

## Left-Libertarian Theories of Justice

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### 1. INTRODUCTION

Libertarian theories of justice hold that agents, at least initially, own themselves fully, and thus owe no service to others, except through voluntary action. The most familiar libertarian theories (e.g., Nozick [1974]) are right-libertarian in that they hold that natural resources are initially unowned and, under a broad range of realistic circumstances, can be privately appropriated without the consent of, or any significant payment to, the other members of society. Left-libertarian theories, by contrast, hold that natural resources are owned by the members of society in some egalitarian manner, and may be appropriated only with their permission, or with a significant payment to them. Left-libertarian theories have been propounded for over two centuries<sup>1</sup>, but in recent years there has been a revival of interest in them. Theories roughly of this sort (but with some important qualifications noted below) have been explored (but not defended) by Kolm [1985, 1986] and Gibbard [1976], advocated by Steiner [1994], Grunbaum [1987], and Van Parijs [1995], and criticized by Cohen [1995].

I shall provide a brief survey of the forms that left-libertarianism can take. Although I shall offer a brief assessment of each approach, a full assessment (with supporting argument) is beyond the scope of this paper.

### 2. THEORIES OF JUSTICE

Justice, as usually understood, is concerned with the moral obligations people have that others are morally permitted to coercively enforce. It is thus concerned—not with all moral obligations, but rather—with only a particular subset. One may have a moral obligation to help an elderly neighbor, but justice does not require you to help unless others are morally permitted to coerce you to help. Justice is usually construed as being concerned with legitimate state enforcement, and that shall be our central focus here. For brevity, unqualified references to obligations and the like should be understood as references to enforceable obligations and the like.

There are, of course, many kinds of theory of justice, and I'll first very briefly situate libertarianism (both left and right) in the grand scheme. First, libertarianism is individualist (and not collectivist or communitarian) in that it takes (the wills and interests of) individual agents—and not states, societies, or communities—to be the objects of fundamental moral concern. Second, libertarianism is rights-based (and not purely goal-based) in that it takes respect for people's rights, and not merely the promotion of some impersonal goal—such as equality of welfare (welfare egalitarianism) or total welfare (utilitarianism)—to be a fundamental moral concern. Third, libertarianism is property rights-based in that it takes the relevant rights to be rights of ownership. Because of this, it takes consent (permission to use one's property) very seriously, and requires compensation for past injustices. It is thus historical (in that what is just depends on what the past was like). Fourth and finally, libertarianism endorses full self-ownership, and thus holds that no one owes any service to others, except as the result of his/her voluntary actions (commitments, wrongdoings, etc.).

Three assumptions underlie my assessments of the different forms of libertarianism. One is that there are certain things (e.g., physical contact of various sorts) that, all else being equal, one may not do to others without their consent, but which one may do with their consent. A second assumption is that, all else being equal, justice requires that the effective opportunity for a

good life be as equal as possible. A third assumption is that justice requires that the distribution of opportunities for a good life be Pareto optimal (efficient). Roughly speaking, these three assumptions amount to the claim that liberty, equality, and efficiency are each morally relevant considerations. More specifically, they support some form of liberal egalitarianism. These are controversial assumptions, which I shall not here defend. I mention them to explicitly identify the perspective from which I will be assessing the different forms of libertarianism. Readers who reject one or more of these assumptions will probably reject some of my assessments. This survey is meant as a starting-point for debate, not as the end-point.

Given these assumptions, neither right-libertarianism, nor unconstrained goal-directed egalitarianism, is plausible. Right-libertarianism is implausible because it permits the benefits provided by natural resources to be exclusively claimed by agents who happen to be in the right place at the right time (e.g., the first occupants, or those who first mix their labor with the resources)—with little or no sharing of these benefits with the other members of society. More generally, right-libertarianism is implausible because it fails to recognize that justice requires some sort of material equality (and not merely formal equality of rights). Unconstrained goal-directed egalitarianism—the view that whatever promotes equality (on some specific conception) is just—is also implausible. For it fails to recognize that there are moral limits on the ways in which it is just to promote equality. Killing, or torturing, innocent people, for example is unjust, even when it promotes equality. Unconstrained egalitarian theories, that is, wrongly hold that the ends always justify the means. Left-libertarianism, by contrast, is promising because it recognizes some demands of equality (some form of sharing the benefits provided by natural resources), but also recognizes some limits (full self-ownership) on the means of promoting equality. It is promising because it is a form of liberal egalitarianism.

