extra-personal things he comes to possess. What characterises SO is that these rights are not the outcome of social practice or contracts but they exist beforehand and independently of a system of positive laws.

The reason for such an interest in this topic is due to the scope of the implications SO bear on matters of moral and political philosophy and philosophy of law. On Cohen's account, SO asserts that at a fundamental moral level individuals are free, in the sense of not being the slave of anyone else and being independent from some other's will, in virtue of the fact that they are the exclusive proprietors of their own selves and have thereby the inviolable right to dispose of their bodies as they please. Among the privileges above mentioned, SO vests each individual with an equally exclusive control over his own labour and the fruits of his labour, thus implying that one can gain a sovereign control over unowned pieces of land and the benefits deriving from the use of his property. Owing to that, the appeal to SO generally offers a moral ground for advocating severe restrictions on the societal institutions' role in adjusting social inequalities. The state should only be concerned with keeping the boundaries between individual self-owners intact.

The original formulation of SO can be traced back at least to John Locke. His influential *Two Treatise of Government* still stands out as a forceful formulation and defence of the natural rights of the individuals. This work came out in a time in Western Europe when a new concept was entering the common language of philosophers, that of the individual. The progressive emergence of this idea marks a turning point in the history of philosophy. For many the beginning of modern philosophy coincides with the discovery (or invention) of an entity never conceived before, namely the "individual" as an sovereign bearer of natural rights that descend onto him in virtue of his condition of human being and protect him against any offence from the government. A famous line contained in the *Treatises* gave to this idea its highest expression "Though the Earth, and all inferior creatures be common to all Men, yet every Man has a property in his own Person (*TTG*, II, V, 27). Following directly from the establishment of natural rights is the fact that governments and legislatures were to regard themselves as constrained in their actions by the limits set forth by these rights. In this regard

Dworkin's definition of rights as "trumps" held by individuals against the interference of political authorities perfectly suits the rights Locke is talking about.

Locke's political views had a huge role in preparing the advent of modern political liberalism, whereby the state is in function of the interests and liberties of the individual. Nevertheless the notion of individual rights, though an essential premise for Locke to round up his political theory, did not have an equal fortune. Quite to the contrary for almost two centuries, after the French Revolution, the idea of some rights belonging to the individual independently of a legal system of positive rules fell out of favour, especially among political philosophers and legal theorists, and disappeared from the philosophical treatises. This was due in large part to the influence of Jeremy Bentham's utilitarianism. Particularly devastating was his account of natural rights as "nonsense built on stilts" (*Anarchical Fallacies*, 1843). Under the spell of a sort of legal positivism Bentham first, and later some of his numerous acolytes, contended that positing individual rights anterior to a positive legislation signifies opening the door to mysterious metaphysical entities.

In addition to the positivist scepticism about natural rights, the notion of natural rights was even more difficult to digest for many readers as a consequence of its close tie with the theological dimension encompassing Locke's philosophy. For the British philosopher, the natural law reflects the way things should be according to God. God ultimately sets the standard of right and wrong so that recognising the rights of the individuals is the manifestation, "a Declaration" (*TTO*: II, XI, 135) of the will of God. This results in a sort of moral realism, which confers rights and duties an objective existence, as if they were factual components of the world. Last but not the least a natural rights based theory seems to demand the complicated task, which reeks of the naturalistic fallacy, to read moral facts off natural things. The assertion that some rights come to the individuals in virtue of some properties convey the controversial idea that there is a common, fixed nature characterising univocally every single individual and that this is a sufficient reason for drawing from this universal moral claims.

The most prominent contemporary philosopher to put the rights of individuals back at the forefront of a moral and political theory was Robert Nozick. His seminal writing, *Anarchy, State and Utopia* (1975) opens with the unequivocal statement "Individuals have rights and there are things no person or group may do to them (without violating their rights)" (*ASU*, Preface). Aiming to breathe new life into the natural rights-tradition, Nozick assert that individuals hold some specific rights owing to their nature as human beings, not qua members

of a social compact or citizens of a state. By these means the SO thesis as well as the labour theory of private appropriation was brought back to the attention of the contemporary philosophers, thus inspiring new interesting and long discussed ideas. I should make it clear that contrary to common presentations of Nozick's doctrine, there is no explicit mention of self-ownership within his book. It is in large part due to Cohen's analysis that it is now common among philosophers to credit Nozick for the contemporary articulation of the self-ownership thesis. After Nozick, many other thinkers elaborated further on the idea of SO and they are now all grouped under the category of libertarianism. They all subscribe to the view that individuals should be left free to exercise their rights freely and deny the political institution an active role in altering the social outcomes for the social good. Individual rights over their body and possession constitute a bulwark that cannot be subject to any balancing act. Individual possessions and income also benefit from this protection against balancing act.

0.2 The structure of the thesis

My work gravitates around the self-ownership thesis and those versions of libertarianism¹ that take individual rights of ownership as fundamental and attempt to elaborate a theory of justice out of moral principles; in this sense they believe that moral reasoning can guide us through the discovery of morally right and wrong ways to treat other individuals. For this appeal to SO, these versions are also the most challenging and interesting ones from the perspective of moral theory. While ascribing to individual some original, non-acquired rights, these theories try to offer people and their deliberate actions an inherent moral status. On the contrary, the branch of libertarianism that tries to cut off any tie to the moral values of the Western philosophical tradition, denies individuals such a moral status.

The first chapter will offer an account of the concept of right. I will introduce the reader to the notion of a right-based morality as opposed to a goal and duty based one. I owe much of the terminology employed throughout the thesis to the legal theorists that starting from Wesley Newcomb Hohfeld² have developed a conceptual framework to spell out the normative content of a right and its correlation with duties. I will then expose and focus the attention on some shortcomings of libertarian entitlement or historical theory of justice paying

¹ There is a minority of thinkers who defend libertarian theories of justice on the account that they best promote individuals' sheer self-interest (Gauthier, 1988), or they maximise liberty in society (Buchanan, 1975). For these thinkers morality does not exist separately of mere self-interest. Justice has nothing to do with moral principles or moral obligations. These views are not immune from criticisms but for the most part this thesis does not confront them. I invite to look at Will Kymlicka's chapter on libertarianism for a full detailed account of libertarianism (K. 2002: chap.4).

² W. N. Hohfeld developed his ideas in his *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 1919. I will however mainly refer to Sumner's explanation of Hohfeld's ideas (S., 1988: chap.2)

particular attention to the project of making political theory dependent on the dictates of an individualist and right-based moral theory. Nozick's chief purpose (*ASU*, chapter 1) is to determine the limits of the power of the state on the basis that there are some rights that inherently belong to the individuals and impose constraints upon what may be done to them. I will also try to prove that the value of the separateness of persons, as interpreted by some libertarians, and Kantian second categorical imperative (Humanity principle) do not offer support to libertarian morality.

The second chapter deals with foundational issues, thus sometimes entering in question of meta-ethics and philosophy of language. The question I wish to answer is whether the concept of self-ownership is meaningful, and whether the self-ownership rights libertarians ascribe to individuals can have a proper foundation or a justifying theory supporting them. Nozick in an frequently overlooked passage manifested the incompleteness of his view: "I am as well aware as anyone of how sketchy my discussion of the entitlement conception of justice in holdings has been" (*ASU*, 125). As I will hope to show by presenting different possible attempts to justify SO rights, the foundational question is still a pending one. Why should we accept these rights? Why should we consider ourselves as self-owners who do not owe anything to others? Why should others consider the bounds set by my self-ownership rights as unassailable? Many libertarians (Nozick) treat these rights as natural ones, in the sense that they somehow are actual entities already fixed in the world. Otsuka treats them as intuitive, some others look at them as deriving from Kantian duties, Steiner accepts them since they are compossible. Mack ties these rights to the well-being of the individual. All these accounts have their shortcomings. The point of this survey is to stress that SO lacks conclusive support, thus undermining the libertarian project to derive a comprehensive theory of political morality from self-ownership rights. The need to tackle this issue stems also from the challenges that SO present to the egalitarian theories of justice.

The last chapter is mainly concerned with the theory of private appropriation that is built upon the rights of SO. In the traditional Lockean account, it is the performance of labour over bits of the external world that generates property rights, as if the land becomes an extension of the worker's body. As I am going to show, Lockean acquisition theories are substantially flawed, but so are also many other attempts to create a theory of appropriation compatible with a side-constraints morality. The chapter purports to argue that a theory of acquisition can hardly be a corollary of SO. And it accounts for the difficulties of combining SO with some egalitarian concerns for fairer allocation of resources, thus shedding doubts on the coherence of some forms of left-libertarianism. The general conclusion to draw is that the

SO principle has no relevance in questions of political theory, the rights of one individual over his own body cannot serve as a vehicle for private property acquisition.

0.3 Aim

Most people find many libertarian arguments scarcely appealing in light of the harsh consequences they lead to; its deontological nature offers a solid ground to deny many forms of redistributions and an active role for political institutions in pursuing the good of the collectivity, yet not so many dare to dig deeper to the root of the problem and question the very logic of individual property rights themselves. But if one wants to reject libertarianism and its strong anti-egalitarian consequences, he cannot abstain from challenging the appealing concept of a non-acquired right to dispose and control our body as we wish to. This thesis dares to go into that.

Referring to rights in political debates is common practice as a right is a powerful political leverage to prompt political changes, but many often show little awareness of the problems involved in this talk. This thesis intends to question a specific use of rights, that one that stresses the individual's original ownership of his own body and the related claim of a natural right to private property in external things. What if we reach the conclusion that talking of individual rights of property as fundamental is a pure exercise of fantasy, that Nozick's assertion that individuals "have rights" is nonsensical philosophy and that there is no justifiable right to private property in the sense specified by SO? What if, even more terrifyingly we come to the conclusion that we cannot make the moral statement that we own our own bodies and our material possessions? All these questions need answer and this thesis hopes to offer some significant insights. More specifically, the thesis purports to reduce the appeal of the SO thesis by highlighting some of its undesirable consequences (I chapter), casting doubts on its foundation (or justification, II chapter) and reducing its scope (III chapter). In fact, if I manage to convince the reader that the idea that we own our body and hence we have exclusive property rights over it is not sufficiently warranted, but it is not more than an irremediably ambiguous intuition, and that our self-ownership rights in any case cannot justify property rights over the external world, then we would be find ourselves less convinced about this thesis and a large part of the libertarian project. We would find out that the moral individualistic framework which underpins the SO thesis is less easy to defend than it might look like. And this goes in line with Cohen's effort to undermine the appeal of SO and make life easier for egalitarians. We would in fact start viewing with more suspicion the view of the individual as the only proprietor of his own person and capacities and that for this

reason he owes nothing to others. This does not mean that I envisage a moral theory that forces people to be generous and devote their life to the service of the needy, but at least I hope I will show that those arguments that ban many forms of assistance on the basis SO are not irrefutable.

1. SO AND ITS INCONVENIENCES

“Act only according to that maxim by which you can at the same time will that it should become a universal law” — Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1785)

1.1. The concept of a right-based morality

Libertarianism is not, as its unfortunate name misleadingly suggests, necessarily a theory of freedom. This is the first mistake one has to avoid when dealing with many libertarian theories of justice, Nozick’s one to begin with. Technically libertarianism, in most of its versions, is a theory of justice anchored on a specific theory of rights³. Or in other words, libertarianism wants to deliver a theory of freedom starting off from the assertion of the self-ownership thesis. This is the point of departure for generating the rights that ought to secure our control of our bodies and powers and consequently our freedom too. That being so liberty is derivative with respect to rights, or we can also say that liberty is introduced as a by-product of rights of self-ownership. Libertarians insist on the importance of rights as a moral protection of the individual choices and condemns any violation of rights as inconsistent with the inviolability of individuals. This chapter purports to raise some questions against the libertarian right-based approach to political philosophy (alternatively referred to as social ethics) and it wants to show some shortcomings arising as a consequence of putting individual rights of SO as fundamental.

Before dwelling upon libertarianism, we need first to explain what it means for a moral theory and a theory of justice to take rights as fundamental. In the attempt to classify moral theories Ronald Dworkin (*Taking Rights Seriously*, see chapter 7) and John Mackie (1978) proposed a tripartite distinction. Since goals, duties, and rights are the currency of any moral theory, then a moral theory should be classified accordingly to the place it assigns to these basic components. In particular, on Mackie’s account the best way to achieve this task is to look at the relation and the function of the terms in a theory and on the basis of that decide if it has a goal or individual rights or duties at its core. In this regard a theory can be said goal-based, rights-based, or duty-based in one of these three ways if:

³ From now on any use of the term “libertarianism” refers to this specific branch of it.

- i. “X” (goal, rights, duties) appears in a theory as the only un-defined term, and defines other moral terms in relation to “X.”
- ii. A theory is X-based if it forms a system in which some statements about X are taken as basic and the other statements in the theory are derived from them.
- iii. An X-based theory can refer to the fact that the basic statements about X capture what gives the “point to the whole moral theory” (Mackie, 1978), where “point” stands as purpose or ultimate meaning.

Bearing this distinction in mind, we should now be concerned with the depiction of the concept of right and its normative elements. Despite the voluminous talk about rights in the public arena, the concept of a right is quite complex and often misused. Wesley Hohfeld’s analysis of the “fundamental legal conceptions has set the standard vocabulary through which most of the contemporary reasoning about rights is carried out by moral philosophers and legal theorists⁴. When we assert that “someone has a right to do something”, usually we imply that he is free to perform his action and it would be wrong, or morally impermissible, from others to interfere with his doing it or alternatively not to supply him with the necessary conditions to carry out this act. This results in the tight correlation between “right and duty” which in Hohfeld’s table appear as correlatives, namely, logical equivalents with different subjects. The right X of individual A is always matched by the duty to respect X that another party owes to A. More precisely, a right is always a ground of duties falling on someone else. Besides, the nature of others’ duty depends on the nature of its generating right.

This would prove to be more understandable once we consider the two following examples. Holding a right to scratch your nose whenever you please entails a sort of freedom, or absence of obligation, in the sense that the execution of this action can follow exclusively from an act of your will. If someone forces you to scratch your nose, then you cannot say you are free to do it. Therefore by an act of will I mean that you are free either to execute the action in question or not. Nevertheless this right is truly valuable only when others are subjected to the duty to respect your right. Analogously when we assert for instance that I have a right to a public education we are usually conveying the message that all the members of society are charged with the duty to supply schools, teachers, transportation means to go to school and so forth and so on to me. In the second case the burden imposed on others is evidently heavier as demanding a more active contribution. In the former example the obligation that falls on others is instead one of non-interference.

⁴ I mostly refer to Sumner’s explanation of Hohfeld’s analysis (Sumner, 1987: chap. 2)

Both the examples highlight the complex nature of a right, thereby referring to a right as a form of liberty is insufficient. When we usually employ the term right, as Hohfeld points out, we are as a matter of fact referring to a claim-right. A right in fact is made up on the one side by a liberty on the part of the right holder, who can perform an action at his complete discretion, in the sense that he is not under an obligation to perform it. But it also consists of an enforceable claim against others. And the latter component gives value to a right. If others, though expected on a moral ground to comply with their duty, do not comply with this expectation, they are acting immorally and are to be blamed or punished for this. L. W. Sumner (1987: 22) emphasises the bearing a right has on others by saying that a claim-right reduces “the range of options deontically possible” for whoever does not hold the same right. My having a right X to something imposes on you or should be a sufficiently justified reason to hold you to be under a duty to respect my space of non-interference or to make my right concrete (by paying for my education for instance). To conclude, my right always comes with the restriction of your freedom which is measured by the range of your options deontically available. In the two example, the options not deontically available to the duty-bearer are the shirk of his own duty.

1.2 Libertarian rights-based morality

Libertarian’s proclaimed intention is to take the respect of individual rights as fundamental. In the theory of justice first outlined by Nozick rights enter into the picture as the moral endowments individuals originally have. “Individuals have rights”, utters Nozick in the introduction of his *ASU*. There are two main features characterising libertarian rights. The first one has to do with their “natural” origin such that these rights are not, nor can they be, the products of community legislation or social practice or a Rawlsian social contract, are exercisable before legal recognition and persist even in the face of contrary legislation or practice (Feinberg, 2003: 39). As a consequence of the fact that the content of this morality is not to be constructed but it is already, so to speak, out there in the world, if the system of law and institutions in a society is not in accordance with the limits set by this morality, the system is immoral. To ascertain that individuals have some natural rights in fact usually functions as the basis of the entitlement to their legal acknowledgement. As Feinberg correctly remarks, the language of rights owes its strength from “its tone of urgency and righteousness” (ibid.). This is the heaviest implication ensuing from the libertarian statement that individuals have some rights, independently of a legal and political system. In this moral

framework, rights define the moral status of a human being, therefore anything that violates individual rights is almost on a par with an offence to his personhood.

