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1. Introduction

Over the last two decades there has been a significant increase in scholarly attention regarding left-libertarian theory. Left-libertarians propose a theory of justice that combines a strong conception of self-ownership with an egalitarian distribution of worldly resources. That combination is motivated by the intuitive attractiveness of both ideas. This dissertation seeks to contribute to the debate about left-libertarianism by taking a different starting point. Instead of the typical two-prong approach I will focus primarily on the idea of self-ownership. Contrary to what is commonly believed, I argue that taking self-ownership as the supreme moral value that ought to guide a theory of justice does have implications for possibly justifiable theories of world-ownership. Moreover, I argue that the argumentation behind the self-ownership thesis implies a very precise left-libertarian theory of ownership rights over worldly resources.¹

By taking self-ownership as my cornerstone this dissertation also builds on the theory of justice presented by Robert Nozick (1974). Although Nozick and I agree about the basic moral rights individuals have, I argue that Nozick's own theory of distributive justice, based on his theory of just initial acquisition, is not convincing. As an alternative, I derive from the thesis of self-ownership a left-libertarian theory in which every individual has a right to an equal share of the competitive value of worldly resources. By discussing different left-libertarian theories I argue that Nozickean self-ownership is only guaranteed in a world in which the rights over external resources are equal in absolute

¹ I take 'worldly resources', 'natural resources' and 'external resources' to be interchangeable.

terms and only apply to the natural resources that are external to human beings.

I start by exposing a Nozickean account of self-ownership, based on Kant's moral and political philosophy. Because Nozick is not always very clear about the foundations of his self-ownership thesis, I restructure his argument and expand it where necessary. At the same time I discuss some of the arguments of critics of the thesis to clarify its meaning. Nevertheless, my goal is not to provide a detailed defence of self-ownership. From a certain point I assume its moral importance and derive a theory of world-ownership from it. I argue the unjustness of Nozick's own account of property acquisition and distribution, and propose a left-libertarian alternative based on the Lockean proviso for initial acquisition of natural resources. By engaging in some of the basic arguments of three very different left-libertarian theories, those of Van Parijs, Otsuka and Steiner, I develop my own ideas and conclude that self-ownership is best respected in a left-libertarian theory in which the redistributable resources are very minimal and only include the external fruits of nature.

2. Self-ownership

The concept of self-ownership is derived from the moral idea of 'ownership': "for person *A* to 'own' item *x*, is for *A* to have the *right* to determine the disposition/use of *x* as *A* sees fit – *A* has a veto over anyone else's use of it" (Narveson, 1998: 7, his italics). To own oneself means, thus, to have the right to fully control the use of one's own person and to transfer this right to others. It also means that one cannot be asked to compensate someone just because

of the possession and exercise of these rights (Vallentyne, 2000: 2). This means that everyone has the same rights over themselves as a slave-owner over his slave. G. A. Cohen (1995: 67) defines the thesis of self-ownership as the idea

“that each person is the morally rightful owner of his own person and powers, and, consequently, that each is free (morally speaking) to use those powers as he wishes, provided he does not deploy them aggressively against others” (his emphasis).

This non-aggression proviso is essential for the understanding of self-ownership. It does not really make much sense to abstractly state that a person owns himself. Because it ultimately all comes down to the *rights* persons possess, this statement could be compatible with a whole range of different collections of rights. Self-ownership is a matter of degree, but the constraints of fullness and universality lead to the idea that it ought to be understood as *full* private property rights over oneself. Full self-ownership means that everyone has the most extensive rights over themselves compatible with same rights for everyone else (Cohen, 1995: 213).

Nozickean self-ownership is based on the idea that the world consists of individuals who all lead separate and distinctive lives. All individuals are morally equal and no person has an innate right to coerce someone else. I understand coercion, like Philippe Van Parijs (1995: 4), “as the (threat of a) violation of a person’s rights, her ownership of herself included”. Because of the *separateness of individuals* we ought not to use someone as a means to

benefit others without that person's consent. A person's separate life deserves respect because a human being is special in various ways. Humans are, for example, gifted with rationality, free will and moral agency. Most of all, what makes persons special is their capacity to form and try to live according to their own conception of the 'meaningful life'. This means that a person is

“a being able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being that limits its own behaviour in accordance with some principles or picture it has of what an appropriate life is for itself and others, and so on” (Nozick, 1974: 49).

Human beings are morally valuable is the fact they have the capacity to set and pursue a conception of the meaningful life based on their own rational will. Therefore treating a person as a morally valuable end in herself means respecting her capacity to choose, and try to live according to, her individual conception of the meaningful life. This means it is morally impermissible to coerce.² Coercing a person is ignoring her individual ends and using her for your own ends. This reasoning is supported by Kant's second formulation of the categorical imperative: “Act [in such a way] that you use humanity [...] always at the same time as an end, never merely as a means” (Kant, 1785: 38). Not respecting a person's choice for a particular meaningful life is not treating her as an end in herself.

² Except in case of punishment or self-defence. I leave these issues aside in this dissertation.

It is sometimes argued that the Kantian foundation for self-ownership fails because Kant does allow using persons as a means if you treat them *at the same time* as an end in themselves. Using persons *only* as means is what this second categorical imperative excludes. Cohen (1995: 239), for example, argues: “*Of course* I treat the ticket-seller as a means when I hand him the money and thereby get him to hand me my ticket. For I interact with him only *because* he is my means of getting a ticket” (his italics). In this example Cohen makes clear that, according to him, treating someone as a means has something to do with the functionality of that person. The function of the ticket-seller makes him a means to me. Although it is true that we use persons at least partly as means in almost every interaction we have, the functionality of the relationship is not the only thing this Kantian moral law is about. The end-means classification has its foundation in the respect you show a person as a rational, morally self-directing being.³ It is the respect you show for the individual choice of the morally autonomous person that determines whether you treat him as a means or as an end. Only if the ticket-seller himself did not want to sell tickets you would treat him as a means because in that case you do not care about his personal ends. Therefore, treating the ticket-seller as a means would mean that he is coerced to sell tickets and so that you neglect the ticket-seller’s ends. If the ticket-seller voluntarily chose to sell you tickets he made ‘selling tickets’ one of his individually chosen ends. In that case the buyer respects the seller’s individual choice and so treats him as an end in

³ Jonathan Wolff (1996: 28) explains that for Kant “to treat people as ends in themselves is to act towards them in a way which respects this characteristic”. In which ‘this characteristic’ refers to the ‘rational will’ of human beings.