In what follows, I first briefly discuss the concept of full self-ownership and its implications. Then I discuss the main left-libertarian conceptions of how natural resources are owned. I end by suggesting that, although some form of self-ownership should be endorsed, full self-ownership should be rejected.

### 3. FULL SELF-OWNERSHIP

Libertarianism (both left and right) holds that all agents are, initially at least (prior to any commitments and wrongdoings), full self-owners. The core idea of full self-ownership is that agents own themselves in just the same way that they can fully own inanimate objects. This maximal private ownership is typically taken to include (1) full control rights over (power to grant and deny permission for) the use of their persons (e.g., what things are done to them), (2) full rights to transfer the rights they have to others (by sale, rental, gift, or loan), and (3) full tax immunities for the possession and exercise of these rights. (The tax immunity ensures, for example, that the other rights are not merely rented.)

Justice imposes constraints on how individuals may be used to promote equality (or other moral goals). Killing, torturing, or enslaving innocent individuals is unjust no matter how effective they are as means to equality. The most plausible grounds for these constraints are, I think, generated by some form of self-ownership and some account of ownership of natural resources. In particular, some form of self-ownership is necessary to recognize adequately that agents have the formal right to control the use of their person. There are some things (such as physical contact of various sorts) that others may not do to an agent without his/her consent, and those very things are permissible if the agent gives his/her consent and the owners of other resources involved give their consent. This is, of course, highly controversial. A constraint

against torture need not be accompanied by a right to waive the constraint, as full self-ownership holds. A full argument would need to address many important relevant issues that I here ignore.

The assumption that some form of self-ownership imposes constraints on equality promotion need not be the assumption that full self-ownership imposes such constraints. Full self-ownership gives agents various control rights over the use of their persons. But it also gives them rights to transfer those rights to others, and various tax immunities. One can endorse a partial form of self-ownership (e.g., control rights) without endorsing full self-ownership (e.g. with full tax immunities). Indeed, I shall suggest below that egalitarians should reject full self-ownership but endorse a robust partial form.

We should note, however, that even full self-ownership on its own does not guarantee that agents have any effective freedom or any entitlement to their products. For agents such as us, who need to use natural resources (space to stand on, air to breathe, etc.) to exist at all, it all depends on how natural resources are owned. For if all the natural resources are fully (“maximally”) owned by others, one is not morally permitted to do anything without their permission. And without their permission, one’s products may be owned by others (since they may be the result of theft or trespass).

So nothing of substance follows from full self-ownership alone. We must consider therefore the ownership of natural resources.<sup>2</sup>

#### 4. THE OWNERSHIP OF NATURAL RESOURCES: APPROPRIATION AND TAXATION

In the world there are beings with moral standing (beings that matter morally for their own sake), natural resources (unproduced resources, such as land, air, water, etc.), and artifacts (products). For simplicity, we shall assume that all beings with moral standing are agents (rational choosers),

and we shall thus ignore the important and difficult problem of the status of children, fetuses, and animals (which I believe have some sort of non-full moral standing). In this section we shall focus on the ownership of natural resources, and its implications in conjunction with full self-ownership.<sup>3</sup>

According to one version of left-libertarianism, natural resources are jointly owned in the sense that authorization to use, or to appropriate, is given through some specified collective decision-making process (e.g., by majority or unanimous decision). One form of this approach—advocated (seemingly, at least) by Grunbaum [1987]—holds that collective approval is needed for any use, as well as appropriation, of natural resources. But as Fressola [1981] and Cohen [1986, 1995] have argued, this is implausible, since it holds that, for agents like us, no one has the right to do anything (e.g., stand in a given spot, eat an apple, or even breathe) without authorization from other members of society. For every action requires the use of some natural resources (e.g., occupying a spatial location), and thus no one is permitted to do anything without approval from others.