Secondly the rights libertarians confer to the individuals in their pre-political condition are essentially property rights, which ideally inform people about what they may do with reference to particular objects. “The central core of the notion of a property rights in X ... is the right to determine what shall be done with X, the right to choose which of the constrained set of options concerning X shall be realized or attempted” (Nozick, *ASU*: 171). If we recollect the examples of the “right to scratch your nose” and the “right to public education”, we should say that for libertarians all the natural rights are of the former nature⁵. They define a range of possible ways one can make use of an owned thing and work as side-constraints on the action of others. Owing to this feature SO rights delineate a space of non-interference and simultaneously impose on others negative obligations (duty to abstain from interference). This last aspect stems from the fact that for Nozick (and way before him Locke) a right essentially amounts to a form of control one can arbitrarily exercise over something. And since libertarianism echoing Locke’s *Two Treatises* asserts that individuals are originally the exclusive proprietors of their own selves and can thereby dispose of their body, talents, abilities as they prefer, this brings to define individual rights as property rights. It results from this that a self-owner has also a right to enslave himself. To sum up, in conjunction to what said above about the origin of rights, we must conclude that libertarianism is concerned with natural, or original or non-acquired rights of private property (the nature of these rights will be dealt with in chapter 2). Individuals possess rights that outline a boundary no one else ought to trespass. In this sense we can affirm that these rights specify a type of conduct that may not be done to them by others if violating their space of non-interference, hence Nozick’s notion of rights as side constraints on the conduct of others comes in.

Two conclusions follow from the above paragraphs. Libertarianism dealing with SO stands out as a full-fledged right-based theory at least for ii. and iii. In regard to condition ii. It is clear that statements about rights are held to be basic as opposed to statements about duties which are derived from the former. Individuals first have rights, which are then grounds of the negative duties on others. Other than this, rights give the point to libertarianism in the sense of iii. in relation to the fact that the respect of individual rights determines exhaustively the

⁵ Technically, for libertarians rights should always be expressed in negative terms. Hence you have no right to scratch your nose, but rather a right to not be impeded from scratching your nose (a negative right). However I choose to put in the other way to highlight the fact that rights generate duties of non-interference, not the other way around.

content and the purpose of libertarian morality. Justice does not demand more than the respect of individual rights (proceduralism, I will return to this point later on in this chapter).

In addition to this, our talk of the nature of rights, and property rights in particular, should evince the fact that libertarianism is individual-centred. Stressing out the centrality of non-acquired rights of private property signifies giving each individual an absolute control over the things he owns, accompanied by the legitimate claim against others that they abstain from their properties. Rights should dictate an absolute respect, regardless of what an individual decides to do within the space of non-coercion created by his right. The enforcement of rights for libertarians is not tied to the promotion of a social good, and even if by chance the infringement of one's rights may come along with the general happiness of society, this would not be a sufficient reason to override the side constraints set by these rights.

Quite to the contrary, on Dworkin's account a goal-based theory's task is to produce as much good as it can for the members of a society, like happiness in utilitarianism. Goal-based moralities guide individual and political action for the sake of a goal, which is "a state of affairs whose specification does not call for any particular opportunity or resource or liberty for particular individuals" (Dworkin, 1977: 90-91). This is to say that a goal-based view does not decide upon the justness of a social outcome on the basis that a state of affair pays due consideration to the particular claims of individuals to have something granted. To make this distinction even sharper, we better say that libertarianism, as a theory of individual rights, opposes the goal-based theory view that human good is always "individualized and agent-relative" (Den Uyl and Rasmussen, in *Natural Law and Modern Moral Philosophy* 2001: introduction); there is no overarching good, hence individuals should be allowed to put their own interests first, within thick bounds. Something to bear in mind is the fact that individualism does not necessarily correspond to egoism, but expresses the point of view that a definition of a good, or of a goal worth pursuing is always dependent on the subjective standards of an individual. On this account one's desire to kill himself, to donate his organs to other people or to go after material wealth, are not differentiable on a moral point of view. This echoes Gauthier's subjectivity of values, for which "each person's preferences determine her value quite independently of the value of others" (Gauthier, 1988: 27). On the contrary a goal-based theory enforces a general view of the good.

At this point one may wonder what is so surprising about libertarianism, considering that morality's main business is to establish what people can do without harming other. It is a

firmly rooted tradition in western philosophy, at least since Hobbes, to invest morality with the chief task of setting up sensible constraints on the individual pursuit of self-interest in a way that one's self-regarding behaviour is compatible with that of others. In this respect libertarianism would not differ much from Rawls's contractarianism, which also seeks to shape a political system where the value of each individual life is weighed the same. However, unlike contractarianism, Nozick's libertarianism seems to commit itself to the strong position whereby rights are moral entities somehow present in the world that have to be discovered, not created or constructed or justified (we will see in the second chapter how and whether these rights can be justified). Nozick does not hold that the mark of principles being reflective of our moral worth is that they would be agreed to by everyone under suitable agreement circumstances. Rather, he supposes that we can identify types of treatment of persons as not sufficiently respecting and taking account of the rationality of individuals pursuing of their own good without having to appeal to any actual or hypothetical agreement. To the contrary, for Rawls the standards of right and wrong, what individuals may do to others and owe to each other in society, can be ascertained only from within a constructive procedure (Rawls, 1980), hence the idea of the original position and the veil of ignorance. Following from this, a conception of justice becomes more of an epistemological enterprise, ultimately coming down to the perspective one assumes when justifying the principle of morals. The point of view from which to decide upon the principles of justice regulating society's institutions has to be constructed in such a manner that everyone is put in the same condition to assess these principles and eventually accept them or not. The veil of ignorance serves the purpose of stripping social members of all their partial interests. Under the veil of ignorance, the social members have to agree on and thereby justify the principles regulating the political and economic institutions of their society. The elected principles, supposedly, obtain their binding force from the decision process itself or, as we may also put it, the parties of the social contract agree to accept some constraints on their social conduct. A theory of justice does not exist before being constructed and unanimously accepted. All this is not to say that Rawls removes natural rights and natural duties out of his theory of justice, in fact his contractarian solution also aims at defending the liberties of individuals from any unjustifiable interference⁶. But he surely endorses the view that our natural or human rights and duties cannot provide an adequate basis for ascertaining the rights and duties of justice that we owe one another as members of the same political society. What counts first is the awareness of

⁶ The first principle of justice states that "each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all".

being part of a sole society where burdens and benefits of cooperation must be fairly distributed.

On the other hand for the Libertarians that make SO the cornerstone of their theories of justice, rights of SO are inextricably attached to a person, *ipso facto*, they exist independently of a collectivity that recognises them or a procedure of collective choice, to wit the contract, that puts them into effect. Once we get rid of the contract as a justifying process then the principle of morals have struggles to acquire a binding force. In other words, why should I accept the deontic constraints set by rights on my pursuit of a good life if I have never consented to them? From the libertarians' point of view instead, one must cope with the fact that rights are something which each individual always carries with him, so that making room for them into a conception of social justice forces us to evaluate the social interactions against the standards set by these rights.

1.3 The State of Nature Hypothesis

The chief purpose of *Anarchy, State and Utopia*, stated in chapter 1 is to determine the limits of the power of the state on a moral basis thus adhering to Locke's standpoint on the relation between politics and morals, "true politics I look on as a part of moral philosophy" (letter to Lady Peterborough). Nozick goes along with it and states that "moral philosophy sets the background for, and boundaries of, political philosophy" (ASU, 1974: 6). Although there is something very much appealing to the idea that any person, independently of citizenship, race, class and community has some rights that everyone, society included, should respect, yet this of libertarianism is a difficult aspect to digest. Elaborating further on Nagel's criticisms of libertarianism, I doubt that even if we blindly assume that individuals have rights this would not be a sufficient reason to promote their absolute respect in society. This is not, from my point of view, a warranted inference. Nozick ponders what individuals may do to each other in their original or pre-political condition. It is the state of nature hypothesis, which Nozick (many other libertarians) borrows from Locke, namely the fictional condition with no established political authority that human beings inhabit before creating the civil society. And he concludes that even in the absence of a positive system of institutions the principles of morals are already established. So far so good.

Nozick then jumps to the conclusion that society should be bound to the same principles regulating the state of nature. It is not odd to assume that we do not need to rely on

a hypothetical agreement or a legislative system to recognise even in the state of nature an individual right to bodily integrity. No one arguably wants to suffer harm because of others' action. No matter how uncontroversial this statement is, if we try to make of this right a regulative principle in a complex society we unleash a sort of "moral fanaticism" (Otsuka, 2013: 13). We would be forced to deem unjust those actions that, in spite of opposite intentions, produce harm to some others' body, like in the example above. And what is worse, even if by hypothesis, the unforeseen harm caused to someone is meagre compared to the large benefits the action brings about, that action would be uncompromisingly impermissible on the grounds of a rights-based morality. A right-breaking action is never an option deontically possible. This is to remark that building upon some specific rights (SO in the case at hand) the regulative principles of an entire society may bring about paradoxical results. The rule of a complex society often requires to counterweight different values and aims, but this is ruled out by Nozick's intention to draw only from a single source, namely SO rights. I am not arguing here that there should not be any room for individual rights in society and that everything should be judged from the perspective of the general benefits to society as a whole. This would in fact reintroduce from the back door a similar form of value monism, equally problematic. What I am merely suggesting is that bringing in a social ethics natural rights and demanding their absolute, unconditional respect is odd to accept and that a political theory should make room for some consequentialist considerations.

The absence of any consequentialist consideration ultimately depends on the fact that Nozick embarks on the project to establish a morality for complex society starting from the hypothesis of the State of Nature. But there is a void to fill in. In fact, we may say without fear of contradiction that there is no logical continuity between the state of nature and the civil society, therefore, even if conceiving of a state of nature is a legitimate practice in philosophical thinking, nothing compels us to submit them to the same moral rules. Nozick sets forth a defence of the use of this theoretical device as it allows to "fully explain the political in terms of the non (pre-) political" (ibid.). But this does not change the fact that once we have left behind us the state of nature, we have moved toward a different condition that also requires different, more fine-grained moral rules.

And if that is so, we can also cut this link with the State of Nature and directly question what social morality works best in a complex society, where governments exist and articulated institutions are in place. In such a move the enquiry into the state of Nature would be pointless and it would be easier to give way to a more pluralist theory of justice capable of balancing out different values, individual rights as well as social goals, and avoiding as much

as possible paradoxical cases. If this section has proved anything is that the use of the State of Nature Hypothesis does not necessarily offer the most suitable approach to social justice.

1.4 Side-constraints: the separateness of persons and the Kantian imperative.

One may further object to Nozick that the best way to promote the respect of rights is to minimise its violation. If our main concern is with the rights individuals have, we should adopt a moral theory that regards the maximisation of rights as the goal to achieve. Nozick not mistakenly points out that a such “utilitarianism of rights” may be compatible with the infringement of someone’s right if doing so would secure the desired end to “lessen the violation of rights” on the overall (*ASU*: 29). On the contrary his side-constraints view treats each individual right as a bulwark that trumps any balancing act. For this reason he asks us to surrender to his view against an utilitarianism of rights, yet he offers no compelling reason for this and it is in fact hard to accept the argument that if we care about rights than we should not strive to minimise their global violation. To be fair, Nozick himself and many others (Thompson 1985; Scheffler 1982) have offered strong responses to this problem. My quick treatment does not do justice to the longstanding debate on this issue and merely points out a problem. It is not, though, strictly relevant to the remainder of this chapter. I will then beg the reader to go on with the reading.

Libertarians would probably insist on the fact that the side-constraint view is ultimately the reflection of the absolute value of each human being. The focus on rights of SO serves to affirm uncompromisingly the inviolability and sovereignty of individuals against others. What ensues from this is the libertarian concern with granting individuals an equally extended sphere of almost absolute freedom wherein they can pursue those ends they deem worth pursuing in their life. And whatever they do within this sphere, which does not clash with others’ equally extended freedom, is morally right and acceptable from what concerns social justice. Those free acts compatible with everyone’s right to the inviolability of his negative freedom are acts one has a right to. This simple principle shapes Nozick’s historical theory of justice, which can be also looked at as an instance of procedural justice. It articulates an “only correct or fair procedure such that the outcome is likewise correct or fair, provided that the procedure has been properly followed” (Olsaretti 2004: 105). This procedure consists in the fact that whatever social outcome is arrived at through the voluntary

and free interactions of moral agents exercising their legitimate rights of ownership, is morally just, regardless of any standard of distributive justice we may have. Given the satisfaction of this procedural condition, how people fare under the resulting patterns of welfare distribution is of no moral significance. Libertarians subscribe to the belief that one is in the condition to shape his life according to his chosen plan if he does not meet obstacles along the way. These obstacles are represented by other individuals as well as any political and legal institution, that all stand as potential threat to an individual's property rights-based freedom. But what if your capacity to effectively realise your plan is impaired and you need some form of support? Unanimously libertarians would repeat *ad nauseam* that making room for forms of positive duties for the promotion of every one's equal chance of success would be in conflict with the value of separateness and the Kantian Humanity principle. Let us submit these two claims to a careful analysis.

1.4.1 Self-ownership and the separateness of our existences

As we have said, the demand to respect SO rights is not a demand to promote in society moral virtues, thereby one cannot be forced to be altruistic and care for the welfare of his fellow citizens. Doing so would deny the prerogative of each agent to employ his body, talents and resources as he pleases with no coercion. If he wants to engage in philanthropic activities he can do it out of his own generosity. Nothing new so far. But then libertarians add that the enforcement of these rights takes seriously the separateness of persons. This is a moral significant fact of which even Rawls' contractarianism according to Nozick fails to appreciate, although Rawls' rejection of utilitarianism largely hinges on the same point. Rawls was the first one to charge utilitarianism of falling short of respecting the moral value of individuals. Utilitarianism reduces each person to a mere vehicle or vessel of utility, which then gives the way to a social amalgamation of all the utility values to produce the maximum sum or average. My value as a single person gets blurred in this sum as my smaller utility value can be sacrificed to attain the greatest balance of utility (*ATJ*, ch.1, 5). Individuality is lost and people become replaceable for the sake of the moral end.

This harsh criticism came back to haunt Rawls' himself. Nozick charged him to blur the difference between individuals by way of making talents and skills part of a common pool, thereby justifying form of redistribution from the well off to the worst off. The device of the veil of ignorance serves to deliver principles of justice as fairness inasmuch individuals are kept ignorant about relevant information concerning their persona, skills, talents, personal assets. In this way Rawls wants to ensure that the parties don't exploit this information to

their advantage. Nozick, and all the libertarians, instead seek to prevent this from happening with the appeal to SO; individuals own themselves, including their talents, so it is absurd to detach a person from her attributes. Respecting individual property rights over themselves counteract any attempt to tear apart the boundaries between our separate existences. Nozick charges Rawls and other liberal egalitarians, like Dworkin, to institute “partial ownership by others of people and their actions and labour” (ASU: 172). Not only my body cannot be damaged or mutilated, but whatever I own cannot be taken away from me without constituting an offence to my moral status. An individual, Nozick, argues can undergoes sacrifices for himself, but not for other people.

“Why not hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives” (ASU: 32)

Yet, there seems to be a problem in this argument if we carefully scrutinise it. Nozick seems to convey the message that the permissibility of redistribution is conditional on the belief that individuals form a social entity resembling a single person. But as also Cohen suggests, one can draw on several different reasons to legitimate forms of redistribution, he does not have to commit to a strong collectivism (C., 1995: 33). I can think of the respect of each human life regardless of social membership, a natural duty to justice, empathy, mere utilitarian calculus... That being so, if the separateness of individuals takes on the simple meaning of an anti-collectivist view of human relations, it does not necessarily knock out arguments in favour of assistance between individuals.