Roger Scruton (2001: 81) carefully explains that it is the ‘autonomy of the will’ that is the Kantian foundation of the moral value of human beings: “[The autonomy of the will] is also ‘the ground of the dignity of human nature and of every rational nature’ ”.

himself, even if they undoubtedly have a functional relationship. This shows that Cohen is right in arguing that it is treating persons *only* as a means that is excluded by the second categorical imperative. What my argument shows, though, is that the ends-means distinction is based on two different guidelines: functionality and voluntariness. So far the functionality is concerned, Cohen is right we might consider it as a matter of extent by which we can treat people as both means and ends in themselves. In case of the voluntariness it is not a matter of degree. Someone either incorporates a certain action as her end, or she does not. This voluntariness guideline does support the self-ownership thesis. From the moment the voluntariness guideline is not met, we treat persons merely as a means.

Kant confirms this moral foundation for self-ownership in his reasoning for external freedom in his political philosophy. External freedom, for Kant, has to do with the ability to set and pursue one's own ends. Coercion and force are interferences with this external freedom. Ripstein argues that according to Kant

“To be free is to be independent, that is, to not be subject to the choice of another person. [...] Anything another person does that interferes with the capacity to set ends for yourself is therefore coercive, because it makes the question of which ends you will pursue depend upon the choice of that person. Another person can do that in three ways: by depriving you of the means you use in pursuit of those ends, or making you pursue ends you do not share, or using your means to pursue those ends” (Ripstein, 2004: 8).

It seems this gives us a strong Kantian argument for self-ownership. On the one hand Kantian morality demands us to respect a person's rational will and her ability to set and pursue her individually chosen ends. On the other hand Kantian freedom requires not to be subjected to the choice of someone else and therefore not to be interfered with. Kant's external freedom logically means the same as the self-ownership thesis. The fact that Kant himself does not argue for self-ownership because, according to him, only things can be owned and because his political philosophy argues for a far more powerful state than is permitted by the self-ownership thesis does not refute this logical analysis.⁴

Nozickean self-ownership is protected by inviolable natural rights. The moral significance of the separateness of individuals and the idea that no one ought to be used as a mere means for the ends of someone else assigns negative rights of non-interference to every human being. The negative self-ownership rights function as side-constraints on human action. They form a framework of possible actions we are morally allowed to perform towards someone else. No consequences can provide an exemption that justifies a rights violation. This means the self-ownership thesis is strongly anti-consequentialist.

These moral rights of individual agents also circumscribe state action. Political rights are logically derived from moral rights because, in a world that consists of individuals of equal moral value, the law that guides the relationship between one individual and another (moral law) also guides the relationship of a group of individuals with a particular individual (political law) (Nozick, 1974:

⁴ Arguing why Kant's conclusions of his political philosophy are not logically in line with his moral philosophy would, obviously, lead me too far in this dissertation.

6). So, for example, the self-ownership thesis does not allow the state to use some individuals as means to achieve some higher social good.

So far I have only argued for strong self-ownership rights and have ignored the rights persons might have over natural resources. Nevertheless, the two kinds of rights are strongly related. Property rights, just as self-ownership rights, are essential for the ability to set and pursue ends. Namely, it is impossible to set and pursue certain ends without having the *full control* over natural resources. If you do not have the full control over resources that enables you to take steps towards the realisation of a certain goal, you have not made the goal your end, but merely wished for it. This shows that to have self-ownership, and thereby the ability to set and pursue ones individually chosen ends, *full private property rights* are inevitable. As Ripstein (2004: 9) argues:

“If I am to be the one who sets ends for myself, I must have means fully at my disposal, so that I am the one who decides which purposes to use them for. [...] I am free to use my means to set ends only if my ability to do so does not depend on what others might have to say about it.”

Both the powers over the own person and the powers over the necessary resources are essential to set and pursue ones own ends. This means that someone cannot have self-ownership without *full private property rights*. If someone interferes with someone else’s self-ownership or property ownership, she interferes with the person’s ability to both set and pursue her

own ends. So all interference with a person or property that is not consented to by the rightful owner is unjust. Of course, this is not to say anything about the property one can rightfully own, which I will discuss later. It only says that, if one has rightful property, it ought to be governed by full private property rights. The contrary argument, in which persons have a rightful say over the property of others, “would probably reflect a belief, prejudicial to self-ownership, that people should be endowed with rights which enable them to benefit from (the fruits of) the personal powers of others” (Cohen, 1995: 106). It might be argued that self-ownership rights and the rights over natural resources are also related in another way. Natural resources, the argument could go, are essential for the successful pursuit of one’s individually chosen ends. Therefore, if self-ownership is about setting and pursuing individual ends, it is important that everyone has access to, or ownership rights over, these essential resources. If you really care about the moral value of humans as rational autonomous beings, it is not self-ownership as such, but a form of self-ownership in combination with a satisfactory amount of resources that is important.

This argument fails in two ways. Firstly, it disconnects the ability to set and pursue an end from the internal and external resources over which a person has an ownership right. This reasoning is not valid, because it is not possible to set an end irrespective of the powers you have over yourself and over your external resources. I cannot make ‘flying’ my end if I am not gifted by nature with the wings and powers to do so. Neither can I make buying a Ferrari my end if it is, considering my financial status, totally unrealistic. Of course I can wish or hope that some day I wake up with wings on my body or a million

pounds underneath my bed, but clearly, here again, there is a difference between wishing and making something your end. The belief to have the power to take steps to achieve the end is essential for something to become an end in the first place. Therefore, the adoption of a particular end precisely depends upon the powers and means you rightfully have at your disposal.