A more plausible form of joint ownership of natural resources—held perhaps by Grotius [1625] and Pufendorf [1672], and explored by Gibbard [1976]—holds that prior to any agreement agents are permitted to use natural resources in conformance with specified terms of common use, but they have no exclusive rights of use (no private ownership). Roughly, this means that they are permitted to use natural resources in various ways (occupy locations, breathe air, eat apples) as long as those resources are not then in use by others (and perhaps subject to certain conditions of sustainability), but they have no rights over any natural resources that they are not currently using. On this view, the initial rights over natural resources are like rights over public park benches. One has a right to use a resource (e.g., sit in one), but once one stops using it, one has no right to prevent others from using it.

Even this form of joint ownership of natural resources, however, is implausible. For it has the implication that no appropriation (i.e. acquisition of exclusive rights of use) could be just in the absence of actual collective agreement. It is most implausible to hold that the consent of others is required for just appropriation when communication with others is impossible, extremely difficult, or expensive (as it almost always is). And even when communication is relatively easy and costless, it's unclear why one needs the consent of others as long as one makes an appropriate compensatory payment for the natural resources appropriated.

A different sort of approach holds that agents may use, or appropriate, unappropriated natural resources without the permission of others, but if they do so, they acquire certain obligations. Below I shall suggest that some form of this approach is plausible. But first we must see that some forms clearly are not. An extreme form of this approach holds that anyone who uses natural resources (which is of course everyone) forfeits all rights of self-ownership (e.g., acquires an enforceable duty to do whatever maximally promotes equality). A slightly less extreme form allows agents to use natural resources subject to the rules of common use without any loss of self-ownership, but holds that anyone who appropriates (claims rights of exclusive use over) natural resources forfeits all rights of self-ownership. Both these views hold that agents are “initially” full self-owners, and are thus “formally” versions of libertarianism. Neither is plausible because they allow self-ownership to be lost too easily.

A plausible conception of the ownership of natural resources must be compatible with reasonably secure (not easily lost) self-ownership. At a minimum it should allow unappropriated resources to be used by agents without the permission of others and without any loss of the rights of self-ownership. More specifically, a plausible conception should be common-use-based in the sense that (roughly) agents are permitted to use unappropriated natural resources as long as they violate no one's self-ownership (nor, perhaps, certain constraints of fair use).<sup>4</sup> On the most

permissive conception of common use, the only constraint on use is the self-ownership of other agents. Agents are permitted to breathe air, walk on unoccupied land, eat apples in no one's possession, and even to chop down trees, and burn down shelters others have built—as long as no one's self-ownership is violated (e.g., by being assaulted or killed). A less permissive version of common use would also impose some constraints of fair use that rule out some kinds of use (e.g., continued possession of the sole source of water). Under common use, no one owns the resource (in the sense of having the right to exclude others from use), and the only constraint on use is self-ownership, and perhaps some constraint of fair use.

Without some such condition of permissible use of natural resources, self-ownership has no real force, since it could be lost through the unavoidable use of natural resources. In addition, a plausible conception of the ownership of natural resources should be unilateralist in the sense of allowing agents to appropriate unappropriated natural resources without the consent of others—and with no loss of self-ownership—as long as they make an appropriate payment (to be discussed below).<sup>5</sup>