Another tension seems to arise in the appeal of separateness and denial of any forms of positive duty on the basis of the side-constraint view of morality. In fact, if separateness conveys also the message that each individual is a source of incommensurable value and this comes down to the fact that he is a rational being able to live on his own conception of the good, then it seems odd to sustain that the same individual should not be supported somehow to achieve his goals, even at the cost of others. Without a due support he would fail to carry out his plan of life and thereby giving a meaning and a purpose to his existence; his interests would be neglected as much as it could happen in a worst-case utilitarian scenario. And it goes without saying that the “burden” to provide the agent with the means to achieve his goals falls on the people around him. Mack, one of the most prominent right-libertarian theorists,

quotes a passage from Isaiah Berlin's famous essays on liberty, to remark what it means to keep the separateness of persons as a guideline for our moral conduct, "in the name of what can I ever be justified in forcing men to do what they have not willed or consented to? Only in the name of some value higher than themselves. *But . . . there is no value higher than the individual*" (Berlin, *Four Essays on Liberty*, 1969, the emphasis is mine). What Mack (1999) purports to argue by quoting Berlin is that nothing can be a sufficient reason to violate a side-constraint as would instead ensue from dictating an individual to help others. Doing this, Mack contends, would amount to failing to acknowledge the value of that individual's life. But if each individual has an intrinsic value, then this seems to be at odd with the claim that no one owes anything to others, even if this can cost him a small effort or a tiny contribution, but might mean a lot for those who would benefit from his contribution. What is the point of defending the priceless value of an individual life, if this life is not enabled to flourish? Nozick himself states in plain terms that individual's possibility to act on their conceptions of how their lives should be lived is what gives meaning to life itself (*ASU*: 50). Of course some limits to what one can and is entitled to receive from others need to be put, so that both the receiver and the giver's desire to meaningful life is respected, but this is a separate matter.

To sum up, the separateness of existences, if taken to reject collectivism, does not necessarily rule out forms of positive duty, which to the contrary SO categorically excludes. If separateness also entails a due respect for an individual's life plane, SO falls short with it. Weighting up these considerations, self-ownership at its best may match with the principle of separateness by offering protection against violation of or aggression to my bodily integrity, to wit, no one can cut off one of my eye to donate it to a blind person. However, no moral theory seems to fall short of these basic requirements, utilitarianism included. A very meagre result.

1.4.2 Self-ownership and Humanity formula

Coming now to the second part of the analysis, we have to assess whether libertarian rights-based morality is compatible with Kant's imperative. Libertarians suggest that enforcing the rights of self-ownership and the Humanity principle have an equivalent scope, in the sense that they serve the same purpose and forbid the same actions. Nozick affirms that his side constraint view gives strength to the "Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are inviolable" (*ASU*: 31, Otsuka, 2005: 14).). A potential conflict arises out of this simple fact: if self-ownership implies a liberty to "dispose of oneself as one

pleases” and even self-enslavement would thereby be a permissible act, then it is inconsistent with the second formulation of the categorical imperative, which imposes an absolute duty on all rational beings to “so act that you use Humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.” Cohen also favours this reading of the Humanity principle, thus asserting that Humanity is an objective end constraining our conduct (Cohen, 1995: ch.10). For Kant, an objective end or end in itself is such that its validity is unconditional and independent of desire and valid for all rational beings. It is an end that every individual qua a rational being has a reason to produce (*Groundwork of the Metaphysics of Morals*, 1785: 4:428) and that limits what one is morally permitted to do when he pursues his ends. And the place of Humanity in Kant’s theory is the one of the end in itself that gives content to the categorical imperatives and provides a sufficient motivation to be effected in our conduct.

For Kant complying with moral imperatives signifies to evaluate and then adjust your conduct with the ways implied by the dictates of a pure and self-determining reason. The maxims of our conduct have to abide by a standard procedure of moral reasoning, which involves a procedure of progressive stages of universalisation. Only if a maxim can be articulated as a universal law governing all rational agents, and a world governed by this law is conceivable and finally you also would, or could, rationally will to act on your maxim in such a world, then your action inspired by this maxim is morally permissible. In addition to this formal standard, for Kant a categorical imperative can be binding on a rational will only if there is an objective end that serves as objective ground for the determination of the will. Lacking an end, any maxim would be wanting of any motivational force, as any action invariably “contains an end” (ibid.: 428). Some of these ends are objective, other are subjective, namely depending on contingent personal desires. Humanity is of the former type and as such can give motivational force to the categorical imperative. Accordingly treating someone else as a mere means, as in the case of slavery (and we can extend this to some forms of wage labour dictated by poverty and starvation, prostitution etc. etc.) is never a permissible act which a rational will would elect as an universal law. And this may count even for the one who enters voluntary slavery and for the one who benefits from the service of a slave. Treating someone merely as a mean for your ends fails to recognise the Humanity of that individual, therefore for a person engaging in such a conduct towards others would cause him to act in contradiction with the dictates of the pure reason. The Humanity imperative generates perfect duties which are such that require that we do or abstain from certain acts with no legitimate exceptions.

For Kant, our Humanity is the collection of features that make us distinctively human, and among these factors the central one is the capacity to engage in self-directed rational behaviour and to adopt and pursue our own ends. To bear in mind, the Humanity principle does not forbid an instrumental use of a person, as this would be absurd considering how many times in our daily life we benefit from the services of individuals. The point for Kant, as Cohen rightly remarks, is that we should never treat individuals as “mere means”, but “always also as end in themselves”, namely as “originators of projects that demand our unconditional respect (Cohen, 1995: 239). The capacity for self-legislation marks out human beings as different from all the other living creatures. A person for Kant acts autonomously when he chooses those principles of action that are the most adequate expression of his nature as a free and worthy being. A slave is by definition a mere instrument in the hands of his owner, who detaches himself from the possibility of being an originator of autonomous projects. Nevertheless, libertarians would deem as permissible a transaction that results in the enslavement of an individual if the would-be slave has previously given an informed and autonomous consent to it. Consent is an important component of the libertarian morality as it is a necessary condition for the realisation of the idea of self-ownership. If we deny one the possibility to enslave himself and thus let himself be treated as a means, a libertarian would contend (see also Steiner, 1994: 232), we are as a matter of fact curtailing his right to dispose of his body as he pleases. And this is in contradiction with the SO rights. One may also suggest that Kant’s stress on self-legislation would allow one to agree on his enslavement. But quite to the contrary such a thing would not gain Kant’s approval, because in entering voluntary slavery one no longer allows the possibility that he is treated as an end. He indeed gives up his Humanity and the possibility in the future to be self-directed and pursue his life goals. From the moment he sells his freedom out his will is directed by an external authority whose benefits he has to serve. The fact that he consents to this does not change the fact that his owner can dispose of him as a mere object. Therefore the Humanity imperative would never permit a situation of slavery, not even in case of voluntary consent.

One can probably try to avoid this tension by weakening the demandingness of the “consent” principle. One could advance the argument that when you enter voluntary agreement you are not, properly speaking, giving consent to it but you are led to that choice by pressing external circumstances. This would make your choice a result of a form of coercion and would not thereby be sanctioned by a libertarian as well as by Kant. At a glance the tension with the Humanity principle seems solved, but as a matter of fact changing the standard of what a consensual action is would not be so different than reducing one’s control

over his own body. It would in fact introduce some form of paternalistic control in one's life, in that some over-demanding standards of consent external to an individual would be imposed to assess the use of his body and faculties. Other people (or the State) as a matter of fact would acquire the right to assess one's conduct in order to prevent some results that they do not deem good for his own interests. In other words it is like letting someone else to establish whether your choices are truly free and not imposed by environmental circumstances that misdirect your judgments, with the consequence that your space of non-interference is drastically diminished.

We then reach the same conclusion as before that in order to meet the condition of Kantian imperative a libertarian has to partially discharge SO. To summarise the whole point, the tension between SO and the Humanity imperative lies in the fact that SO licenses some acts that Kantian imperative categorically forbids. The reason of this tensions ultimately comes down to the fact that respecting rights of self-ownership has no implication whatsoever about my attitude towards other, how morally I ought to regard them, whereas Kant's morality demands a "particular form of regard for or attitude to others" (Cohen, *ibid.*: 240). Owing to this, even if we reinterpret Kant and move away from the idea that voluntary servitude is a violation of the Humanity within a person, the tie between SO and a weakened Humanity formula would still be a matter of dispute.

Conclusion

The chapter has dwelled upon the explanation of libertarian rights-based morality. After having offered an account of the concept of a right-claim and its correlative duty, I have focused the attention on the self-ownership thesis, which confers each individual a set of rights of ownership, the right to control and dispose of his body as he prefers with no interference. I have then proceeded to point out some problems in the libertarian attempt to infer a political theory from a moral theory of natural rights and claimed that his move deprives his moral principles of binding force and can open the doors to a sort of "moral fanaticism". To be fair with many libertarians, it must be said that these points do not necessarily apply to all versions of libertarianism. I often highlighted the shortcomings of libertarianism against the constructivist approach to justice favoured by Rawls. Though these criticisms, in my opinion, show severe limits in Nozick's (Locke) belief in the existence of some sort of natural, objective and pre-given rights, other approaches to SO may defy these problems.

The chapter has then purported to show that the tie between libertarianism, and the principle of the separateness of persons, and the Kantian imperative is not to take for granted. By these means I have attempted to undermine the philosophical attractiveness of the project to take SO as a starting point to generate a theory of justice.

Contra Nozick I argued that redistribution, which SO wants to forbid, is not necessarily ruled out if the separateness of person bans any comparisons of social members to a sole body. Additionally, I have shown that separateness, as is also interpreted by Mack, fails to lend strong support to libertarian rights-based morality in consideration of the fact that taking serious notice of the separateness of persons seems to involve the possibility to generate positive duties to provide others (taken in a broad sense) with the necessary means to develop their life plan, that is what gives ultimately value to their life. Finally I have shown that the self-ownership thesis has to be discharged or severely weakened in order to be compatible with Kantian imperative to treat others not merely as a means, but always as ends in themselves.

2. THE STRIVING AFTER A FOUNDATION OF SO

“I know of no natural rights, except what are created by general utility: and even in that sense it were much better the word were never heard of. All such language is at any rate false: all such language is either pernicious, or at the best an improper fallacious way of indicating what is true... From law of nature come only imaginary rights” — Jeremy Bentham, (Anarchical Fallacies).

2.1 Setting up the problem

We now enter into the delicate question of the foundation of the rights libertarians ascribe to the individuals. If the upshot of the first chapter was that the adoption of the side-constraint view comes along with some inconveniences, a strenuous advocate of libertarianism can always find a way out by admitting these problems but claiming that one must cope with them nonetheless. If individuals have rights, these rights have to be respected and enforced, independently of any other reason we may have to oppose to them. The compulsoriness of rights cannot be discounted, hence if we accept rights, then they must be enacted. It results from this that the central issue regards the justifying reasons one has to posit rights, in the case at hand to posit natural or non-acquired rights of self-ownership. As Peter Vallentyne notices, “libertarianism (both left and right) holds that all agents are, initially at least (prior to engaging in any commitments or unjust actions) full self-owners, and that any violation of self-ownership is unjust” (Vallentyne, 2000: introduction). In addition to that, such original rights are deemed to be waivable (Steiner, 2000: 77) in that any individual can do away with them with no restriction on the ground of justice.

One cannot just merely assert that rights exist and demand their absolute respect. In the first place this is not an acceptable practice in philosophy, no matter how intuitive some moral principles may be, they should always stand on a firmer support. But what is more noteworthy in the problem under examination is that to take rights of ownership as fundamental implies submitting others and political institutions as well under duties of non-interference and this serves also as a ground of ruling out many forms of positive duties between the social members. In the realm of justice we can kill ourselves, donate our organs, enter servitude, while retaining others obligated to respect our acts (Steiner, *ibid.*). These implications are remarkable and relevant, therefore one cannot be sloppy about the

foundational issues, but needs to strive after a justification of these original rights and correlative duties.

2.1.1 The formulation of the question

The questions in need of an answer and that will be the object of this chapter are essentially reducible to the following one, if SO rights are by definition not created by any institution, nor by contractarian procedures, nor are they derived from other maximising goals, what reasons do we have to accept and enforce them? Contractarian theories on the overall agree that all principles of justice must be grounded in some procedure of collective choice, hypothetical or not. Individuals are called upon to establish what they are entitled to and what they owe each other, thus offering a valid solution to the problem of justifying the choice of the principles and of the source of their binding force. In virtue of this constructivist methodology, contractarian theories treat rights not as “natural fact which we are capable of discovering, but as artefacts which we are capable of inventing” (Sumner, 1987: 130). Even if a contrarian may believe in the importance of respecting some basic rights of the individual, it is the contractarian procedure that bring these rights into existence and give them their deontic power.

It is not as simple as that. Dworkin for instance points out that Rawls’ conception of procedural fairness presupposes or guarantees the respect of the basic rights of individuals. And even David Gauthier, who many regard as a spokesman of a contractarian liberalism (look Kymlicka 2002), holds that some moral rights antedate the bargaining. Clearly, even in a contractarian view of justice we often stumble again on the foundational issue at the core of this chapter. There seems to be no escape to the question of the justification of rights, even in many contractarian theories. What are then the rights to be seen as fundamental? and why? For Dworkin this right is the one to equal concern and respect which would work as an independent and more basic moral standard than the collective choice procedure (D., 1977: chapter 7). And in his own view Rawls’ justice as fairness serves to guarantee the respect of this right. For Gauthier the initial rights correspond to the “endowments” individuals bring to bargaining table (Gauthier, 1986: 222). Although he does not conceive of these rights as “inherent to human nature” thus denying them a properly moral status (ibid.), still some initial constraints on what people bring into the initial situation are needed to yield a fair (impartial) social arrangement (ibid.: 191-92). Why should we choose SO as the generating principle of our theory? What privilege do these rights have in comparison to Dworkin’s and Gauthier’s one?

Natural rights theories, among which Nozick's libertarianism, operate with the assumption that rights are somehow objective entities who self-assert their normative power to our human reason and ante-date the social contract. But why should we surrender to this power and pretend the enactment of these rights in our political institutions? What follows now is a first general account of the troubles accepting a morality of natural rights. This part does not concern directly and exclusively libertarianism, but serves to make the reader more aware of the problem at hand.

The chapter will then unroll as follows. I will first introduce Locke's theological view, after which I will examine Nozick's (and Cohen) derivation of SO from "some moral impressive facts about our nature". Both of these views endorse a form of moral realism, rights are true entities with which individuals are endowed. Then I will pass on to consider other attempts to give a proper foundation to SO rights, wherein such rights do not necessarily entail a moral realism of the Lockean and Nozickian kind. I will consider Taylor's articulation of SO on the basis of a Kantian morality, Steiner's compossibility argument, and to conclude Mack's value individualism. I am pretty sure other foundations have been offered of which I am not aware and would also be worth a mention, but I believe that the ones I am going to examine fit well with the purpose of the chapter. Despite their many degrees of difference, all of them present considerable shortcomings.

2.2 The danger of a "mischievous" use of natural rights

The language of rights is categorical with little room for manoeuvring. Utterances of the form "X has a natural (or moral) right to..." convey the imperious message that institutions not enforcing this right of the individual are acting outside of the boundaries of morality and should thereby accommodate to this demand. The invocation of a right in fact always comes along with the ascription of unescapable duties on others who are expected to comply with it. To make matters clearer, let us refer to a simple example. Until 60 years ago no law would recognise that women have any right to get an abortion. Yet this right seems to be compatible with a morality built on the SO thesis⁷, hence an advocate of SO would refer to this situation as incompatible with the standards of libertarian morality, as all governments would be infringing women's property rights over their body. We run into the first oddity of this use of language. How can indeed a government be at fault to shirk its duty to respect a

⁷ I make here the strong assumption for the sake of the argument that the foetus does not hold any right of ownership, hence the only rights in question in the example are those of mother.

right that is not legally codified, unless we have strong reasons to believe that pre-political rights exist? This seems to be not so much different than accusing one to break a rule that has never been stated before. How can then Nozick pretend to assess governments against the respect of natural rights of ownership? Most intuitively someone would draw on the idea of a parallel dimension of moral rights, in all respects similar to actual legal rights, with the exception that they just lack a legal backup. If that is true, then one would effectively falling short of complying with some moral standards when failing to acknowledge a natural right.