Secondly this argument takes as a premise that we value the *successful* pursuit of individual ends. But why would this be the case? I can be happy for someone who achieves, or lives according to, her personal ends, but I do not see why this would be a reason to value the achievement as such. If I make it my end to go to the bar seven days a week, because it gives me joy and happiness, it seems odd for others to value the act 'me going to the bar seven days a week' just because it is the expression of the successful pursuit of my end. What I hope others value is me as a person, as a morally autonomous, rational being who sets and tries to pursue my own ends, but not the particular act that is related with one of my ends. The successfulness of someone's pursuit of individual ends does not determine the value of a certain act, let alone the moral value of a certain person. It can be concluded that the relationship between self-ownership and ownership over natural resources only goes in one direction. To have self-ownership it is necessary to have full private property rights over your rightful belongings, but owning external resources is not a necessary condition for self-ownership.

This might lead, at first sight, to a confusing situation. On the one hand self-ownership rights include the full property rights over oneself *and* one's rightfully obtained external resources. On the other hand having self-ownership does not require the possession of such external resources. If it

really is self-ownership that is important to us, as the expression of the separateness of individuals and the moral law that no one ought to be used as only a means for the ends of someone else, why do we actually care about private property rights over external resources at all? In the following section I will answer this question and I will derive a theory of rightful private property appropriation out of the underlying argumentation of the self-ownership concept.

3. World-ownership

The justification of property rights over external resources is independent of the self-ownership concept. This is because the mere idea that persons ought to be the owners of their own selves cannot justify ownership over worldly resources. Self-ownership and world-ownership are initially unrelated. The independent justification of property rights is usually based on the idea of the 'tragedy of the commons' (Kymlicka, 2002: 113-115). If no person or group has the exclusive rights over a certain external resource, and thereby everyone is allowed to use it as they wish, the productive use is drastically diminished. No individual or group has an incentive to invest in the collective resources and thus the possible output that can be gained through the resources will never be reached. Moreover, if the population increases it might even be rational for each individual to deplete the resources. It is arguable that the only logical solution for this 'tragedy' is to assign some kind of property rights over the previously unowned external, worldly resources.⁵

⁵ Although this topic is certainly worthy of further study, I will not focus on it any further as the emphasis of this dissertation is not on the justification of private property but on its relationship with self-ownership.

Although the justification of property rights as such is independent of the self-ownership concept, the kind of rightful property rights that ought to be assigned can be derived from it. So what can individuals rightfully own if we accept self-ownership as the ultimate expression of the equality and separateness of individuals and of the moral law that no one ought to be used as merely a means? So far I have argued that some kind of system of property rights is just and that, to be in line with self-ownership, this system ought to assign full private property rights.⁶ I now argue that, besides the full private property characteristic, property rights ought to be (1) unilaterally claimable, (2) equal and (3) impermanent. In doing this I focus on the justification of the initial acquisition of natural resources. Because every external resource we own is rooted in nature all such titles can only be just if the initial acquisition was also just. Just initial acquisition is the building block of every just title in external resources.

Firstly, property ought to be unilaterally claimable. As some kind of full private property system is legitimate and as all individuals are equally valuable, everyone has an equal right to appropriate initially unowned natural resources and claim full private property rights over them. In that case self-ownership demands the justness of unilateral appropriation. The reasoning is similar to the one for full private property rights. If a self-owning individual has the right to appropriate some part of the worldly resources, her exercise of the right ought not to depend on what others might have to say about it. The self-owner ought to have the prerogative to use her rights in the pursuit of her individually chosen ends. If the exercise of her rights depends on the will of someone

⁶ This excludes, for example, communal systems of property rights.

else, she becomes subject to this will. This would mean disrespect for the separateness of individuals and for the particular individual as an end in herself. A system of unilaterally claimable private property rights over worldly resources is the only one in line with self-ownership.

Secondly, a unilateral appropriation is only just when it respects the right of all other individuals to an equal share of the world's natural resources. This argument is more complex and so I start by refuting the Nozickean justification for *unequal* unilateral appropriation.

Nozick bases his theory of just initial acquisition on the Lockean proviso of just property appropriation. Locke (1698: 288, section 33) argues that unowned natural resources can only be justly appropriated if one leaves "enough, and as good" for others to appropriate.⁷ Based on the moral equality of individuals it is arguable that every unilateral initial property acquisition ought to be constrained by some kind of Lockean proviso. But what does it mean to leave 'enough and as good' for others and does this proviso survive a critical scrutiny? As a justification for full permanent private property rights the Lockean proviso is not convincing. This is because in a situation of scarcity the Lockean proviso cannot stand. If I appropriate a certain scarce resource and thereby, for 'the first time', do not leave enough and as good for others, my appropriation is unjust. But this means that the last person who appropriated this resource did not leave 'enough and as good' for me to appropriate and his appropriation was unjust as well. Applying this reasoning further to previous appropriators makes clear that the Lockean proviso cannot

⁷ Although this is not the only constraint put forward by Locke, it is the most important one and the focus of most of the debate about just initial acquisition.

justify full permanent private property rights over a (possibly) scarce resource (Nozick, 1974: 176).

In acknowledging this weakness of the Lockean proviso Nozick (1974: 176-177) argues for a different interpretation. Firstly, the Lockean proviso should be understood in a weaker sense. An appropriation should not leave enough and as good resources for others to 'appropriate', but to 'use'. As long as everyone still has enough and as good to use the appropriation is justified. This opens the door for the total appropriation of scarce natural resources while still meeting the (weaker) Lockean proviso. Secondly, and more importantly, the Lockean proviso should be understood as a moral rule not to 'worsen' the situation of others by appropriating natural resources. This leads to the following Nozickean proviso for just initial acquisition:

"A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened" (Nozick, 1974: 178).⁸

This Nozickean proviso fails as a normatively acceptable guideline for private property appropriation. Its most troublesome feature is that it allows a first-come first-served system of property appropriation because of the proviso's weak baseline of comparison. For Nozick this baseline is the pre-appropriation situation. To worsen someone's situation by a certain appropriation means that this person would be worse off, in material terms, after the appropriation compared with before. Because of his empirical claim

⁸ I take 'not to worsen the position of others' as both a necessary and sufficient condition for justified initial acquisition because Nozick does not clarify other conditions that should be met.