In what follows, then, we shall consider some common-use-based, unilateralist conceptions of natural resource ownership (in conjunction with full self-ownership). Radical right libertarians—such as Rothbard [1978, 1982] and Kirzner [1978]—hold that there are no payment requirements for the appropriation of unappropriated resources. Agents are free to take ownership of whatever unappropriated natural resources they find (or mix their labor with). Obviously, this is a non-starter from an egalitarian viewpoint. Lockean right libertarians—such as Nozick [1974]—hold that the only payment requirements are those of a Lockean proviso, which requires roughly that no individual be made worse off (in some appropriate sense) by the appropriation (compared with the situation before appropriation).<sup>6</sup> It seems quite plausible that satisfaction of some form of a Lockean proviso is a necessary condition for just unilateral

appropriation. But Lockean libertarians are mistaken in holding that it is sufficient for just appropriation. For private property rights over natural resources typically bring the owners benefits (even after making a payment to ensure that no one is made worse off). Consequently, people are willing to pay for these rights, and the rights have—relative to some specification of the “morally relevant” market conditions—a competitive value (market clearing price).<sup>7</sup> Given the valuable nature of rights over natural resources, there is no reason why an appropriator should be immune from paying for this competitive value.

Georgist libertarians—such as eponymous George [1879, 1892] and Steiner [1977, 1980, 1981, 1992, 1994]—hold that agents may appropriate unappropriated natural resources as long as they pay for the competitive value of the rights they claim.<sup>8</sup> Given the existence of multiple generations, the most plausible version of this approach requires that rights over natural resources be rented (as opposed to purchased) at the competitive rent value (so as to ensure that for each generation the total payment equals current competitive value).<sup>9</sup> Although strictly speaking this approach does not allow full appropriation (since rent is owed), it does allow partial appropriation (everything except the rent immunity), and in what follows “appropriation” should understood to be possibly only partial.

Most egalitarians, however, will reject Georgism on the grounds that the taxes (rents) that it requires agents to pay are based solely on the competitive value of the natural resources that they own. As a result, agents with more advantageous unchosen personal endowments (e.g. productive talents) pay the same taxes as those with less advantageous unchosen personal endowments who own equally valuable natural resources. Most egalitarians will want those with greater unchosen advantage to pay higher taxes (since they can reap greater benefits [e.g., produce more with the same amount of natural resources]). Doing this will further promote

equality—both by the leveling-down effect of imposing the taxes and by the leveling-up effect from spending them.

Most such egalitarians may grant that the payment of competitive rent is a necessary condition for just appropriation, but they will deny that it is a sufficient condition. A natural way of modifying the Georgist position to take into account the above consideration is to hold that, in addition to paying the competitive rent, appropriators must pay a tax equal to up to 100% of the net benefits (net of the competitive rent) that they reap from appropriation.<sup>10</sup> Of course, in practice it is not viable to tax agents 100% of such benefits. The required information about benefits is impossible to obtain and even enough information for rough approximations would be very costly to obtain. Furthermore, 100% taxation leaves no incentive to make productive use of natural resources (since it leaves no net benefit to the agent). For these reasons, the full-benefit-taxation approach should be understood as setting a maximum tax that can be charged. The actual tax charged will be whatever maximizes net tax revenues (after deducting administrative expenses).

Consider then the full-benefit-taxation conception of natural resource ownership. This is like the Georgist view considered above except that, in addition to paying competitive rent, appropriators must pay taxes (up to 100%) on the benefits they reap from appropriation. This approach has the effect of treating all benefits of applying personal talents to appropriated natural resources as social assets. It is, however, compatible with full self-ownership. First, as we have seen, any assumption about the ownership of natural resources is compatible with full self-ownership. Second and more importantly, this view of the ownership of natural resources is compatible with a relatively secure self-ownership. For, like the Georgist conception, it imposes the financial obligations only on those who appropriate natural resources. Agents are free to use unappropriated natural resources under the terms of common use without acquiring any

obligation to pay rent or benefit taxes. It is thus possible for agents to avoid having to pay the tax.<sup>11</sup>