There are many serious issues to deal with in such appeals to natural rights and their respect. The first one concerns the place of these rights. Referring to an “ought to” dimension has the valuable prerogative to lay out some benchmarks of morality that do not change at the discretion of a majority or a ruling political party. Nature is fixed and never changes, therefore the natural rights of the individual offer the most solid forms of protection against any abuse. Nevertheless it commits one to the strong belief that moral facts can be read off natural facts. Alan Gewirth shows good evidence that the following statement “If you are a man, then you have rights” is not logically sound (G., 1996: 9). This is so because there is not an immediate entailment, or “analytical link” to use Gewirth’s words, between human beings and rights. In fact, no contradiction is involved in the statement “If you are a man, you do not have rights”. Having said that, what are, if there are any, the particular features that should accord self-ownership rights to a human being? Nozick pursued this justification of SO.

Last but not least, many starting from Bentham have shown concerns with the potential mischievousness of any talk of rights. As already mentioned, the point underpinning the appeal to individual natural rights is usually to demand that an actual positive system of laws accommodates to the standards set by this natural morality. The risk is that people can take advantage of the normative force of natural rights in the attempt to advance their political goals without making any effort to justify their claim. Bentham’s words prove to grasp the gist of the problem, “Men speak of their natural rights when they wish to get their way without having to argue for it”. Taking notice of this, Feinberg expresses his concern that “positing moral (natural) rights can become an instance of “wishful thinking” (Feinberg, 2002: 49). This is the kind of misuse of natural rights that any advocates of a libertarian theory should avoid.

The point of this section is to make the reader fully aware of what is at stake in the appeal to natural/original/non-acquired rights and the power of this weapon in the political debates. I am not pressing the charge that some forms of libertarians lean toward a sort of

moral realism and for this we should reject them, but I intend to underscore the need to dispose of a solid justifying theory of the rights libertarianism takes as fundamental in order to avoid a misuse of the language of rights. Simply claiming, as Nozick and others too often do, that we have a natural rights of property qua human beings is highly problematic. Libertarianism's aspirations to have a place among twentieth century theories of justice largely depends on the possibility to come up with this theory.

To conclude this introduction to the chapter, what we are looking for is a reason to believe in the existence and the enforcement of rights of self-ownership. The rights attached to SO are usually the following ones: each individual, so long as he does not violate the same rights of others, has the right not to be killed or assaulted, to be free from all forms of coercion or limitation of freedom, and the right not to have property, legitimately acquired, taken away, or the use of it limited. Sumner refers to this enterprise as the search for a "standard for authenticity" for human rights. (S., 1987:12). And in order for libertarianism to preserve its nature of a rights-based morality such a justification must avoid recurring to end-goals principles, like some forms of instrumental libertarianism do. In the latter cases in fact, the rights of the individual would become mere instruments for the attainment of some ends. This would result in depriving rights of their status as fundamental moral entities and would give the way to consequentialist morality, which are in open contrast with the deontological nature of rights-based moralities. Bentham condemned the incapacity of all natural law theories to provide this standard of authenticity to its own rights. "There is no similar (to the one of positive laws) agreed test to establish the existence or non-existence of a natural right" (*Anarchical Fallacies*). His endorsement of positivism in ethical matters forced him to see rights and duties as the mere products of a legislative and sanctioning systems serving the dictate of general utility. A right in his own opinion exists only when there is some power capable of laying upon others the obligation to avoid interfering with us. Therefore the idea of some rights belonging to human beings in general, "antecedent to and independent" to positive law was inconceivable for him. Can SO defy this challenge?

2.3 Theology and Self-evidence

Contemporary philosophical defences supporting the recognition of basic human rights, does not wear the same metaphysical dress as the earlier doctrines of the seventeenth and eighteenth century. Those doctrines were positing rights in recognition of the fact that God himself had endowed men with these rights. Locke stated it clearly that a theory of

natural rights needs the underpinning of a natural theology. For him God is the only conceivable authority that can issue objective and binding moral precepts that have to rule our social behaviour. Even if this goes often unnoticed, the respect of natural rights that everyone owes to an individual is from Locke's point of view ultimately owed to God himself. God is the only lawgiver issuing true moral imperatives, it is then our reason to guide us through the comprehension of God's will. Individuals' due fulfilment of obligations towards the other human beings ultimately depends on the superior will of God. Individuals have rights in the state of nature because God wanted so for his own sake and well-being.

Not only is the appeal to God considered to be an invalid strategy in modern moral reasoning, but even if there were such a God indeed and his will were transparent to our reason, this would not bring us that far. Acknowledging the existence of a God does not provide us a sufficient reason to accept his rule.

Some philosophers tend to take the validity of human rights almost for granted, counting on their self-asserting nature. Michael Otsuka, for instance, objects to Rawls that his contractarian method fails to generate principles of justice in tune with our convictions "regarding the existence, importance, and stringency of natural rights of self-ownership" (O., 2003: 5). In his point of view the choice of any principles of justice should always be conditional on the acknowledgement of SO rights. He motivates his stand by highlighting the coherence between these rights and "our fundamental moral intuitions" about ourselves and our relations with others. He adds to support this view:

"Even if people from widely different cultures were thrown together on a desert island with no sovereign or common language or custom, one person would nevertheless act contrary to duty and violate the right of another if he were to kill him for sport, to maim that person, or to enslave him against his will" (Ibid).

To be fair with Otsuka, there is nothing controversial in the statement, as thinking otherwise is appalling. However, if we go along with Otsuka's reasoning, we would be invoking a dimensions of objective values that exists above us or independently of our moral reasoning, in which case we would have not moved away from a seemingly theistic view. To who the individual thrown on the desert island owes the duty to refrain from certain actions? The job of a philosopher is to apply his tools even to shed doubts upon what is taken for granted by anyone and seems self-asserting. This chapter does that.

2.4 The foundation of Self-ownership: Making sense of Nozick (and Cohen)

Nozick rids his discussion of rights of any theological elements. Owing to the fact that these rights are not granted by institutions, created by any contractual process nor, accorded to individuals for the sake of fostering some optimal social outcome, if they have any foundation, for Nozick that foundation must consist in some morally impressive facts or attributes about the nature of individuals qua individuals (self-consciousness, free will, having a soul, disposition to rational behaviour, *ASU*: 47). Such impressive facts should be capable of providing an individual with compelling reasons not to be treated by others in certain ways, whereby rights come in in their function as side-constraints.

As we mentioned in the introduction, Nozick left unsolved many issues regarding his theory in his *Anarchy, State and Utopia*. He committed to settle them in another occasion, but in his future works he never touched upon moral and political philosophy. Nevertheless the effort to spell out a justification for SO rights faithful to Nozick might not be entirely hopeless. To this end it may be helpful to look at the way Cohen sets forth the skeleton of Nozick's reasoning (Cohen, 1995 chapter 4⁸):

- 1) No one is to any degree the slave of anyone else. Therefore
- 2) No one is owned, in whole or in part, by anyone else. Therefore
- 3) Each person is owned by himself. Therefore
- 4) Each person must be free to do as he pleases, if she does not harm anyone else; hence individual property rights.

As this insightful reconstruction of Nozick's argument shows, the normative statement that affirms the existence of rights comes after three alleged descriptive and undisputable statements, which should prove undeniable facts about our human nature. This however has to be motivated. The first premise regards the standing of an individual among his fellowmen. Once again Nozick sides with Locke in describing men in the hypothetical state of nature as standing equal to one another. A state of nature is a "State of Equality wherein no one has more power and jurisdiction than another" (*Two Treatises of Government*, II, II). Nozick takes the natural equality and freedom of individuals to be a self-evident true. I do not see any valid

⁸ Throughout chapter 3 of his text *Self-ownership, Freedom and Equality*, Cohen challenges the criticism of those who, like Dworkin, discharge the concept of self-ownership as indeterminate and incoherent. Although an opponent Nozick's libertarianism, Cohen's analytical work to define in plain terms libertarian ideas is extremely insightful and serves the case at hand.

ground to reject 1 and 2 unless one is willing to defend the outlandish idea that some men are designated by nature to rule over other men. Nature does not ground any one's claim to be the owner of another human being as a birth right. Quite to the contrary, Nature seems to speak in favour of an equality between human beings, or better said, Nature is neutral in this regard.

Instead what proves more problematic is proposition 3. As intuitive as it may appear, there is some ambiguity involved in this statement, and what is more there seems to be a lack of logical continuity between 2) and 3). Statement 3) asserts the idea of self-ownership, which should not be confused with the self-ownership thesis. The former in fact merely asserts that individuals as a matter of fact are the owners of their selves and this then constitutes the basis for generating one's property rights over his body. We first have to own ourselves before we can claim property rights over our person against others. The introduction of rights implies the fact that others have to abstain from certain behaviour that my rights prevent. But this is not a simple matter. Having ruled out as contrary to reason the possibility of the natural slavery of some does not entail that an individual owns himself. Kant in fact denied this as did Locke by making God our master. Nothing, given 1) and 2), invalidates on a logical ground a statement that denies one's ownership of himself. Maybe there is no such thing as self-ownership, maybe it is a meaningless assertion. One needs to be aware of the many difficulties involved in spelling out the meaning of such a statement as "each person is owned by himself".

At a glance such a statement seems to convey the idea of a separation within our person between two entities performing different tasks, one that possesses and one that is possessed or better, that executes the will of the owner. But what is the former entity, the owner of the self? The Platonic soul inhabiting temporally a worthless agglomeration of flesh? The Cartesian *res-cogitans*? or the Kantian transcendental subject? Practically speaking, each major Western philosopher would come up with his own peculiar view on this topic. Equally obscure is the nature of the owned thing inasmuch as saying that it is the material body, the *res extensa*, the "Person" (Locke, *TTG*, II, V) or the mechanism triggering the motion of our body is not of much help. Do we own our genetic endowment, comprising our talents and skills? Besides, the dualism that the idea of self-ownership implies has fallen out of favour among contemporary philosophers who are trying to move away from a lingering troublesome Cartesian ontology (see on this regard Gilbert Ryle, *The Concept of Mind*).

Obviously these questions touch upon perennial philosophical disputes between philosophers on the mind-body question, the personal identity problem and the free-will one and so on. It goes without saying that my thesis has no ambition to dwell upon these eternal dilemmas, if not, because each of this topic alone would stand ten different theses on its own. But the point is to underlie how problematic is the idea of self-ownership and how difficult it is to render its exact meaning, giving the concepts involved. And if there is no way to define neatly what owns and what is owned, then the concept of ownership itself becomes dubious, to put it mildly.

Cohen in the attempt to provide libertarianism with a coherent formulation tries to turn away from these intricacies by offering the seemingly brilliant solution:

“We do not say that a person owns some deeply inner thing when we say that he owns himself. To say that A enjoys self-ownership is just to say that A owns A: 'self', here, signifies a reflexive relation. I see nothing in the concept of ownership which (like fatherhood) excludes a reflexive instance of it” (C., 1995: 210).

Such a definition aims at escaping the many problems of which I gave a sketchy account in the previous paragraph. Nonetheless, as far as I am concerned, this restatement of the idea of self-ownership does not help us make a step forward. We still do not know in what sense we can call ourselves owners of our body nor does it say what we own of our body. Either Cohen's definition leads us back to the drawing board or it adds up something new whose meaning is still to clarify, though Cohen leaves us with no guidance and does not really elaborate further his idea. Worse still, most the libertarians show a blatant disinterest in this issue, despite its relevance for the project of building up a theory of self-ownership rights on some natural facts.

Therefore, what follows now is my personal attempt to try to make sense of Cohen's idea. By referring to a “reflexive relation” in my opinion Cohen intends that, independently of the content we give to the concept of self, nothing would change that an individual forms an unique personality which is also what makes up his identity. By which I mean the expressions of the self, be it through the parts of his body or his actions or activities, can always be attributed to the same entity. In other words, I can always recognise an immutable self that underpins the intricate and chaotic alternation of my actions, words, thoughts and decisions. If that is so, Cohen's account of the idea of self-ownership thus ends up agreeing with Locke's definition of a Person as being constituted by all the acts, past, present and future that spring

from her consciousness. “A person is a being constituted by the consciousness of free and responsible actions” (*Essays Concerning Human Understanding*, book IV) .

For Locke and for Cohen (if my reasoning is sensible), what defines the singular identity of a person is her persistent capacity through the time of her life to always impute to herself her actions; a person needs such a continuity and connections between her beliefs, desires and intentions and memories to remain the same over the time. Such a continuity would also do justice to Cohen’s idea of a reflexive relation. A owns A in the sense that everything arising out of A always constitutes an essential part of A or A always recognises as the expression of her own identity whatever arises out of her. That being so, each human being is a self-owner to the extent that he can claim at any point in his life that his body is his own and not of anyone else, that his choices, actions and intentions have a direct linkage to himself. But even if we accept this conclusion and we leave philosophers of mind to their quarrels, we find out that the normative statement 4) still awaits a conclusive justification. We have reached the point where we can safely assert that one cannot be said to be by a law of natural necessity the slave of someone else, and that everyone stands on an equal ground to one another, and that a person forms an unique entity in the sense that her actions can always be connected to that entity. But at the very best, we just have accepted a factual truth which cannot bridge the gap with the normative claim that gives the whole point to libertarianism, namely that anyone can dispose of his body as he pleases and expects from others’ an absolute non-interference. And Cohen himself is aware of the difference in character between the factually true statement that “this arm is my arm and what this arms does always respond to something happening in myself” and the normative claim of SO that generates the negative rights and the correlative duties libertarians have in mind. All things considered, in the case at hand the factual truth can be merely a plausible reason for acknowledging the sort of rights libertarians have in mind, namely that we can use the body as it pleases us without others telling us what to do. Yet this inference does not rest on safe grounds. What I am suggesting here, is that the descriptive fact that we control our own body in the way intended by Nozick (Cohen) cannot deliver the libertarian SO rights, they have, at best, a very limited scope.

Let us consider a simple example to make sense of this. There is a pen on a table. According to the given definition of self-ownership (not to be confused with the moral self-ownership thesis) my arm belongs to me and anything that I decide to do with my arm makes part of what defines my unique identity and persona. In case 1, I carry out the self-deliberated act to pick up that pen. Whereas, in case 2, someone commands me to pick it up. Advocates of libertarian morality would condemn case B as violating the property rights I have over my

body. Fair enough, no one would disagree with this. However, even in case B, the fact that someone issues an order to me does not change the factual truth (we control our body) that the arm executing the action remains mine and only mine, and the act of the will that ultimately sets the arm in motion has a direct linkage with myself. Either I pick up the pen on my own will or as a consequence of a command, the unity of myself with my actions remains infringed. Enforcing natural property rights does not make ourselves the owner of our own bodies, as Nozick instead purports to show and wants us to believe. We are always and (inevitably I would say) the owner of our own bodies in the sense stated by Nozick (Cohen). We can never get away with our own self. Even a slave always preserves the control of his thoughts, ideas, intentions and even of his choices as his own deliberative self ultimately carries out an externally imposed command. This should convince the reader that the factual truth of self-ownership is not a logical entailment of the normative claim of self-ownership (individuals have a large sphere of actions to choose among to dispose of their bodies), nor does the enforcement of SO rights add up anything to our control of the body. And if it is so, the SO thesis with its far-reaching consequences lacks a proper foundation on the “morally impressive fact about nature” that both Cohen and Nozick suggest.

2.5 The Kantian route

Is there any way we can deliver the rights libertarians are longing for without altering that structure of the argument outlined by Cohen? One possible way to prevent that others interfere with someone’s right to dispose of his body as he pleases is to turn the relation between rights and duties upside down. If the upshot of the previous section shows us that we do not have a compelling reason to establish self-ownership rights from natural facts, which, if we remember from chapter 1, according to Hohfeld’s terminology are composed of a liberty and a claim against others, maybe we can try the reversal strategy. Namely, we can impose on others the duty to abstain from right-breaking behaviour. The key lies in Kantian deontological morality. Taylor turns to it to make a case for a Kantian justification of SO (2004).

- Given that my claim-right to scratch my nose is made of a liberty (or absence of obligation) and a claim against others;
 - if we manage to establish a duty to abstain others from scratching my nose;
- then we would indirectly be promoting my liberty to scratch my nose.