that a system of full permanent private property rights almost always is better than a pre-appropriation situation, Nozick thinks he leaves his critics with the high burden to prove the worsening of a certain appropriation. But, if we accept the moral law that all human beings are equally valuable, this arbitrary baseline of comparison allows some unacceptable situations (Cohen, 1995: Chapter 3). Imagine, for example, an unowned world with two inhabitants A and B. According to the Nozickean proviso it would be totally justified for A, as the first person who starts claiming private property, to appropriate the whole surface of the world while, at the same time, ensuring that B is materially at least equally well off than before. A is now allowed to decide on her own what to do with all the natural resources, but still Nozick would not take that 'side-effect' into account in the evaluation of B's situation. Or, imagine five sailors discovering an unknown uninhabited island (Ossenblok, 2011: 4). Would it really be just for the first one who sets foot on the island to claim it all if he makes sure that the welfare of his fellows is not worsened? The Nozickean proviso does not even demand the first sailor to compensate the others for his appropriation because the island was unknown and, therefore, it had no influence on the welfare of the sailors before they discovered it. An appropriation of something previously unknown never worsens the situation of others, compared with the pre-appropriation situation. Even more striking is that the Nozickean proviso allows one of the sailors to shout, before mooring: "That island is mine!" Even in that case the appropriation would be just and the others could not do anything but be perplexed. It is not clear at all why the other sailors have to accept this arbitrary first-come first-served unequal

appropriation. The least one might expect is that all sailors, as morally equal agents, ought to have an equal right to the island.

Just like in the argument for self-ownership, the demands of fullness and universality constrain the right to unilaterally appropriate unowned natural resources. Recall that I argued that everyone ought to have *full* self-ownership rights, which means that these rights are constrained by the same rights of others. Treating persons as equals entails that everyone can enjoy the same rights. This is not the case in Nozick's argument. Nozick argues that some have a stronger right to appropriate than others. The first-come first-served system of appropriation leaves those who are too late with no right to appropriate. But like John Arthur (1987: 344) argues: "[No person is] born deserving a smaller share of the earth's wealth, nor is anybody else naturally entitled to a larger than average share". Natural resources are a sort of 'manna from heaven' and no one has a special claim to them. Therefore, treating persons as equals means that everyone has the right to an equal share of the worldly resources. The equal share theory here presented interprets the Lockean proviso as an absolute constraint. In a world of scarce natural resources, to leave 'enough and as good' for others can only mean to leave the same share for all. But have I not argued that the Lockean proviso is not convincing as a justification for full private property rights?

What the Lockean proviso fails to provide is a justification for full *permanent* private property rights. The zipping back argument presented earlier shows that the Lockean proviso cannot justify the kind of property rights right-libertarians like Nozick want to defend. But these are not the kind of property rights that are in line with self-ownership. Compatibility with the self-ownership

argument demands everyone having the right to appropriate an equal share of the worldly resources. Logically this equal share is dependent on two variables: (a) the amount of available resources and (b) the number of human beings on earth. Therefore the self-ownership argument requires, as a third characteristic, full *impermanent* private property rights which are adaptable to changing circumstances. If the content of the variables changes the rightful private property rights have to change as well, because of the different equal share each person initially had a right to appropriate. It is worth noting that Nozick himself at some point seems to argue for adaptable private property rights. Nozick (1974: 180) argues that if a person becomes the owner of the only water hole left, she is not allowed to charge what she wants, even if the scarcity came about by no fault of her own.⁹ This example makes clear that Nozick as well thinks that the amount of available natural resources can affect the property right an owner can have.

This concludes my basic argument for left-libertarianism. I showed that self-ownership is an important moral value and that, if one takes it as the supreme value to guide justice, it leads to a theory of world-ownership in which everyone has a right to some kind of equal share of the natural resources. Now I will develop this idea by assessing the use of self-ownership in the very different theories of three leading left-libertarians: Philippe Van Parijs, Michael Otsuka and Hillel Steiner.

⁹ Nozick does argue that it would be different if the water hole did not dry up because of precautions the owner took, but this is irrelevant for my argument.

*4. Self-ownership and freedom*¹⁰

Some left-libertarians, like most notably Philippe Van Parijs, have argued that the core concept of their theory is not self-ownership, but a certain conception of freedom. They see self-ownership as an important part of their theory, but do not accept it as the most important moral value that ought to guide a theory of justice. In this section I first concentrate on the relationship between self-ownership and freedom and argue that self-ownership indeed is a distinct concept. Therefore the argument for full self-ownership presented here is not the same as arguing for maximal freedom. Thereafter I argue that Van Parijs's attempt to combine a plausible conception of self-ownership and maximal freedom is not successful and I conclude that self-ownership should be valued and defended on its own. Self-ownership should not be seen as only a part of a theory of justice, but as the ultimate value that directs justice.

Many libertarians, like Nozick himself, have mistakenly argued that their theory takes 'liberty' as its most important value. The liberty-based reasoning is something like this: libertarianism argues against (state) interference in voluntary actions of adults and consequently promotes the freedom to do what one wishes with one's rightful belongings. But this reasoning proves unsound if we analyze the real meaning of freedom in this argument (Kymlicka, 2002: 148-153). Every idea of freedom has to fit in a triadic formula in which agent X is free from preventing conditions Y to do action Z (MacCallum, 1967: 102). In the 'libertarian' reasoning the main focus is on the preventing condition Y (e.g. state interference) and the action Z (e.g. free transfer of rightful belongings). Nevertheless, if we focus on the agent X it

¹⁰ I take 'freedom' and 'liberty' to have the same meaning.