Something in the general area of Georgist libertarianism and full-benefit-taxation libertarianism is, I believe, promising for liberal egalitarianism.<sup>12</sup> They each avoid the problem of requiring the consent of others to use unappropriated natural resources by holding that common use is permitted and involves no loss of any rights of self-ownership. The two conceptions also hold that appropriation of natural resources without the consent of others—and with no loss of self-ownership—is legitimate as long as appropriators pay the relevant rent and taxes. The key difference between Georgism and full-benefit taxation concerns whether agents are entitled to the net benefits of appropriation (net of competitive rent). Georgism only requires agents to pay competitive rent, and thus typically allows agents to benefit from appropriation (with agents with greater productive capacities typically reaping greater benefits). Full benefit-taxation, on the other hand, taxes away up to the full benefit of appropriation.

Neither Georgist libertarianism, nor full-benefit-taxation libertarianism, is a form of pure egalitarianism. For their endorsement of full self-ownership does some real work in limiting the admissible ways in which equality may be promoted.<sup>13</sup> On these views, agents may not be killed, tortured, or assaulted without their consent. Nor may they be coerced into providing involuntary services for others (e.g., mandatory labor for the state). Nor do agents owe any taxes merely because they exist or because they use natural resources. Nor are taxes imposed that effectively require agents to work in their most productive capacity (e.g., the “tax slavery” that results if each person owes an annual tax equal to the value of his/her maximally valuable annual product). If, however, agents appropriate natural resources, then they must pay the competitive rent, plus perhaps taxes equal to up to the full value of the net benefit from appropriation.

Purist egalitarians will reject the above two approaches and hold that anyone who uses natural resources thereby incurs the obligation to do whatever is necessary to maximally promote equality. Although such an approach is formally compatible with (initial) full self-ownership, it gives no real role to self-ownership, since agents must use some natural resources (e.g., to stand on or to breathe), and hence immediately lose their self-ownership. More weakly, one could hold that the obligation to promote equality maximally is incurred by anyone who appropriates (as opposed to uses) natural resources. This leaves some real role for self-ownership, since in principle agents could decide not to appropriate. But it has the result that appropriators may lose some of their rights of self-ownership, and be subject, under certain conditions, to forced service (e.g., when their skills are needed by society), forced transfer of body parts (e.g., organs for a disadvantaged person), or even torture (e.g., when it provides important medical information that reduces the suffering of the disadvantaged). Because these implications seem implausible, nothing more demanding than full benefit-taxation (or something like it) seems promising for egalitarians.

## 5. THE OWNERSHIP OF NATURAL RESOURCES: SPENDING THE SOCIAL FUND

So far we have considered what the appropriate payment is for appropriation of natural resources. We now need to address the question of how the social fund generated by rents and taxes is spent. Most of the usual theories of justice (e.g., utilitarianism, mutual advantage contractarianism, envy-freeness and related criteria) can be invoked here, but interpreted as theories of spending policy (and not of taxation). Because we are focusing on left-libertarianism, which by definition involves some form of egalitarianism, I shall limit my remarks to egalitarian theories of spending.

On the equal share conception—advocated by Arthur [1987] and Steiner [1994], and discussed by Kolm [1985, 1986]—the social fund is divided equally among all agents in society. This view is not concerned with the impact on people’s well-being, and it does not require compensation for individuals with disadvantages in their personal or situational endowments (their genes, the environment in which they were raised, etc.). This lack of concern for effective equality of opportunity for a good life is, I believe, implausible. Of course, if it is combined with the full-benefit-taxation approach to appropriation, the more advantaged will pay higher taxes than the less advantaged, but typically (e.g., for incentive reasons) the higher taxes will not completely eliminate the differential benefit. And even if they did, equal sharing of the social fund does not guarantee effectively equal opportunity for a good life. Some people, through no fault of their own, may benefit less from their share of the spending than others (e.g., those who are genetically morose).<sup>14</sup>