In consideration of this conclusion, Taylor suggests that when we “argue for a duty of non-interference with other persons, we are in effect arguing for a particular conception of self-ownership” (Taylor, 2004) and enacting a side-constraints view of morality. Fair point, but it is too soon for a libertarian to get his hopes up. Let us examine carefully Taylor’s solution (I will assume the reader is fairly familiar with the basic ideas of Kant’s moral theory). For Immanuel Kant, morality presents itself to a rational agent as an absolute and categorical demand, which means that failing to live up to moral values equals being irrational. Resulting from this is the contention that our pure self-determining reason wants us to act in certain ways. From his standpoint a categorical imperative must be valid in the same form for all rational being. Hence it must determine the will "on grounds which are valid for every rational being as such" (G 4:413). We stand out among other creatures due to the fact that we can act out of the rules that are the product of our own law-giving reason. On this ground rests Kant’s hypothesis that our moral thought can recognise some moral duties toward others in order to respect their nature as human beings. To prove his point, Taylor takes two candidate maxims of moral conduct that would not get approved by our moral reasoning in a Kantian sense.

- a. “I will physically coerce other people if such coercion is necessary to advance my interests.”
- b. “I will physically coerce other people if such coercion is necessary to advance their interests”

He convincingly shows that our practical reason would contradict itself if it wanted these two maxims to become universal laws. The two maxims in question cannot be universalised. In giving maxim a. a status of universal categorical imperative commanding absolute respect, our reason would as a matter of fact harm itself. Maxim a. would license heavy forms of coercion and manipulation to which any one potentially can be subject. Maxim b., to the contrary, yields forms of paternalism that clash with our nature as autonomous agents. We must be capable of self-control in order to be autonomous, and paternalism is a blatant negation of this. Having granted that, Taylor can legitimately claim that no world is conceivable where a. and b. may raise up to the level of universal laws of morality. Quite to the contrary, arguably any rational will would conceive of a world where coercive and paternalist behaviour against rational individuals are categorically forbidden. In light of this then Taylor draws the conclusion that the self-ownership thesis can have a Kantian foundation. From his point of view, the upshot of vesting rational agents with a duty to

abstain from coercive actions and paternalistic behaviour is that each person is secured in having a sphere of non-interference where she can dispose of herself at her discretion.

Everything seems brilliantly settled. But what about the concerns we expressed in chapter 1 with regard to a tension between the Humanity imperative and the SO principle. The latter delivers absolute rights of control over one's own person, among which also the right to waive them. The former demands one to comply with some perfect duties, with no expectations, arising out of the end Humanity Principle, which imposes some objective ends to our conduct. In chapter 1 we showed how Kant's principle puts some restrictions on one's conduct towards others, yet the same holds for the conduct that has an impact upon oneself. More precisely it implies that someone, though he is his own master, cannot be plausibly said to be the owner of himself and dispose of himself as he pleases, still less can he dispose of others, since he is accountable to the humanity in his own person and in that of others. For Taylor there is a possibility to avoid this potential tension. Yet I hope I will show that this tension is far from being solved. On his account "self-ownership rights are completely consistent with self-regarding (albeit unenforceable) duties the self-owner may be under, such as a duty to respect Humanity-in-oneself" (Taylor, 2014). He further adds to make this point clear,

"there is nothing contradictory about the following pair of claims: I have a right to commit suicide (that is, you have a perfect duty not to interfere), but I am not at liberty to do so (that is, I have a perfect though unenforceable self-regarding duty to continue living)".

This is incomprehensible to me. First I fail to understand how such a right to kill oneself can have room in a Kantian moral framework, given that Kant was adamant about the immorality of such voluntary acts as suicide, voluntary servitude, self-mutilation, as they are inconsistent with the respect of Humanity in oneself (look back at 1.4.2). The respect of Humanity in my person and in the one of others must ground the objective value of any categorical imperatives, which is to say, it must provide an end to all our actions. Besides, asserting that a right does not entail a liberty contradicts the nature of a right. We would have nonsensical sentences like "I have a right to scratch my nose, but I am not a liberty to do so". A right without liberty is the negation of the concept of right. So once again, we are in front of the choice to drop either SO (or relax it) or a Kantian moral reasoning. Either we give away with self-ownership and we accept severe restrictions to our actions or we stick to SO and we leave Kant aside.

To buttress my point, the idea that any talk of rights can be reduced to a complete description of the correspondent duties is incompatible with the rights-based nature of a theory appealing to SO. Holding a right is not merely to be the beneficiary of a duty. As A. John Simmons correctly points it out, rights carry with them the idea of “optionality and discretion” (A. J. S, 1992: 119), which is to say, that rights are tied to the idea of legitimate claims a right-holder can advance to others. What is distinctive about rights is that they give those who hold them control over other people’s freedom. To have a right, and this especially counts for libertarianism, entails being in the position either to demand or else to waive the performance of a duty. The difference is subtle, but not irrelevant. Rights convey the idea of something that is owed to the right-holder by all the people on whom the correlative duty to respect his right falls. To the contrary a duty-holder in a Kantian sense has no obligation to any individual in particular, but has to respond to some standards of morality, independently of those who would benefit from his moral conduct. Dworkin hits on the key to the whole matter when he asserts that to talk about an individual's rights is “to concern oneself with his independence of action” whereas to talk about his duties is to “concern oneself with the conformity of his actions to some code of rules” (D., 1988: 169). That being so, the order of priority between an individual right and duty cannot be inverted without undermining the libertarian rationale of taking rights as fundamental. H. L. Hart goes along the same line when he stresses the fact that “from your duty to me, it doesn’t follow that I have any control over your freedom” (1955), which is what entails from me holding a right against you. Therefore making duty fundamental would result in the loss of this important aspect.

This leads to the conclusion that even in the absence of the aforementioned shortcoming, a foundation of SO rights upon Kantian duties would defeat the libertarian purpose of basing its moral principles on the respect of rights with the purpose of giving individuals an absolute discretionary control over their own lives against others’ intrusions. This should convince the reader that Taylor’s route is not viable for a libertarian in the attempt to give a foundation to the SO thesis.

2.6 Steiner: from compossibility to existence

Worthy of our attention is Hillel Steiner’s analytical work on rights. The leftist branch of libertarianism is his creation. In a couple of papers and more extensively in his seminal work *An Essay of rights* (1994) Steiner displays the reasons to endorse a libertarian stance on social justice. In the opening of his *Essay* Steiner warns the reader not to approach the book

with the hope to find an answer to the question “why we should be moral”. To the contrary his essay is an attempt to define “What is justice?”. And for those who has never taken the hassle to read through his book, his answer is that the chief task of a theory of justice is to arrange in a just way restrictions on our freedoms and the only way to achieve this is through the enforcement of negative rights. Therefore, like Nozick Steiner defends a conception of justice based on respect for property rights, but he pays greater attention to the foundations of such a view. Starting from the premise that each individual has a capacity for freely determining his actions and values his freedom very much, Steiner derives the “fundamental or original right to equal liberty”. This means that each person is born with attached a right to exercise his free choice and thus exercise his original right to freedom. Steiner refers to this right as the “antecedent condition of acting” (S., 1994: 226). Then Steiner applies his analytical skills to show that the only way we can make sense of such a right is if we endorse a negative view of liberty. My liberty is compatible with yours only when we do not have to dispute over the use of something to bring into effect an act. Any of our actions needs some means to get its way outward, this implying that some control over objects is required. This first object we originally possess is our body.

Moreover, Steiner says: ‘a person is *properly speaking* unfree to do an act if, and only if, his doing that action is rendered impossible by the act of another person’ (Steiner, 1974; 1994: 8). And only property rights can achieve the logical requirement to distribute entitlements in a way that avoids conflicts and prevents potential interferences. Hoping to do justice to Steiner’s lengthy but sophisticated demonstration, we can say that the compelling reason we have to accept property rights is that they are the only defensible and plausible kind of rights, and this is so as a consequence of the fact that only property rights can make up sets of compossible rights. For Steiner compossibility is what mainly matters for a set of rights to be acceptable to our moral reasoning. So, he argues, if we want to secure rights to individuals in order to secure them equal freedom (Steiner, 1994: 229), these rights must be negative property ones, as these only avoid clashes between individual freedoms.

Compossibility in matters of legal theory entails that my execution of rightful actions is compatible with that of others’. Libertarian property rights meets this requirement as they distribute exclusive entitlements to the use of objects (individual bodies, extra-personal objects) in ways not harmful to others. Such rights are all of the type “I have a right to dispose of something as I want, as long as I do not harm others”, hence they vest one with the liberty to choose among possible actions with the things he owns. To bear in mind is Steiner’s distinction between “vested” and “naked” liberty (ibid: 75); the former is surrounded by a

protective perimeter formed by the duties of other, whereas the latter lacks such a strong protection (I am at liberty to sit on the only bench in a garden, but I do not control others' duty to let me sit there). The solution to obtain compossibility is to endow individuals solely with vested liberties. Liberty for Steiner is measured by the amount of "physical objects over which individuals enjoy control—that is, control over the spatio-temporal locations and material objects that constitute the 'physical components' of actions (Steiner 1975, 48; 1994, 33–41) On the hypothesis that we can, at least ideally (it is in fact a rather ambitious goal), allocate the use and control of every single thing on this planet to an agent, every disputes of justice would be settled, and freedom secured to everyone. Holding a property right over X entails that everyone else is categorically excluded from the same prerogative. Owing to this, individuals exercising their rights over their possessions can never be an obstacle with that of others.

Though sketchy, this brief account gives the gist of Steiner's endorsement of a libertarian stance on morality. As I have shown, a fundamental role is played by the logical value of compossibility, whose correspondent in epistemology would be coherence. The mutual consistency of all the rights in a proposed set of rights is at least a necessary condition of that set being a possible one. The first thing to notice is that, to quote from Rawls, it is "impossible to develop a substantive theory of justice founded solely on truths of logic and definition" (R., *ATJ*: chap. 1, 9). In the case at hand what this means is that even if a system of rights proves to meet some logical standard of consistency, this in no way compels us to endorse a side-constraints view of rights. It is too shaky a foundation.

Just think about the following scenario. There is a world in which everyone is forced to abide by the will of a Leviathan and no one has a right with the exception of the dictator. The last one may also be a viable option on a logical basis, as this distribution of rights is as compossible as the one ensuing from a distribution of property rights in the way envisaged by Steiner. You can dispose of any object on the realm as long as the Leviathan does not need the same object. Nonetheless, the logical possibility of the Leviathan's distribution of rights surely does not convince us of its validity. This shows that first we have to give our consent to a determined view of liberty before handling matters of compossibility. Therefore, the fact that arranging rights in a way that fits a determinate view of justice founded on the respect of SO avoids impossibility results does not clinch SO. We can give SO and its related libertarian theory of justice credit for its capacity to yield a compossible distribution of rights, but nothing compels us to accept the definition of freedom and coercion underpinning it.

After all, Steiner's definition of freedom as absence of coercion and negation of freedom as denial of the actions I am entitled to do with my possessions is the first undefended premise in his system and unrelated to the fact that property rights do not conflict with each other. Steiner starts his enquiry by asking how to put constraints on our actions, thus already leaning towards a side-constraints view of morality. In other words, it is not uncontroversial to assume from his part that "our exercises of liberties and powers is impermissibly obstructable" (1974). For Steiner I am unfree "if and only if" my action is rendered impossible by the action of others, namely when I cannot exercise the power of his will because someone's wilful coercion. It is beyond doubt that I am unfree to go watch a football to the stadium if someone has locked me in a room. But intuitively we would think that I am equally unfree if accidentally I locked myself in. Such a view is also closely tied to the strong assumption that "to be a right-holder" for Steiner does not come from the fact that one is the beneficiary of someone else's duty. Steiner inherits this view from Hart's choice theory of rights, whereby a right is defined by being "in a position to claim the performance of a duty from another, or to waive it, and therefore to determine by his choice how the other ought to act" (1955).

Nevertheless we may oppose to this stance on the meaning of freedom and concept of holding a right. What if we reject the view that freedom is not curtailed "if and only if" some other's individual action makes my doing an action impossible. What if we lean to a more substantive idea of freedom and we believe that cases of brute luck or lack of wide opportunities as well reduce one's freedom, even if no other human agent is directly responsible for that? What if we believe that one is entitled to a fairer treatment for the sake of the inner value of a human being and that this is a sufficient reason to enforce some forms of positive duties? Duties can be thought of being primary with respect of rights. We can side with Rawls that justice arises out of a natural duty to respect the moral value inherent in each person and *ipso facto* rights come to the individuals on the basis of some more general duties. And this is not so odd to sustain, if we believe that we have some forms of duties towards the future generations that arise independently of the existence of specific future right-holders. The point I want to make is that Steiner's insistence on the value of compossibility leaves the fundamental question still pending, namely why to begin with we should accept SO rights and a side-constraint view of morality that forbids many forms of positive duty.

On top of that, defining freedom in function of the objects one controls results in a watered down idea of self-ownership. An advocate of Steiner's proposal such Ian Carter (see his introduction to *Hillel Steiner and the Anatomy Justice* 2009) remarks the practical

advantages of approaching the question of liberty from this perspective, the main of which is the possibility to measure and compare the degree of freedom of different individuals. Yet, if we recollect the rationale underpinning the establishment of property rights, the whole point was to vindicate individual's sovereignty and capacity for freely choosing a life plan. On the contrary, if we push to its natural conclusions Steiner's logics, we must cope with the counter-intuitive fact that handing a slave or a prisoner books, pens, or some other items causes an extension of his freedom. But how can we say that this increase in freedom does justice to the idea of self-ownership? By these means I hope to have shown that Steiner's construal does not help us in regard to the core question of this chapter. We cannot infer the justifiability of the side-constraints from the compossibility of property rights. Compossibility is already built in the negative view of freedom to which Steiner commits himself. In this sense for the purpose at end such his solution is still wanting and leads to a scarcely appealing view of freedom, which seems also far from the one the advocates of SO intend to defend.

2.7 Mack: value individualism and jurisdiction theory

Now we will proceed to examine Eric Mack's jurisdiction theory of rights. Mack is the leading figure among the right libertarians and in a couple of article he has laid out a justification of SO. To begin with, Mack commits to a defence of what he calls "value-individualism", the view that "for each rational and purposive agent, the ultimate end, that which is of most fundamental value, is his good, his well-being" (Mack, 'In defence of individualism', 1999). In his point of view, for each individual what ultimately matters and ought to matter is the promotion of his own well-being. The case for the attainment of any given end is made by an individual in terms of how that end has an impact upon his own well-being. This entails that nothing can transcend the value my personal well-being has to me, thereby, according to Mack, the fact that someone deems valuable the attainment of one end for his own good, does not constitute in itself a reason for me to be under a positive duty to help him. Value individualism rules out the possibility that other people's well-being can become part of my set of fundamental values and ends. Moreover Mack argues for an objectivist account of well-being, meaning that one's well-being is not equivalent to some subjective states of mind or experiences of pleasure, but consists "in objective states of his existence and his relationship to the world and to other creatures" (ibid.). This is to demarcate individualism from a sheer subjectivism and to prevent Nozick's powerful argument that to make the maximisation of a loosely defined well-being a moral guiding principle is compatible with the idea of minds attached to making-pleasure machines.

Then Mack engages with the justification of the ascription of individual rights of ownership. Such rights would work as side-constraints to protect each individual in his “devotion to the promotion of his own chosen ends” (“In defence of individualism”,1999). The enforcement of these rights and the correlative duty would bring into existence a full-fledged “individualist social and political order” (ibid.). Property rights for him serve to settle questions regarding “who has the authority to dispose of the means of action whose disposition is under dispute” (M., 2000). Mack envisages social morality as essentially concerned with the establishment of “compossible domains of authority” (M. 2000). Rights of self-ownership fulfil this requirement as they ascribe natural jurisdictional rights over one’s own body and one’s legitimate possessions and prevent others from interfering with these rights-based jurisdiction. To cite his own example, if one has jurisdiction over his right index finger, then the use of that finger to scratch his own nose can be carried out under the favour of morality, while others’ same use is not, as they lack any jurisdiction over that finger.

Why would SO be justified in Mack’s view? For Mack the acceptability of SO is conditional on the acceptance of his value individualism. In Mack’s point of view the fact each individual’s life and well-being possesses ultimate incommensurable value accrues to each one jurisdictional claims over themselves. Value individualism ascribes to each individual “the robust prerogative” (1999) to act in accordance with his chosen actions that can contribute to his own well-being. There is no other higher end to which an individual can devote his life. Without the bulwark against any form of intrusion, violence and coercion, which SO rights grant him, his prerogative would be continuously threatened. It will ensue that all other agents have a moral liberty to impede an agent’s prerogative. Nevertheless, as it should be pretty obvious, Mack has not yet furnished a conclusive argument to accept SO. In fact, possessing a prerogative cannot be a sufficient strong reason to establish a right and the correlative duty on all others. It is question-begging. To say my natural rights of SO should be acknowledged by others and enforced by the institutions because I have a prerogative to have them is in all respects the same as to assert that my natural rights of SO should be acknowledged because they ought to be such. QED.