becomes clear that who is made free by this reasoning is the owner of the resources. It is the person with ownership rights (over herself and/or over external resources) who is freed from the preventing conditions. However, as I mentioned earlier, ownership over item *x* means that the owner has a veto right over everyone else's use of *x*. If I organize, without your consent, a party in your garden you will probably make use of this veto right and ask the police to remove my friends and me from your property. In that case we (X) are unfree because of state interference (Y) to party in your garden (Z). Private property rights by definition restrict the freedom of everyone but the owner. If libertarianism really promotes freedom, it has to argue that the non-owners are not made unfree by the prohibition to use the owner's property without her consent. This is only possible by shifting from a non-moralized conception of freedom as non-interference to a moralized conception of freedom based on rights. Libertarians could argue that non-owners are not made unfree because they did not have the *right* to use the property. But then, to avoid a circular reasoning, the rights persons have cannot be based on an idea of freedom itself. Libertarians presuppose ownership rights if they say that they argue for liberty. This argument shows two things. Firstly it makes clear that I am right in engaging in the fundamental mission of every libertarian to justify (self-) ownership rights. Secondly, and more importantly, it shows that freedom and ownership are two entirely different concepts. Freedom is about the absence of interference. To deny this based on a moralised conception of freedom goes straight against our intuitive ideas about its meaning. The just and rightful imprisonment of a criminal still makes him unfree (Cohen, 1995: 60). The fact that interference, and not rights, is at the core of freedom also shows

that non-ownership, for example because of a lack of money or resources, can mean unfreedom. This makes clear that libertarian theory, both right and left, does not want to promote freedom. It tries to defend an idea that a just society is a society in which everyone acts based on the ownership rights they legitimately possess over internal and external resources. We might say ownership rights promote certain (negative) freedoms, but certainly not freedom as such.

Philippe Van Parijs (1995: 1) acknowledges this difference and assumes that “freedom is of paramount importance”. Nevertheless, self-ownership is an important part of his idea of freedom. To be free it is essential to have a minimum of negative self-ownership rights. Because ownership and freedom are fundamentally different concepts there is a question of compatibility here. What is left of our morally valuable (and in my idea supreme) concept of self-ownership in a theory that takes freedom as the prime value? Van Parijs rightly takes the amount of freedom one enjoys as partly dependent on the opportunities one has. As freedom is about non-interference, maximizing freedom is taking away as much interference as possible. As I have just argued, this could be dependent on the amount of ownership rights one has over external resources, like money, wealth, land, etc. Van Parijs thinks that the value of the opportunities created by these external resources ought to be leximinized among members of society. This has to be done by a maximization of an unconditional basic income.¹¹ The underlying reasoning for this basic income is simple: like every left-libertarian Van Parijs (1995: 99) argues that

¹¹ I ignore here Van Parijs’s idea of ‘undominated diversity’ by which he argues that a person is ‘dominated’ when her opportunity set is so bad because of undeserved disadvantages in her endowments that everyone prefers someone else’s set of endowments over hers. When someone is dominated in this way, Van Parijs argues, extra compensation, above the basic income, is justified (Van Parijs, 1995, chapter 3).

everyone has an equal right to the external resources and that, therefore, persons ought to compensate all other humans for the appropriation of socially owned (and initially unowned) goods or, as he calls it, external assets.¹² This redistributive scheme maximizes the opportunity set of the least advantaged members of society. The demand for equality is constrained by the idea that everyone has to have equal self-ownership rights. That guarantees, what Van Parijs calls, ‘real freedom for all’. His idea of freedom, thus, consists of two components: self-ownership and opportunities. These two concepts form a balance, because a strong conception of self-ownership, which is linked with ownership rights over external resources, will demand significant sacrifices on the distribution-of-opportunities side. Unfortunately Van Parijs’s theory is extremely unbalanced and focuses too much on the opportunity side whereby he is left with an implausible account of self-ownership. This is displayed by the fact that he considers far too many goods and services as external assets, and thus redistributable, to be in line with a reasonable conception of self-ownership. Because ‘real freedom’ is about opportunities, Van Parijs argues that all resources that might enhance one’s opportunities should be included in the ‘relevant pool of external assets’.

“What is relevant, from a real-libertarian¹³ standpoint [...] is of course the whole set of external means that affect people’s capacity to pursue their conceptions of the good life, irrespective of whether they are natural or produced. External endowments, in other words, include whatever usable

¹² The relationship between this compensation mechanism and the equal share theory will be addressed in the next section.

¹³ Van Parijs calls his theory ‘real libertarianism’ as a reaction to the fact that ‘classical’ libertarians do not really promote freedom, while Van Parijs does.

external object in the broadest sense individuals receive access to” (Van Parijs, 1995: 100-101).

From this argument Van Parijs derives, for example, the idea that all gifts and bequests are legitimately taxable at 100%.¹⁴ You receive a gift or bequest, which always exists out of external assets, just because of good brute luck. You do not have a special claim to these external assets and therefore you ought to fully compensate all other members of society for your appropriation. But surely this reasoning shows a very strange interpretation of the idea that the demand for equality is constrained by self-ownership rights. A gift or bequest always involves two persons. Although it might be true that the receiver has no special self-ownership claims over the gift or bequest, the donor surely has (Vallentyne, 1997: 333). One of the core rights of self-ownership exactly is the right to transfer the ownership rights you have over internal and external resources. Moreover, expressing appreciation, friendship or love by gift giving is often part of a person’s conception of the good life. Therefore, an argument for the legitimacy of the 100% taxing of gifts and bequests cannot be based on ‘people’s capacity to pursue their conception of the good life’. Van Parijs is stretching the concept of self-ownership too far in his quest to ensure ‘real freedom for all’.

Another problem with this very extensive ‘relevant pool of external assets’ is that it seems to ignore the reason why some external resources are socially owned in the first place. The logical reason why compensation has to be paid for the appropriation of some external resources is the fact that no one has a

¹⁴ It is irrelevant for my argument that Van Parijs (1995: 101) pragmatically states that in reality a tax of less than 100% is advisable because of reasons of efficiency.

special claim to them. Some external resources really are 'manna from heaven' and, as I have argued, to distribute them equally is the only way that treats everyone as morally equal agents. But Van Parijs (1995: 101) states that

“Such material objects as factories and stamp collections, private houses and public bridges, such immaterial objects as nursery rhymes and computer programmes, the work ethic and nuclear technology constitute external assets on a par with beaches, pumpkins, and parrots.”

It is strange that he is convinced that, for example, private houses are on a par with raw natural resources. There certainly is a big difference. Private houses are the product of human labour, build on privately owned land with, let us assume, rightly appropriated natural resources. Private houses are produced by individuals with resources over which they had rightful ownership rights. It is very odd and even wrong to treat this 'production' as 'manna from heaven'. It is right that compensation ought to be paid for the appropriation of natural resources, but from that moment onwards, the natural resources are fully, although with an impermanent right, owned by the appropriator. Asking to compensate for the outcome of the production to which these resources serve means that one is asked to pay multiple times for the appropriation and use of the same natural resource.