His reasoning would be more convincing if he puts up a defence of SO rights on the fact that an individual recognises in others the same prerogative as he has to be free to achieve his ends. If I have certain goals and I need a right of non-interference to achieve any of them, then I must conclude that others should not interfere with my purposive behaviour. If and only if everyone else conforms to the same logic, then a morality of rights and duties similar in kind to the one Mack is defending takes shape. Only in this way others would accept my

claim to non-interference. However in a such a shift what matters is not any longer the well-being of the agent that offers a ground of SO, but the general commitments, without external sanctioning authorities, of everyone to the golden rule of morality or the principle of universalizability (Bernard Williams, 1985: 60). Value individualism in this sense is not of much help to articulate a theory of rights and duties.

Moreover, once Mack bends toward an objective account of well-being, then this from my point of view is hardly compatible with the purpose of having SO rights as fundamental. As already suggested, SO accrues to an individual an absolute control on his life. Whatever he does within his sphere of negative freedom is morally just, independently of the purposes of his conduct. On the contrary Mack's value individualism makes rights derivative with respect to well-being, with a serious consequence. If one's well-being consists in some specific "objective states", this has the effect to curtail the scope of one's rights. More precisely, if rights owe their ultimate justification to the attainment of these objective states, then they would be groundless if one were to make use of his space of freedom to engage in actions that are potentially harmful to his well-being. For the sake of his well-being, his inappropriate use of rights in fact should be stopped. For this reason value individualism, in the particular way Mack understands it, fails to support SO, to the contrary it brings in an external entity as fundamental, well-being, that can turn out to restrict my autonomous use of rights.

Conclusion

As was my intention to do, this chapter has shown why the question of the soundness of the branch of libertarianism built upon the SO is still to be settled. I have achieved this by surveying some attempts by diverse authors to lay out a foundation of the SO thesis.

The authors I have discussed throughout the chapter are in order:

- Nozick, or we should say Nozick as was interpreted by Cohen: we showed that his attempt to ground SO on some impressive facts about our nature is unsatisfactory, as the idea that we own ourselves (the factual assortment of self-ownership) either is hopelessly ambiguous or it does not necessarily yield self-ownership rights.
- Taylor's Kantian route: the problem is that SO and Kantian deontological morality are not compatible, so that we are forced to choose between one of the two.
- Steiner: his compossibility criterion is not sufficient to convince to endorse a libertarian stance of morality those who are not already committed to a negative view of freedom.

- Mack's value individualism: his conclusion is at the very best question begging and would require an amendment, or at worst, turns out to be incompatible with the aim of ascribing absolute property rights over one's body.

Upon due examination of these points, I lean to the conclusion that SO and the related side-constraints view of morality is not solidly defended by those who aim at supporting it. While chapter 1 was concerned with the implication of SO, this chapter has purported to demonstrate the lack of reason for taking SO rights as fundamental. At the very best the self-ownership thesis reflects the intuitive but loose idea that we are free and physically separate from others. For Vallentyne the theoretical weakness of SO does not obscure the "plausibility of its concrete applications" and this, he argues, suffice to validate a moral principle (V., 2005). However, as we also showed in the chapter 1, such implications are not always easy to spell out, nor are they uncontroversial. Think of the legitimacy of voluntary enslavement, the trade of one's own organs, the denial of many forms of assistance which are instead common practice in contemporary societies.

Casting the doubt of philosophy upon our basic intuitions may look like fastidious nit-picking for many, all in all we need a starting point for our reasoning. But this would prove nothing apart from the fact that not necessarily our raw intuitions are a firm guidelines in our moral reasoning. The fact is that one cannot ignore the indeterminacy of the idea of SO. What are the boundaries of ourselves? Where do we draw the line to separate my existence from yours? Even at a basic level, the truth is that I do not fully control all my body, if we think of the many involuntary mechanism happening beyond the surveillance of our conscious mind. These questions do not directly enter a theory of justice, however, short of any strong reason to believe in such a thing as a self-ownership and self-ownership rights, we should be less concerned about avoiding it when doing so fits with other purposes. And this would go along the same line of Cohen, who felt that an advocate of egalitarianism should feel not too attracted by the SO thesis and less scared to move away from it.

3. SO AND THE OWNERSHIP OF THE EXTERNAL WORLD

"The first man who, having enclosed a piece of ground, bethought himself of saying 'This is mine,' and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars, and murders, from how many horrors and misfortunes might not any one have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows..." — Jean-Jacques Rousseau, ('Discourse on Inequality', 1754)

3.1 From Self-Ownership to a Theory of private property

Hardly one would deny the relevance of private property in matters of moral and political theory. The control on material resources accrues to their proprietors many privileges in terms of material wealth. To have a property right on a part of the external world vests the proprietor with the authority to dispose of the land as he wishes to as well as with the control on the fruits of his activity upon that land (income rights). The richer in terms of resources a land is or the higher its value in the market place, the larger are the benefits one reaps from it. In this respect the allocation of property rights has a direct impact on the distribution of wealth and power in a society (MacPherson 1978: 24). More than that, underneath its intuitive simplicity, the statement that cries out "this is mine, not yours" offers many levels of analysis for philosophers.

One may wonder what this has to do with the purpose of my enquiry about the SO thesis. The answer is ready made; many advocates of libertarianism appeal to their rights-based morality in order to articulate a theory of private property appropriation. As one has some non-acquired rights over his own body that work as a bulwark against any non-agreed intrusion, so one can claim such an exclusive control over portions of the external world and make them, so to speak, parts of his own inalienable body. Any form of taxation would also be morally impermissible insofar as it amounts to a violation of an individual's exclusive control over the fruits of his own labour (Mack, 1998). Ownership of external resources has been usually associated with a specific body of full (or almost full) exclusive rights such as the right to possess, use, manage, alienate, transfer, and gain income from property (Honoré, 1977). By these means they hope to give the right to private property the status of right on a par with other rights individuals seem to have beyond any doubt, like the right to bodily integrity, liberty of expression and free use of skills and talents.

3.1.1 Setting up the problem

We will now ask the reader to leave aside for a while all the doubts the second chapter has cast upon the SO thesis. Let us now assume for the sake of the argument that the individual rights of property over one's body rest on a solid, unquestionable ground. The issue we want to address in the chapter to come is whether SO thesis can be the ground of a theory of private property appropriation, as Locke, Nozick and Mack, Steiner all have committed to believe. The question is whether a self-owner in virtue of his original rights can become a private owner and the rightful claimant of the fruits of his labour (right to income). Mack with particular clarity formulates this view in plain terms, "my main claim is that the reasons which support the affirmation of a natural right of self-ownership comparably support a natural right of property" (Mack, 2010). Steiner goes along the same line when he asserts that "natural resource rights are only a subset of moral property rights" thus stressing the continuity between an unencumbered ownership of our bodies to the unencumbered ownership of external things (Steiner in *Left-libertarianism and its critics*, 2000: 77). For Steiner it is beyond doubt that some of the inputs in our labour activities to the labourer, thus serving for him as a vehicle for a rightful appropriation.

Once again, contemporary libertarians owes to Locke⁹ the first stringent articulation of a theory of private property appropriation from the premise of self-ownership. Such a theory of appropriation results from the combinations of two complementary things, a natural right to acquire private property and a procedure of just acquisition. The former is grounded, to cite Locke's own words, on each human being "desire, strong desire of Preserving Life and Being having been Planted in him, as a Principle of Action by God himself" (*TTG*, I, IX, 86). Since, in order to satisfy this desire of preserving life he has to make use of "those things, that were necessary or useful to his Being" (*ibid.*) he must have the right to acquire such things. In Mack's terms this is a "non-acquired right of private property" (2010), meaning that each individual can freely engage in the acquisition of extra-personal objects that he deems beneficial to his own well-being. To bear in mind, a natural right of property must not be confused with a natural right to property if we take the latter to mean that everyone has a basic moral claim to have a granted access to any resource in particular. A right of property entails that each individual is free to pursue the acquisition of property and has no less claim to do this than anyone else. But this right of self-preservation through property alone cannot do the entire work in a justifying theory of private property. It is yet to specify how and when

⁹ There is still much disagreement on the interpretation of Locke's theory of private property. The reader should not be surprised if my account of Locke seems to hint at different conclusions.

someone can justifiably call something his own. The question is not so trivial, especially if we remind of Rousseau or Proudhon's view that private property is a theft perpetrated by some at the cost of the property less.

For Locke the means of appropriation is labour, hence the hotly debated labour theory of appropriation. "The labour of his body and the work of his Hands, we may say, are properly his" (*TTG*, II, II, 27). In virtue of a property over his labour power, any individual performing labour upon an unowned piece of land thus acquires, according to Locke, an exclusive enforceable claim to the unilateral control of that land. Labour, to put it shortly, generates first rights of ownership over extra-personal objects. The consequences of this theory are far-reaching. The foundation of property rests upon the individual, his purposive action and labour activity. Moreover, the creation and consequent distribution of property rights over resources does not require the ratification of society or of a contractarian procedure. This makes this theory completely compatible with the individualistic premises of the libertarian rights-based morality. The political institutions once put in force by its members for protective purposes do not have the moral power to change allocation of property rights for the promotion of other moral goals, as this would come along with forms of coercions against individual self-owners. The labour theory of appropriation seems to fit perfectly the libertarian concern with the freedom and inviolability of the individual, and fills the void of their historical account of justice as it justifies, on an hypothetical ground, the creation of the first entitlements to property. The establishment of a property right results from an individual carrying out his life plan, without the need of any agreements or conventions if at the same time he does no harm to others. Yet many issues are still open that make the soundness of this theory highly questionable. And the division among left and right libertarians regarding the distribution of external resources, the requirements of the provisos, the legitimacy of income tax and so on and so forth, they all account for the many unsolved question in the libertarian theory of property.

The questions I am going to tackle throughout the rest of the chapter concern:

- the moral status of non-man made resources; which hypothetical scenario of the original world is more consistent with the SO thesis?
- the idea that mixing labour generates property rights and variation of this view.
- Where does a right to own external things come from if not from SO?

3.2 No-ownership vs common-ownership: the original status of the world

While offering his historical rendering of justice, Nozick tacitly assumes that the world in its original state had to be unowned, meaning that it was not yet assigned to anybody. In such an hypothetical scenario all the fruits of the earth were up for grabs, but no property right was already established. Land was, to use John Simmons' terminology, a "rights-vacuum" (Simmons, 1992: 237) waiting to be filled in by right-generating actions. Resulting from this, each one is in the same condition as anyone else with respect to external resources. One does not need the acumen of Gerald Cohen to realise that the moral status of individuals does not bear any direct consequences over their standing with regard to the external world. In the case at hand, individuals having rights as side-constraints over their use of their body does not say anything about the original status of the world with regard to the possibilities of its appropriation and use. That being so, one can without fear of contradiction set forth a moral theory that combines SO with a view of common or joint ownership of the world. Either in a common ownership scenario or a no-ownership one, individuals have no direct advantages over others. No one would enjoy an advantage over others or does harm to others. Nonetheless the differences are relevant, if we take one of the two stances¹⁰ as a starting point for a historical view of justice.

To begin with, to ponder about the original ownership status of the world is not just an exercise of sterile philosophy. As Mathias Risse also notices, it is a "hypothetical device for thinking about what it makes sense to say about what we can or ought to own, or what we owe each other" (Risse, 2003). In general all the things that do not result from a human design ought to be a matter of interest in dealing with this issue. And as a matter of fact framing the relation of human beings with the original world in terms of no-ownership or common-ownership makes a good deal of difference.

3.2.1 The no-ownership view

In a scenario of no-ownership, as we suggested above, all the external resources are originally unowned, everyone is at liberty to use the products of Mother Nature for his subsistence, but none has any exclusive right to anything. Property in this regard does not exist yet, but has to be created, hence the need of a theory of "private property acquisition"

¹⁰ As a matter of fact, there are many other possible ways in which the idea of a sort of initial common ownership can be spelled out. We can also imagine that land is initially equally divided so that each gets an equal share, however this hypothesis seems difficult to imagine and even less practical. Nevertheless, for the sake of simplicity I will follow Risse (2003) and focus on the comparison between the no-ownership view and common-ownership one, hoping to give a clue of the problem at hand.

(Risse, 2003). Cicero and later Grotius summed up the main implication of this view by means of a picturesque metaphor. The unowned world can be imagined like a theatre, wherein everybody is equally entitled to a seat, but if somebody arrives late, nobody is obligated to share her seat.

3.2.2 The common-ownership view

On the other hand, if we conceive of a sort of original common ownership of the world, we assume the existence of an original form of property right, which we can envisage in a way that all the human beings collectively own the natural resources. This scenario demands a theory of “privatization” (Risse, 2003) as “the crucial issue being how to derive rights and duties constituting private ownership from an already existing bundle constituting common ownership”. The main upshot of a common-ownership scenario is that everyone has an equal say in determining the disposition of the resources that all may use. It follows from this that any act of privatisation can occur “only on the basis of universal agreement, or at in accordance with general preferences” (ibid.) as the collectivity would, arguably, pass onto a new owner its control over a bit of its property, only at the condition that its most beneficial use is made of it.

The common-ownership view was the most favoured one by XVI and XVII century philosophers, such as Locke, Pufendorf, Grotius, who (non-)motivated this choice with an appeal to a theological premise. They all looked at the earth and its products as a gift God gave to men in common, so that they could make use of it “to the best advantage of life and convenience” (*TTG*, II, V, 26). On this ground Locke himself could make the claim that an owner is bound to a sort of duty towards his fellowmen. His use of property must be productive and beneficial to others, hence if he lets the resources on his property go wasted and the “Products of Nature perish in his Possession (*TTG*, II, V, 37) he consequently loses any claim over that land. Anyone else is entitled to take over the control of his property for a better use. In this framework, it is clear that the community of individuals always retains a residual claim over the land, even after an act of privatization.

3.2.3 A problem of coherence

Now, what we want to know for the purpose of this essay is if the common-ownership scenario can be chosen over the no-ownership one independently of a theistic framework. As both Risse (2003) and Wenar (1998) both agree, none of the two views can stand on its own independently of any other considerations, which is to say that our basic intuitions do not help us opt for one of the two alternatives. They so to speak are either equally implausible or

equally acceptable. But if we do not have a strong reason to choose one over the other, we may pick out the starting state of the world that better suits the purposes of our moral and political theory. As we said, the upshot of viewing the world as initially commonly owned by Humanity is that any act of appropriation must be ratified by the community. We can envisage many ways in which this ratification can occur, a contractarian procedure (Rousseau for instance), different forms of bargain (Wenar, 1998), utility calculus, the realisation of other moral goals and so on. All in all, common-ownership gives “each individual a claim to be treated as an equal owner, not simply as somebody with an equal chance of becoming an owner” (Risse, 2003). Resulting from this, any individual can call a piece of land his own only after having agreed with others on the conditions of his future use of the land. He may be asked to compensate others for his acquisition, he may agree on a specific use of the land that the community prefers, he may accept to share the benefits of his activity on the land with everyone. As nicely shown by Risse, the point is that, lacking an independent reason validating the common ownership view, one should choose it if he commits to a view “that ties together individuals’ lives and gives a prominent role to solidarity or advocates a rather comprehensive understanding of what we owe to each other” (Risse, 2003). But none of these motives should move the chords of a fan of the SO thesis, who advocates a form of individualism and is not comfortable with overbearing forms of solidarity and sharing. The SO thesis envisages a world where a human being is a single unrelated atom who does not owe anything to others unless he decides so. Risse concedes that joining SO and common-ownership may be consistent, but incoherent nonetheless in virtue of the fact that the reasons that motivate someone to endorse a common ownership of the world are in “a deep tension” (ibid.) with many motives underpinning the libertarian self-ownership thesis. Mainly owing to this Fried discharge left-libertarianism accusing it of “housing disparate moral intuitions that share little but a name” (Fried, 2004: 78). Vallentyne’s replies to these charges prove to be wanting as he bites the bullet and asserts that “there is little reason to require this coherence as understood” (2005, 209). But it is utterly insufficient.