Although the pool of external assets so far argued for by Van Parijs is already extremely extensive in light of self-ownership, he (1995: 102) thinks this will only lead to a level of basic income that is something between 'pathetically

low' and 'frankly negligible'. Therefore he argues that, to increase the level substantially, jobs have also to be treated as distributable external assets. Imagine a world in which everyone is equally talented and there is involuntary unemployment. In such circumstances, he argues, compensation has to be paid for the 'appropriation' of a job by means of an 'employment rent'. This reasoning implies, again, a very strange conception of self-ownership. Self-ownership rights are at the core of the employer-employee relationship. The object of such a relationship is the voluntary transfer of resources over which the employer and the employee have rightful ownership. As I have argued before, it is incompatible with self-ownership that one has to pay just because of the possession or exercise of the corresponding rights. The employer transfers the right over a part of his rightfully owned external resources (e.g. in the form of wage) to the employee in exchange for a part of her rightfully owned internal resources (e.g. labour power). Moreover, the skills of the employee do not matter. It is an essential part of self-ownership that you can transfer your ownership rights to whoever you want. So, even if the chosen employee was less talented than the other candidates for the job, the employer had the right to employ her based on, for example, her beauty or the outcome of an employee lottery. Jobs clearly are particular relationships between individuals and are by no means socially owned. Arguing that in exchange for the existence of an employer-employee relationship compensation has to be paid to everyone else only makes sense if one assumes that everyone has a right to a job. But on which conception of self-owning individuals could such a right be based? And who should be the duty bearers of this right? Jobs certainly are no 'manna' over which no one has an

initial right. They are created by individuals using their ownership rights in a specific way. It is not because some individuals cooperate by transferring their ownership rights in the form of an employer-employee relationship that everyone has a right to such an advantageous relationship. Envy is a very poor guide when it comes to the allocation of rights.

This short analysis of some concrete implications of Van Parijs's theory makes clear that he uses an implausible conception of self-ownership. One of the most important rights related to self-ownership, the right to freely transfer one's title over rightfully owned resources, is firmly neglected. Moreover, Van Parijs gives the impression that his only goal is to leximin opportunities and he thereby overlooks the constraint he himself puts on the demand for equality: the constraint of a reasonable protection of self-ownership. This impression is confirmed when Van Parijs (1995: 102) explicitly asks the question: "Can our inheritance be boosted?" This shows a spirit that is far from the anti-consequentialist ground of self-ownership. Nevertheless, part of Van Parijs's theory might be justified by a conception that individuals ought to be compensated for undeserved disadvantages in internal endowments. In the next section I will argue that this idea is incompatible with our moral duty to treat persons as equals. For now we can conclude that a theory that promotes 'real freedom', which means a conception of freedom that includes the opportunities people have, does not leave us with an acceptable conception of self-ownership. Therefore self-ownership ought not to be protected and promoted as a part of a theory based on freedom, but as an independent moral value.

5. The meaning of equality and the equal share

Even if left-libertarians could agree that self-ownership ought to be treated as an independent moral value, there still is a lot of room for discussion. For example, what does it actually mean to treat persons as 'equals'? What consequences does an 'equal' treatment have on world-ownership? I have already argued that everyone is entitled to an equal share of natural resources, but what exactly is an 'equal share'? I argue that equality demands *respecting* persons equally. This equal respect ought not to depend on the worth of internal endowments, but on the intrinsic moral value of individuals as moral agents. Therefore, a theory that allocates different rights over external resources because of differences in internal capacities, like for example Michael Otsuka's left-libertarian theory, fails to respect persons as equals. This leads to the idea that everyone is entitled to an equal share of the competitive value of natural resources.

Otsuka (2003) argues that the only just egalitarian interpretation of the Lockean proviso is one that ensures equal opportunity to welfare. The Lockean constraint that no person ought to be worsened or placed in a disadvantage by someone else's appropriation can only be met if everyone has the right to appropriate an "equally advantageous share of unowned natural resources" (Otsuka, 2003: 24). A share is equally advantageous if everyone has the ability to pursue the same degree of welfare, based on the satisfaction of self-interested preferences. Otsuka thinks this argument is in line with self-ownership because that concept does not say anything substantial about world-ownership. Consequently, according to him, almost every theory on just initial appropriation of natural resources would be in line

with self-ownership. Although it might be true that the concept of self-ownership itself does not have, at first sight, specific consequences for the ownership of worldly resources, this reasoning is incorrect. As I argue throughout this dissertation, the arguments and reasoning that underlie self-ownership definitely do prescribe some constraints for morally acceptable property appropriation. Moreover, I argue that this underlying reasoning prescribes a specific theory of world-ownership. So Otsuka also ought to be constrained by the underlying reasoning of self-ownership in arguing its compatibility with world-ownership. Because he fails to treat persons as equals, he fails this condition.

To see why Otsuka's luck-egalitarian theory fails to respect persons as equals we have to look into the basis of equality, i.e. the *reason* we treat persons as equals. This is important because the basis of equality inevitably constrains acceptable egalitarian theories and, as I will argue, is incompatible with Otsuka's proposal. What makes persons special and different from, for example, animals is their capacity to rationally and autonomously set and pursue individual conceptions of the good life. In short, humans are rational moral agents – possessors of a moral personality. But if this is what makes us morally valuable, why do we not agree that persons with higher developed agential capacities are more valuable than persons who have less developed such capacities? Following Ian Carter (2011), I argue the reason is that, when it comes to political justice and the moral justifications for coercion, we ought to treat persons with equal 'opacity respect'. This means that we ought to avoid looking at their internal moral capacities and treat persons as simply agents. Respecting persons as equal moral agents demands that, above a

certain minimum standard, the degree to which they possess the internal agential capacities (e.g. rationality, free will and the ability to set and pursue individual ends) does not influence their moral personality. This means that, above the minimum standard, persons are respected, as individual moral agents, as separate entities with independent equal value. This reasoning is in line with, and even supported by, the arguments for self-ownership. To respect persons as ends in themselves involves “adopting a perspective that avoids evaluation of the agential capacities on which moral personality supervenes” (Carter, 2011: 552). Kant supports this ‘external perspective’ when he argues that to respect, in contrast to love, entails to keep “a proper distance” (Kant, 1797: 215). The separateness of individuals requires treating persons as equals, i.e. to respect them, above the minimum standard, independently from the internal capacities on which their moral personality is based.

The underlying reasoning of Otsuka’s ‘equal opportunity to welfare’ is that everyone ought to have the same starting position to reach an amount of welfare irrespective of *undeserved* inequalities in internal (including agential capacities) and external endowments. Luck-egalitarians like Otsuka usually argue that from this equal start onwards persons will only be compensated for those outcomes they cannot be held responsible for. So, on the one hand, Otsuka takes into account the responsibility of agents but, on the other hand, he wants to compensate for inequalities in internal agential capacities. But surely there are differences concerning the degree to which someone can be held responsible, (partly) dependent exactly on these internal agential capacities. To be able to neglect this fact luck-egalitarians rightly argue that

above a minimum standard of agential capacities persons could be held equally responsible for their actions and choices. Thus, so far as the responsibility sensitive part of his theory is concerned, Otsuka shows opacity respect (Carter, 2011: 567-568). Nevertheless, the part of his theory that argues for compensation for inequalities in internal agential capacities does not show this respect. Besides the fact that this seems to be a conflict in his theory, it shows that Otsuka does not treat persons as equal moral agents and thus that his theory fails to be compatible with the underlying reasoning of self-ownership. It shows a lack of respect for equality and the separateness of individuals to take agential endowments directly into account when one tries to equally distribute worldly resources. Therefore Carter (2011: 568) argues that “responsibility-sensitive egalitarians ought to revise their assessments of inequalities so as to include only nonagential endowments.” It is wrong to conclude from this that it still could be legitimate to compensate for inequalities in nonagential capacities. Real opacity respect demands to see persons as simply agents and therefore their moral rights ought only to depend on morally relevant agency related facts. The only relevant facts of persons as moral agents are precisely these internal agential capacities and thus all moral claims ought to be absolutely equal.

Following this reasoning every individual has a moral right to an absolute equal share of the initially unowned natural resources. Because real self-owners have the right to transfer their rightful possessions – hence inequalities in rights over worldly resources will arise automatically – it would be ridiculous to assume that everyone ought to have an absolute equal bundle of natural resources. Typically the possession of natural resources is

beneficial for the owners and, consequently, the resources have a certain value. What everyone is entitled to is an equal share of this competitive value of natural resources. The competitive value is the expression of the worth of a particular resource in a market condition based on supply and demand (Vallentyne, 2000: 8). As the value changes over time and we have to take future generations into account, owners ought to pay a competitive rent value rather than a one-off payment. This ensures that at each point in time the payment equals the current competitive value.

This 'equal share of the competitive rent value' theory is also resistant to a strong criticism of Otsuka's theory made by Richard Arneson (2010: 173-174). A way of showing that Otsuka fails in providing us with an acceptable theory of justice is to imagine the implications of his proposals in a world in which the resources are not scarce. In such a non-scarce world it might be possible that, despite the abundance of natural resources, some able-bodied persons are not allowed to appropriate any natural resources at all without them providing external resources for others. It might be the case that there are non-able-bodied persons who are not capable of transforming natural resources in welfare for themselves. Equal opportunity to welfare contains that even in circumstances of abundance persons might not be allowed to appropriate anything at all without significantly compensating others. This seems absurd and inspired by envy. Moreover, it is an anti-Lockean consequence. Locke argues that in a situation of non-scarcity, where there is as good left for others, one should be free to appropriate. If not, and one claims the benefit of someone else's labour, it is "plain he desired the benefit of another's pains, which he had no right to" (Locke, 1698: 291, section 34). If persons have a

right to the equal share of the competitive rent value of all natural resources, by contrast, all persons could freely appropriate in a non-scarce world. Nevertheless, the arguments for paying the competitive rent would still hold. The appropriation makes some initially unowned natural resources private. Excluding others from the use of a resource that was in common use is only legitimate by paying them their part of its competitive rent value. But, of course, in an over-abundant world the competitive rent value of worldly resources would be (very close to) zero. This means the competitive rent value theory provides a convincing justification in both realistic scarce worlds and hypothetical non-scarce worlds.

6. A coherent conception of self-ownership

We could very broadly summarize the argument so far as follows: (1) to take self-ownership as the supreme moral value that directs justice leads to a theory of world-ownership in which everyone has a right to an equal share of the competitive value of natural resources and (2) these natural resources ought only to include resources that are exterior of human beings because otherwise one fails to show opacity respect and thus to treat persons as equals. But Hillel Steiner (1994) argues that the second part of the argument is incoherent with the first part. A theory based on an acceptable account of self-ownership, he thinks, has to accept that some internal endowments are seen as natural resources. This is because otherwise we cannot explain why we are not all the rightful possessions of our parents. As every acceptable account of self-ownership claims that we are the just owners of what we produce by means of our rightful possessions, we ourselves surely have to be

produced by means of some initially unowned natural resources to become self-owners in the first place. Steiner argues that germ-line genetic information indeed is a natural resource and that we therefore all have a right to the equal value of the total germ-line genetically determined talents. I argue Steiner is wrong when he states that his argumentation provides the only possible reasoning for self-ownership and therefore germ-line genetic information is not necessarily a natural resource. Moreover, it is unconvincing because his argumentation is based on a far-fetched reasoning about the first human beings. Thus my argument for opacity respect still stands while Steiner fails to meet this opacity respect criterion.