Cohen comes to the same conclusion when he notices that a scenario of joint-ownership would end up with making SO rights merely nugatory. Each individual would be an equal owner of the land, but as nobody can carry out any action on the land without the agreement of the other, as matter of fact “everyone owns each other” (Cohen, 1995: 98). To carry out any of our daily actions, like walking, eating food, breathing, we need space, resources, air, all which are mankind’s property. Paradoxically I would be forced to strike an agreement with others before I enact any of my action. This tension inevitably follows from

the fact that SO wants to liberate individuals from the burden of forced assistance, whereas a common ownership of the world ties individuals together, thus either tearing apart the boundaries between self-owners or making them extremely thin. That being so, a SO thesis supporter has to embrace a no-ownership view of the original status of the world for the sake of his own initial moral principles. Or he can endorse a common-ownership view, if the motivation for SO is other than endowing an individual with any power whatsoever to do something in the outer world, but it would remain the fact that this way would strip SO of any value for the individual.

In the no-ownership state of the world one has broad unimpeded rights to use natural resources, within the slim limits of others' bodily integrity. As a matter of fact most of the libertarians start from the assumption of no-ownership (Nozick, Rothbard, Otsuka). The result of these last paragraphs may seem irrelevant, but it is not. We have ruled out as scarcely plausible any forms of libertarianism that aims to combine principles of SO with collective-ownership of the world (see Grunenbaum 1987). Moreover, we know now for sure that a libertarian who starts from the premise of SO has to come up with a theory of appropriation, not of privatization. He has to explain how an original property right can be created *ex nihilo*.

3.3 The theory of appropriation in a no-ownership view

Jeremy Waldron in his text *The Right to Private Property* (1988) offers an insightful analysis of theories of acquisition founded upon the premise that individuals have some property rights over themselves. He immediately stresses the fact that Lockean-based¹¹ principles of just acquisition “stipulates an action or set of actions A such that anyone who performs A with respect to some resource (*unowned*) ipso facto becomes the owner of that resource” (Waldron, 1988: 172).

We can analytically formulate this idea in the following way: “for all x and for all r, if x does A with respect to r then x becomes the owner of r” (ibid: 263). This formula is then refined so as to highlight the moral implications an act of appropriation bears on those excluded from ownership. In fact in a world where private property is yet to exist an appropriation entails that someone takes a bit of the material world out of the common use and thereby gains the legitimate authority to exclude others from using it without his

¹¹ Lockean in this case does not necessarily refer to what Locke thought, but how he was interpreted by many, Nozick in the first place.

permission. By these means, the resources present in a piece of land that were once up for grabs to everyone are now under the exclusive control of a single owner.

It turns out this way, “for all x and for all r, if x does A with respect to r, then for all other individuals y, x acquires a right that y refrain from using r” (ibid.: 264). As this representation underscores, an act of unilateral appropriation has far-reaching consequences which at the same time show some difficulties in accepting this view. As a consequence of the action of a single individual, what comes about is that the situation for everyone else with the exception of the new owner is changed from “an absence of duty to one of duty” (ibid.: 265). The acquired right of the appropriator places the people around him in a position of moral dependence, as they have to keep themselves from disposing of some resources without the owner’s approval. What is more, they have not agreed to this new status, but this onerous duty has merely slipped on them without their consent. Even if this does not speak against a such approach to the question of property acquisition, it surely points to its scarce intuitive appealing. We had often the chance over the thesis to underscore the centrality of the side-constraints view of rights in libertarian morality. Severe intrusions in the sphere of freedom of each individual are intolerable unless conditional on the previous consent of the affected part. Having said that, the first oddity in the Nozickian account of property is that voluntariness is not a relevant factor when it regards the parties affected by private property acquisitions.

One may say that an act of acquisition, especially if it meets some requirements (provisos), does not do harm to others. We can agree with the libertarian on this, especially if we take on a very narrow definition of harm, but the fact remains that such a theory devices a scarcely intuitive “first come – first serve” mechanism of acquisition, that unequally and unfairly distributes property rights in society and consequently even wealth and power. Things in fact are especially worse if we consider that in such a prospect one is vested with a burdensome duty to stay out of a property just because he was not the first one to seize it and work on it. And arguably few, with the exception of Rothbard¹², could assert that one deserves to be excluded from the use of property just because he was not the first one to stake a claim on it. Even when the proviso is respected, the property-less are nevertheless reduced to be passive spectators in the management of property, which is a central aspect in the functioning of a society for its far-reaching consequences in terms of distribution of powers and wealth. Property in the hand of someone becomes a source of power when property-less have to work for him to earn a living and accept his employment conditions. I believe that this

¹² Rothbard rules out any form of proviso. See his 1978, *For a New Liberty, The Libertarian Manifesto*, revised edition, New York: Libertarian Review Foundation

paragraph does justice to Waldron's charge that a Lockean theory of acquisition enjoys less plausibility than a contractarian solution, whereby a precise distribution of property is set up on the basis of the preferences of each single social member (ibid.: 266). Waldron contends that rights-based theory of acquisition of the Lockean and Nozickian type can hardly become principles of just acquisition in an account of justice as fairness where the unanimous consent of all the parties is required.

Intuitively one has few reasons to agree to a principle the effect of which is that one day he may be forced to depend on someone else to satisfy his most basic physical needs just because he did not take a seat in the theatre quickly enough. This in itself is not a sufficient reason to throw away the SO argument for property acquisition. But the fact that a principle of justice would fail the test of the hypothetical agreement surely does not speak in its favour.

For if the law is such that a whole people could not possibly agree to it (for example, if it stated that a certain class of subjects must be privileged as a hereditary ruling class) it is unjust¹³.

At a glance, Locke seems to provide a powerful, intuitive argument underpinning a non-consensual view of property acquisition. He asks us to imagine the situation in which we have to ask for the consent of others before we can perform some labour on an unowned piece of land so as to derive from it the means for our subsistence. It is absurd to think that we have to wait for the approval of others, without considering the difficulty to identifying who should have a say in our appropriation, before we can start working on the land. In an overly dramatic tone, Locke says that "man had starved" if forced to wait for the "consent of all mankind" (*TTG*, II, V, 28). Unfortunately for anyone contrary to a contractarian approach to property, this is not a knocking-out argument. We can assume that every approach is at the beginning only provisional but "subject in principle to the consent of all" (Ryan 1984: 80) and that the appropriation is effective only when it is at a later stage offered up for a social ratification. But in a such account of property, what individual ownership rights can secure is merely a *de facto* appropriation of natural resources without the characteristic of a basic and exclusive moral right. And the community would have no binding reason to accrue property rights to the one who claims them upon a due consideration of his self-ownership rights. Doing so a community of individual would result in tearing apart the moral tie between a person and his properties that Nozick and others with ask us to accept.

¹³ Kant, *Theory and Practice*, in Reiss (ed.), *Kant's Political Writings*. The quote is from Waldron (1988: 273).

The point of this section was to question the plausibility of a theory of acquisition that entitles a self-owner to claim a property right without the explicit consent of others. To this purpose, following Waldron in particular, I have accounted for some problems in it that stem particularly from the fact that the question of property is of such a vital importance in every society that it seems difficult to justify that each member should not be given an equal voice in the distribution of it. One may make the conditions of a proviso more stringent so as to secure more bargaining power to non-appropriators (see appendix at the end of the chapter), but this would result in drastically reducing the freedom of a self-owner to appropriate (similarly to a common-ownership scenario). All things considered, the question now is, what can solidly grant a self-owner a moral entitlement to a property acquisition in a no-ownership scenario and not just merely a privilege or a concession granted by others? What can justify an unequal and what is more “non-agreed by all the interested parts” distribution of the benefits deriving from the use of private property? If it turns out that nothing can do this work for a self-owner, then we would have strong reasons to reject this approach to the question of private property.

3.3.1 The origin of property rights: the quest for a satisfying answer

We enter now into the heart of the theory of acquisition. The issue to face is what can ever justify the substantial moral changes an appropriative act brings about without recurring to the device of the social contract, whereby the allocation and enforcement of property rights would occur regardless of the specific ownership rights of an individual. What is the A (see above) that can entitle one to appropriate an unowned piece of land and by these means generate duties on the non-appropriators? As we mentioned before, the consequence of an appropriative act are relevant, as it comes along with the reduction of land for common use and the consequent reduction of freedom for many and an unequal distribution of wealth. Right-libertarians for instance believe that a property right over land justly acquired is so strong and long-lasting that one has an exclusive claim on the benefits he can reap from the use of that land, with no room for taxation and redistribution. The collectivity is completely left out of any role in the allocation of property rights. Left-libertarians take on a less robust view of ownership rights, but they also subscribe to the view that the political institutions have almost no authority to alter these rights.

Hume’s scepticism looms over the question of property. For him, the question of property is not philosopher’s business, as nothing in a relation between man and property can have a foundation in moral theory. “Tis very preposterous to imagine, that we can have any

idea of property, without fully comprehending the nature of justice, and shewing its origin in the artifice and contrivance of man. The origin of justice explains that of property. The same artifice gives rise to both” (*A Treatise of Human Nature*, book III, sect. II). The conclusion of this section may turn out to reinvigorate Hume’s point. Self-ownership rights do not afford a basis for any entitlement to private property.

What seems to be beyond any reasonable doubt, starting from the premise of SO, in a state of no-ownership of the world, is that everyone is at liberty to acquire property to provide for his own subsistence. What is to debate is how can individuals generate property rights and why any particular procedure would justify a right of ownership and income rights? In the introduction to this chapter, Locke suggested that when someone works on an object or cultivate a piece of land, he projects something of his self-owned self into the thing, thereby acquiring the right to call that land his own and takes it out of the common use. According to Locke, once one “mixes his labour with (*TTG*, II, V, 27), places any labour on (*ibid*, 37) raw land, he thus, so to speak, extends his rights of ownership beyond himself onto the external world. This would entitle him, for Nozick especially, to dispose of that land as he pleases and enjoys the fruits of his activity. To many the idea of mixing one’s labour resembles more a piece of rhetoric rather than an argument on its own right. On the one hand it leaves unanswered what exactly one injects in the thing on which he performs labour. It cannot be labour itself as Locke suggests, because labour is the term that defines the whole process. We would thereby end up with an untenable definition of labour as: “labour amounts to mixing labour with...”. It is clearly tautological. But even if we go along with this metaphor and we give up on defining the mixed entity, whatever of our self-owned body we place in the land will intuitively vanish through the time (our sweat, our energy...) so that this can hardly grant a long right of property that remotely resembles the ownership right libertarians have in mind. In addition to this, this account leaves a lacuna in the process of acquisition. A man has first to take a bit of the land in his possession and exclude the others from it before he can start the right-generating process, which is labour in this case. But if the ownership right does not originate until labour is performed, we may question how in the first place a would-be appropriator could pretend to ban the others from the land. One possible way around this difficulty is to reply that the initial occupancy of the unowned and uncultivated piece of land sufficed to make the case for a legitimate appropriation. Nevertheless this faces another problem considering that strictly speaking an individual can occupy just the space his material body occupies, not an portion of land he is interesting in owning. That being so, his initial act

to exclude the others from the land before starting to work on it was not protected by any legitimate right.

One may attempt to defend this view by appealing to the intimate tie between property and one's life plan. Spending time and energy to ameliorate a piece of land is part of an individual's project for his life, whereby to force one apart of his worked land would interfere with his sphere of freedom and thus abridge his SO rights. But, as Cohen suggests if I do justice to him (1995: chapter), what if someone else has an interest in seeing that land remaining a public space because he would like he and everyone else can continue enjoying the view from there or the pleasure to walk among trees. How can we balance the interest of the appropriator and of the anti-appropriation person? Even the latter can appeal to his legitimate right to keep a piece of land unowned as part of his idea of good life. Moreover although the would-be appropriator may offer him a huge compensation, as Nozick's discussion of proviso also contemplates in these cases (*ASU*: 179), the "environmentalist" guy may still resist nonetheless and his right to shape his life as he wishes should also be deemed inviolable. From which results that even if a piece of land converted to a productive use by a new owner has indeed all the benefits Nozick ascribes to private property (*ibid.*: 177) none of this benefit can outweigh the force of the "environmentalist's" right, on a libertarian side-constraints view of rights. His appropriative act was not legitimate since the beginning. This seems also to resist Rothbard's attempt to justify a labour theory of appropriation by appealing to the new value that a man's labour adds to raw resources (Rothbard, 1974: 109-10). In his point of view the creation of new value that enhances a piece of land is beneficial not merely for the owner but for the non-appropriators as well, thus making the duty they have to bear less burdensome. But this, as far as I am concerned, cannot outweigh the strong desire of those who do give value to a common area or those who also have an interest in acquiring that piece of land as a part of their life plan. To sum up quoting from Wenar (1998), as long as some of the non-acquirers have a strong desire against an appropriative act by someone, it is hard to show that someone's right to acquire the means of his subsistence should outweigh others' objections.

It is true that provisos on acquisition, and several ones have been put forth since Locke, serve to avoid undesirable consequences following an appropriative act. In general the idea is that no-one should be made worse off when one wants to tack a portion of the land out of the common use. However, my point against SO still holds. If we assume land is not contested, which is rather unrealistic, there would not be quarrels among different claimants. In a hypothetic scenario of abundance of land and resources, no one would have plausible

reason to object to any appropriation. We would not need to ponder about who has a right to property and about how much one can acquire. There would be enough land for everyone to appropriate and earn a living from it. Introducing constraints on acquisition and wondering about the allocation of property makes sense only when resources are scarce, the value and productivity are unequally distributed on earth and land might be object of disputes. In such case portions of land would be allocated independently of one's SO rights. Or to be more precise, such rights cannot favour one self-owner against another for the reasons accounted above. The labour-mixing idea is flawed and a right to shape a life's plan without constraints cannot overcome the same prerogative of another. Consequently other benchmarks would need to be introduced to weigh up the claims of different individuals to a piece of land, (equal opportunities for well-being Otsuka, material well-being (Nozick), fair divisions..., just to name a few). And this would lend support to my claim that self-ownership rights are of scarce use in the question of property rights.

If I am not mistaken, my last point knocks out some attempts to justify "territorial rights" on minimalist criteria. I am referring in particular to the paper "Territorial rights and colonial wrongs" (Ferguson, B. and Veneziani, R. 2016, unpublished draft). The authors argue that "persons acquire territory and resources simply by staking a claims on these goods" providing they meet some conditions of fair appropriation (provisos). Honestly speaking I struggle to see whether this answer is a real solution to the issue at hand or it is merely a restatement of "first come – first serve" acquisition theories. My main concern with it stems from the incapacity of this minimal criterion to offer any practical guideline when a piece of land is disputed. The authors do not elaborate further on the exact meaning of "stake a claim". I take it to mean that someone asserts before anyone else a right to an unowned piece of land. If that is so, it is hard for me to see why the fact that someone once asserted a right on a piece of land can alone possibly justify someone's ownership right when others are interested in owning the same piece of land.

Besides, the "staking a claim" criterion seems even more counterintuitive than the labour-mixing theory. Let us consider this simple example to show a serious flaw in the "staking claim" rationale. I am sitting on the sofa in my living room and I formulate in my mind a firm intention to appropriate and work on an unowned piece of land and I also work out a detailed business plan. Unfortunately when I arrive on the place, someone has already started working on that piece of land and I contest his appropriation because I was the first one to conceive an act of appropriation on, thus stating a claim on it before anyone else. It is

hardly an acceptable conclusion. If something more than a mere assertion is needed, then we are back where we started this section.

3.3.2 Desert and property

Another way to refine a theory of acquisition is to introduce some notion of desert. Who first appropriates a land and works on it, and spends effort, pain and mental energies deserves to seize the fruits of his own labour. From which results that one acquires an entitlement to private property to his income on the basis of a moral desert as a form of reward. The first oddity ensues from the fact that making desert the basis for a right to private property defeats the purpose of a right-based theory of property acquisition. In the latter view, one should be granted a right to own land, for the sake of his own right, as a protection of his exclusive interests in those pieces of land. If desert comes in the picture, considerations of rights become secondary, “I deserve X, therefore I have a right to X”, whereas in a right based approach it goes from “I have a right to appropriate X, therefore you ought to respect my right”. But more than that, several other problems emerge along with the introduction of notion of desert as the basis of appropriation. First of all the claim that labour is the most deserving activity lies undefended. This depends on the values that are dominant in a community of individuals. In the Greek and Roman societies for instance, intellectual activities enjoyed a much higher consideration than manual labour. The slaves were those who had to carry on the burden of much of the productive activities, without receiving recognition for their fundamental contribution. All this changed once capitalist values of productivity and industriousness took over with the result of providing labour with a virtuous status (Locke, *TTG*: II, 34). This leads, in my opinion, to the conclusion that intuitions and ideas of what is moral deserving does not necessarily have to correspond with notions of right. One thing is to say that Cristiano Ronaldo has a legitimate right to receive his stellar salary, a separate matter is to question whether he deserves it or not. A person may deserve something even though he is not entitled to it. Similarly a person may be entitled to something even though he does not deserve it.

The idea that labour deserves some form of recognition hinges on the intuitive fact that it is not a pleasant activity; no one engages in such an activity for its own sake, but usually with the expectations to gain some benefits. For this reason we should feel obliged to reward these strenuous workers. Despite its intuitive force, this rationale has its own shortcomings. To begin with, in the non-unrealistic case that one finds working exciting and does not cost him any pain, we should conclude on the basis of this rationale that he has less

entitlement to what he wants to appropriate than the one who struggles throughout the working activity. And this is paradoxical. Alternatively others may reward the toil of the worker by enforcing his right to property and fruits of his labour in order to boost him and anyone else to act in the same way in the future, since the private use of resources is beneficial for the collectivity. However in such a way labour would not be inherently good, thus meritorious of a reward in itself, but only conditional on the consequences it brings about. Moreover, on the same ground a community of individuals may also be interested in promoting only determinate types of labour and reward only those workers that yield the things held to be more valuable and useful. The upshot would be even worse from the perspective of a SO advocate, as in such a way ownership rights would be conceded provided very restricting conditions that others set up (Waldron, *ibid*: 204).

Two other relevant issues touch upon the questions whether I do deserve to reap the fruits of my labour and how much of them. The rationale of appealing to SO in order to set forth a theory of acquisition is to make one the exclusive controller of a land he is entitled to, which also should secure him the entire fruits of his labour. Intuitively we think that one should get what he produces with his own work. But it is not so taken for granted. In particular when the notion of desert is brought in, the tie between control and the fruits of one's labour seems to dissolve, or at least, seems less strong. All in all, others can recognise my merit for having enhanced the value of some raw resources through my effort, but this does not entail that such merit has to be rewarded by me having an exclusive claim over the fruits of my labour. Society can repay me with social consideration (Wenar, 1998), or with the fruits of some other workers. And it is not also that easy to argue that one should reap the entire share of the products of his work. In fact often the fruits one can gather from the use of some land is influenced by the quality of it. So one may spend a lot of effort and terribly suffer but eventually get very little, in which case if the effort is the measure of the entitlement one should say that this worker deserves more than what he could reap and that his extra-effort should be somehow compensated.

Finally it is not even unquestionable that I can deny others a share of the fruits of my efforts. In fact someone may also make a case for the appropriation of part of the fruits of my labour by invoking some other moral consideration; he can for instance, claim he is not physically endowed to endure work or he enjoys better other activities. But even if he is just lazy and reluctant to work, is this a valid reason to believe that he deserves to starve instead of receiving a share of my fruits? To sum up the point of this section, the introduction of the notion of desert does not necessarily buttress the theory of private property that the advocate

of SO aims to justify, namely a self-owner can acquire absolute property rights over a piece of land and exclusive claims to the fruits of his labour by performing some labour activity (or any other X activity).

Conclusion

An attentive analysis of the points raised in this chapter discourages any attempt to justify the origin of property rights on the basis of individual self-ownership rights. This conclusion does not rest exclusively upon a due consideration of the unfairness and arbitrariness of a “first come – first serve” appropriative scheme, especially when compared to a contractarian (Kantian) rationale. The inadequacy of such an acquisition theory largely depends on the fact that there are no strong reasons to believe that a self-owner who first claims ownership rights to an unowned piece of land should acquire the right to exclude others from it. There seems to be no way to specify how an unowned thing can become owned by a self-owner and even more troublesome is to infer the conclusion that an owner should also seize all the fruits of his labour. And if my conclusions are sound also in regard to the scarce plausibility of SO and common-ownership view of the world, then, as was my intention to conclude, SO turns out to be severely affected. It cannot offer support to a theory of private property acquisition, thereby proving to be scarcely useful in matters of political theory. All the justification theories we have scrutinised lack a decisive moral weight. The labour-mixing criterion is overly ambiguous and incomplete, while some variations of it either fall short of the same problem or fail to endorse the conclusions an advocate of SO aims to derive (as in the case of the desert theory of property). This gives strength to Hume’s idea that a property relation is a social construction, an artifice of human relations, not a natural and moral one. Many problems stem also from the fact that as long as some of the non-acquirers have a strong desire against my appropriative act, it is hard to show that my natural right to acquire the means of his subsistence should outweigh others’ objections. The conditions of just acquisitions set by the proviso must introduce some other benchmarks to solve conflicts thus making SO rights utterly irrelevant.

If a self-owner cannot extend his rights beyond himself in the outer world when property rights do not exist yet, then paradoxically the foundation of private property of material resources, the rights to waive and gain income from one’s property, is equally shaky. If it turns out that at the beginning of a chain of transfer of property rights, no one could legitimately appeal to moral consideration of SO to exclude others from a piece of land, then SO cannot serve as a trump card against distribution, taxation or expropriation; any successive

property rights acquired through voluntary transfer and redress would be for the same reason lacking a support or justifying theory. And the result is paradoxical, if we consider that a theory that purported to defend individuals from the interference of others turns out to be incapable of motivating any forms of claim to private ownership against the community. If my reasoning is not flawed, this conclusion would also disqualify the reasons many libertarians, through the appeal to SO, offer to keep the state from altering property rights; as technically all property rights would be conceded by others rather than acknowledged and enforced for their own sake, adjusting inequalities through the redistribution of property rights and income cannot be seen any longer as a violation of my rights as self-owner.

What else could we do to support a moral right to private property and avoid Hume's scepticism? Property rights can be thought of as issued by political institutions and the same institutions can then dispose of these rights as they want. In such a case one has to turn to an utilitarian rationale to underpin a system of property rules, but this would make property rights contingent on utility or other maximising calculus. This is the traditional utilitarian stance on property, in which case I can be granted a right to private ownership by the positive institutions in my country upon the contingent fact that this is the best way to promote the greatest happiness of everyone or other goals. Alternatively, if we want to stand firm on the belief that private property ought to have a more solid moral foundation than the will of the government or of a majority, one has either to work out other solutions (contractarianism à la Rousseau) or draw on other moral principles that make the use of property essential to the full development of an individual, not just a privilege for a few.

Appendix to chapter 3: Otsuka's proviso

To conclude it is worth mentioning Otsuka's egalitarian proviso. Even if some of the conclusions of this appendix may be redundant and do not add up anything to the content of the thesis, his proposal of an egalitarian liberalism should be discussed. On his account, an initial acquisition is just only when everyone else can acquire an equally advantageous share of unowned worldly resources, (O., 2003: 24). When this proviso is met, according to Otsuka, the distribution of resources would be such as to provide everyone "equal opportunity of welfare" (ibid.: 35). This seems a brilliant way out to the problems of any right-based theory of acquisition, as any appropriative act can occur only if it is not too costly for others. It is beyond doubt that this proviso does a good job at counteracting the large inequalities that would on the contrary emerge out of a regime under a Lockean and Nozickian proviso. It would secure every one possibility to make use of natural resources in his most preferred and useful way. The point I want to make against Otsuka is different, it somehow resembles the one I advanced against the attempt to put together self-ownership and common ownership of the world. As I mentioned in the second section of chapter, Otsuka assumes the world to be originally unowned. He in fact asserts that the enforcement of an egalitarian proviso rest on each individual's claim "to a fair share of worldly resources to which nobody else has a prior or stronger moral claim" (ibid.). But then I wonder why an individual should be responsive of everyone's "equal opportunity of welfare" (for Otsuka future generations too should be included in this fair allocation). Why would someone be interested in the faith of others up to the point of accepting a severe restriction on his possibility of appropriation. Otsuka endorses the view that each generation has just a "life-time leasehold on worldly resources", meaning that they have somehow to preserve the value of what they own for the future generations. Then again, it seems that Otsuka is trying to yoke conflicting values "that cannot plausibly stand together" (Risse, 2003). For Risse such a combination would result in making left-libertarianism a shapeless theory of justice that tries to incorporate too many different things. In my view though, the main problem stems from the fact that his solution would require to include in SO strong rights to substantial forms of well-being. On this ground a self-owner would be effectively entitled to the attainment (at least to the opportunity to attain) of a certain level of welfare so that others are bound to accept severe constraints on their appropriation and use of resources. But this is already far enough from the logic of SO, which pretends to avoid overbearing duties on individuals without a previous consent.

FINAL CONCLUSIONS

We commenced this work with the explanation of the self-ownership thesis, which underpins the majority of libertarian theories of justice. The main idea of SO is that individuals have natural/non-acquired/original property rights over their body and can extend their rights over the external world, thus acquiring rights of ownership over extra-personal resources.

There is something extremely intuitive and appealing to the idea that we own ourselves and therefore we can do with our body what we please. Otherwise, who else owns our body? Therefore, if nobody can be said to be someone else's slave, it must follow that each person owns her own body as well as her talents, skills, labour, and the fruits of her labour. On the basis of this seemingly self-asserting principle, Nozick articulated a theory of justice demanding the absolute respect of these rights, hence the idea of a minimal state whose only purpose is to enforce these rights. Since the boundaries set by these rights are extremely thick, no balancing act can take place between different individuals to adjust inequalities, meaning that the power of the political institutions is limited to protective functions. According to libertarians, individuals should be left free to engage in transactions with others and exchange their property rights over their bodies and extra-personal resources. As long as no state of affair comes about with any rights violation, the demand of justice is fulfilled and there is no room to adjust the outcome in favour of a more desired goal. Society for libertarians, unlike the common assumption of many liberal contractarians, is not a joint adventure. There is no social goal worth pursuing nor reason to rectify unequal circumstances. Nothing is owed to others on the ground of justice, if this involves breaking one's ownership rights. Individual's choices within their protected sphere must be respected, regardless of the aggregate outcome. It is libertarians' common belief that the strive to implement higher equality among individuals would lead in practice down a slippery slope to oppressive social intervention, centralized planning, and even in a worst-case scenario human engineering to repair natural inequalities.

The strategy I set forth to undermine the appeal of SO was to question the claim that treating individuals as self-owners, namely taking full respect of the rights over their persons, amounts to taking into consideration the separateness of our existence as well as the Kantian Humanity imperative. This was primarily the focus of chapter 1. If taking serious notice of the separateness of persons is an argument against collectivism, this is not enough to forbid any

form of appropriation, contrary to what SO entails. If separateness involves the possibility to generate positive duties to provide others (taken in a broad sense) with the necessary means to develop their life plan (that is what gives ultimately value to their life) then SO falls short of its demands. Self-ownership at its best may match with the principle of separateness while offering protection against violation of or aggression to bodily integrity.

Finally I have shown that the self-ownership thesis has to be discharged or severely weakened in order to be compatible with Kantian imperative to treat others not merely as a means, but always as ends in themselves. This tensions ultimately comes down to the fact that respecting rights of self-ownership has no implication whatsoever for my attitude towards others, how morally I ought to regard them, whereas Kant's morality commits one to take on a particular form of regard for others. This aspect also distinguishes Rawlsian contractarianism from some libertarian theories presented in pure contractarian terms (Gauthier 1986: 55-58, Buchanan 1975). In such interpretation of the contract each party to the bargaining table merely strives to maximise his self-interest. Others are obstacles or potential harms to my attainment of maximum advantage, but it is more convenient for anyone to look for a compromise than to end up in a Hobbesian state of war. Consequently whatever constraints on my mere self-regarding behaviour I accept, it is exclusively with a view to my ultimate advantage. The principles of justice thus established reflect a mutually advantageous agreement between self-interested individuals. What enters the picture are merely individual subjective values and personal preferences. Nothing has value from an objective point of view, but everything is measured on the scale of one's personal interest. By these means the aforementioned theorists attempt to rid morality from the sphere of justice. On the contrary for Rawls each person has moral worth in herself, and for this reason others owe her justice, namely equal consideration and respect. Rawls, largely influenced by Kant on this, refers to a "natural duty" of justice (*ATJ*: 100) that binds social members together. Natural duties do not stem from an act of consent but "obtain between all as equal moral person" (*ibid.*: 99). In a certain sense the two principles of justice as fairness serve to spell out the consequences of this unconditional natural duty. Why all this should have an impact upon the philosophical force of SO is due to the fact that both the principles of separateness and the Kantian idea that Humanity should always be treated as an end in itself, are valuable principles in moral philosophy.

In chapter 2 I proceed to attack the foundations of the SO. Libertarians accept SO as a starting point to generate their theories of justice, offering, in my opinion, not conclusive reasons to do that. One may look at this effort with scepticism, after all we need a starting

point, an intuitive idea to begin with. At one point our reason must stop and take something as granted. “If I have exhausted the justifications, I have reached bedrock and my spade is turned”, once Wittgenstein famously said. But why then should we start from SO, especially if we consider its ambiguities, shortcomings and above all the implications, often unpleasant, which it leads to. If we lack compelling reasons to believe that we are self-owners and that our initial property rights work as side-constraints on what others may do to me, then we can also set up a principle that recognises more reciprocal duties and advances more substantive goals ahead of our social relations than merely the avoidance of interference. In this regard the outcome of chapter 2 plays in favour of many egalitarian theories that often teeter when they have to confront SO. Interestingly enough, this echoes Cohen’s conclusion that a socialist does not need to be afraid to claim that self-ownership rights should be curtailed to generate more substantive freedom for more people. “For real freedom, or autonomy, to prevail, there have to be restrictions on self-ownership” (Cohen, 1995: 102). Other than this, I believe that the Kantian project, his quest of universal laws of reason and the insistence on the absolute value of Humanity offers a more solid ground for recognising the interests of each individual, his rights to a self-determined existence, and aspirations to an equal moral consideration than SO. This however must come at a cost of a severe reduction of what an individual may do to his own person and the ways he can treat and regard others.

Finally, in chapter 3 I have shown that an advocate of SO facing a choice between a no-ownership or a common-ownership view of the world should opt for the former. But then I pointed out the shortcomings of all the attempts to specify and justify how a self-owner can create property rights *ex nihilo*, when land is initially unowned. If my arguments are sound, I can draw the conclusion that even if rights of SO rest on solid foundations, they fall short of grounding property over external resources, thereby proving their scarce utility. One may also turn the conclusion of this chapter against the libertarian (Nozick especially) justification of a capitalist society. If there is no ground for believing that some people are more justified to acquire and dispose of private property rights than someone else then the actual distribution of property rights can be seriously modified to foster other goals. The chapter has also shed doubts on the philosophical possibility of some forms of left-libertarianism that try to counteract the anti-egalitarian tendencies of SO with the assumption that the world belongs to the mankind as a whole. As we proved (3.2), the two premises appear to be mutually exclusive.

I believe that my conclusions lend support to Will Kymlicka’s ones, who does not hesitate to call the SO thesis a “red herring” (K., 2002: 127). Either it has scarce, irrelevant

implications or it prevents us from achieving what we really care about, a more substantive idea of freedom and fair treatment of individuals in a society. On top of that it struggles to give property a substantive moral foundation. As an alternative I am thinking now of the Hegelian account, that links the justification of private property with the ethical development of a person. We do not go astray if we say that property rights for Hegel are inextricably intertwined with our nature of human beings, but not in the same way as Nozick does. Or what is the same, individuals enter into the world as free agents and property rights should be seen “as implicit in our first and basic entry into the world as free agents” (A. Ryan, 1984: 121). For Hegel by objectifying his will in the objective external world through the performance of labour a person brings his will into a stronger and more mature relation to itself. Not only would such a view make the exclusion of many people from private ownership harder to motivate, but it also yields a richer account of the meaning of labour. In Hegel’s labour is not simply a vehicle of appropriation and a means to earn a living. Labour is instrumental to the full realisation of an individual, his “self-actualisation”. My suggestion for future works is that Hegel’s stance on property should be considered more seriously in the contemporary debate, especially in consideration of the political changes his ideas might support toward a more equal distribution of property rights over productive resources.

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