Steiner's argument starts by asking why we are not all the rightful possession of our parents if we consider that people really are self-owners, and thus the legitimate owners of what they produce with their rightfully owned resources. It seems we cannot ever come to be self-owners in the first place. By means of a far-fetched argumentation about the replication and recombination of DNA strands he argues that this reasoning is incorrect. The first beings that could rightly be defined as moral human agents, he calls them Adam and Eve, are the product of two pre-human beings (Steiner, 1994: 247). These pre-humans are on the same (non-)moral level as all other natural resources. The replication and recombination of their pre-human DNA strands started the line of human beings and is still the basis of all contemporary humans. This means that all human beings are the product of some persons labour combined with an initially unowned natural resource (i.e. the germ-line genetic information of the pre-humans). This leads Steiner to a two-fold conclusion. Firstly, because our existence depends on a combination of other persons'

labour with initially unowned natural resources we are not owned by our parents. Secondly, our germ-line genetic information ought to be included in the natural resources over which every individual has an equal right. Both conclusions, I argue, are unproven by his arguments. The key point of Steiner's argument is that "we can deny that *all* the factors entering into [the procreating process] were the products of those producers, or of other persons who voluntarily supplied them. [...] Some of these factors were supplied by nature" (Steiner, 1994: 248, his italics). Although this reasoning might be correct, this does not provide him with an argument why persons cannot be owned by their parents. The fact that nature adds a significant factor to the production process is not sufficient to argue that the product is unowned. Like Steiner himself argues (1994: 238), if I plant a rightfully appropriated acorn on my rightfully appropriated plot of land, I am the producer of the oak tree that arises and its rightful owner regardless of other natural factors that are required for its successful production. The oak tree cannot vegetate without unowned natural resources like air, sunlight and (rain) water. Nevertheless, these essential additives of nature do not change my ownership right. This means that, following Steiner's reasoning, parents might indeed be the rightful owners of their children. The second conclusion is linked with the first and, thus, also unproven. Germ-line genetic information is not necessarily a natural resource over which everyone has an equal right. It might as well be the private property of the producers who combine the natural resource with their own labour: the parents.

The question how we can come to be self-owners while being the product of others' labour clearly needs a different answer. Again the solution can be

found in the moral equality of persons. The mere fact that persons have equal intrinsic moral value provides sufficient ground for the idea that parents cannot own their children. Because all persons are morally equally valuable one ought to “act only in accordance with that maxim through which you can at the same time will that it become universal law” (Kant’s first formulation of the Categorical Imperative) (Kant, 1785: 31). As we have seen, for person B to have an ownership right over person C entails that B has the exclusive right over C’s disposition and use. This presupposes that B herself is not owned by A, because otherwise A would have the ownership rights over B’s disposition and use *including* B’s rights over C. To be able to own something, one cannot be owned at the same time. This means that if a parent claims ownership rights over her (adult) child, she illegitimately privileges herself not to be owned by her own parents. Here we have a contradiction in conception. Ownership over one’s children is impossible if we universalize the idea. This reasoning leads to the outcome that we cannot be the rightful possessions of our parents. Because this conclusion is not derived from a difficult argumentation about the replication and recombination of DNA strands, Steiner might be wrong that we all have an equal right to everyone’s germ-line genetic information. I argue he is indeed wrong. His argument for including germ-line genetic information into the distributable natural resources is based on the idea that there indeed ever was a clear shift from pre-humans to humans. But this cannot be but a fiction. Rather than a shift it was an evolution over thousands of years. It is ridiculous to assume that we could even reflect on the moment Adam and Eve, the first beings with moral personality above the minimum standard, were created by the pre-humans.

The evolutionary character forces us to take another standpoint. My arguments for opacity respect still hold. Human beings ought to be self-owners who are respected as equals. This equal respect can only be showed by a political theory that does not take internal endowments into account.

7. Conclusion

The purpose of this dissertation was to test which theory of initial property acquisition is best compatible with Nozickean self-ownership. I have argued that, although the concept as such does not tell us much, the underlying reasoning implies a left-libertarian theory. An equal distribution of worldly resources is the only one compatible with the basic ideas that support the self-ownership thesis. To respect the separateness of individuals and the moral law that everyone ought to be treated as equals means that we ought to distribute natural resources equally. This is supported by a strict interpretation of the Lockean proviso. To leave 'enough and as good' in a scarce world can only mean to leave the same for all.

I have carefully developed the argumentation behind self-ownership and shown the concept's importance for a theory of justice. I have demonstrated that, to be in line with self-ownership, a theory of rightful private property rights ought to justify full private property rights that are unilaterally claimable, equal and impermanent. I have argued that Nozick's own theory of initial property appropriation is not in line with the self-ownership argument and stated the basic outline of a left-libertarian theory in which everyone has a right to an equal share of the value of the worldly resources. By discussing some basic arguments of the theories of Van Parijs, Otsuka and Steiner I

have developed my argument further. Contrary to Van Parijs I have argued that self-ownership ought not to be seen as a part of a theory that promotes freedom, but as a morally valuable independent concept. By failing to do this Van Parijs's left-libertarian theory is left with an implausible conception of self-ownership. The discussion of Otsuka's theory has shown us the importance of opacity respect in the underlying reasoning of self-ownership. To treat persons as equals one ought not to take internal endowments into account in the allocation of rights. As the internal agential capacities are the only morally relevant facts about humans as equal moral agents, opacity respect leads us to the idea that only resources that are external to human beings ought to be included in the redistributable pool of natural resources. By refuting the arguments of Steiner about the inclusion of germ-line genetic information into the relevant pool of external resources, I have shown that my theory is not based on an implausible account of self-ownership.

Of course there is still a lot about my theory that could be the subject of extra research. For example, I have not tried to give the most extensive defence of self-ownership. I have only partly engaged with possible criticisms of the concept. Further scrutiny is essential to establish that self-ownership indeed is an important value that ought to guide possible theories of justice. To be able to discuss its relationship with world-ownership, I have partly assumed that it is the supreme moral value that ought to guide justice. Another example concerns the weight that is put on the idea of individual consent. I have argued that we always treat persons as ends in themselves if they consent with the action. An interesting question, though, is whether we can build a theory on such a possibly fragile concept. The line between consenting and

being coerced might not always be as clear as I assumed in this dissertation. Although there still are a lot of questions that could (and should) be asked, this dissertation is a valuable contribution to the left-libertarian debate. To adhere to left-libertarianism it is not necessary to be attracted to both self-ownership and egalitarianism. A commitment to self-ownership alone leads to a similar theory of justice.

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