On the equal gains in well-being conception the social fund is spent so as to give each person an equal gain in well-being (quality of life) from the spending. Unlike the equal share conception, it is sensitive to the impact that spending has on the quality of people’s lives, and seeks to give everyone an equal gain in the quality of their lives. A crucial question (discussed briefly below), of course, concerns the relevant conception of well-being, and whether well-being is—as required by this approach—cardinally measurable and interpersonally comparable in units. Even if welfare is so measurable, most egalitarians (including myself) would reject this view for being inadequately egalitarian. For it requires no compensation for unchosen disadvantages in the prespending levels of well-being. A person with a low level of prespending well-being (e.g., with an unchosen depressive disposition) is given the same well-being benefit (gain) as a person with a high level of prespending well-being, and that is implausible. Any plausible egalitarian spending policy will be concerned with well-being levels and not merely with well-being gains.

The most plausible view of how the social fund should be spent is, I believe, the equality of well-being view. It holds that the social fund should be spent so as to promote equality of well-being as much as possible. It focuses spending so as to improve the quality of life of those with relatively unfavorable genetic or situational endowments, and spends little or nothing (except for instrumental reasons) on those with relatively favorable endowments.<sup>15</sup>

There are, of course, many important questions about this view that need to be addressed. One question concerns the relevant measure of well-being (or the good life): happiness, preference satisfaction, functionings, primary goods, or some perfectionist ideal.<sup>16</sup> I would argue that the appropriate measure is something in the area of happiness or preference satisfaction. And I would follow Arneson [1989, 1990], Cohen [1989], Van Parijs [1995], and Roemer [1993, 1996] in holding that it is only the value of the opportunity for a good life that that is to be equalized. If individuals choose to develop expensive tastes or to squander their resources, they and only they should bear the costs (and no equalization is needed for inequalities so generated). And there are a host of questions about how equality should be measured and the sort of interpersonal comparability, if any, of well-being that is relevant. These are all important issues that I leave open here.<sup>17</sup>

If my assessments above are correct (and admittedly they are very controversial), the most promising form of left-libertarianism is either Georgist or full-benefit-taxation, based on an equality of opportunity for well-being spending policy. Let us briefly consider some objections to these views.

## 6. SOME OBJECTIONS CONSIDERED

Right-libertarians will, of course, object that no payment, or only Lockean compensation, is owed for the appropriation of unappropriated natural resources. And even those who agree that

competitive rents, or even full benefit taxes, are owed for rights over natural resources may challenge the equality of opportunity for well-being spending policy. These are important objections, but I shall not address them here. Instead, I shall focus on objections that can be raised even if one accepts that full benefit taxes are owed for appropriation and the funds so generated should be spent to promote equality.

One objection concerns voluntary slavery. Both Georgist and full-benefit-taxation libertarianism hold that agents are full self-owners as long as they do not agree to give up some of these rights. Full self-ownership includes not only first-order rights of control over the use of one's person, but also the right to transfer (e.g., by gift or sale) these rights to others. This entails that one has the right to voluntarily enslave oneself. This strikes many as wildly implausible. (Involuntary enslavement violates full control self-ownership, and is not at issue here.)

If one thinks that a main concern of justice is to protect the possession of effective autonomy, then this implication will indeed seem problematic. On the other hand, if one thinks that a main concern of justice is to protect the exercise of autonomy, it is not. For a well-informed decision to sell oneself into slavery (e.g., for a large sum of money to help one's needy family) is an exercise of autonomy. Indeed, under desperate conditions it may even represent an extremely important way of exercising one's autonomy. The parallel with suicide is relevant here. In both cases an agent makes a decision that has the result that he/she ceases to have any moral autonomy, and thus ceases to exercise any. In both cases it will typically be one of the most important choices in the agent's life. Surely, assuming no conflicting commitments, etc., protecting the agent's exercise of his/her autonomy overrides any concern for protecting or promoting his/her continued possession of moral autonomy. One has the right to choose to cease to be autonomous (by dying or by losing rights of control). Thus, genuinely voluntary enslavement is not problematic. It is simply the limiting case of the sorts of partial voluntary

enslavement that occurs when we make binding promises and agreements (e.g., to join the military).<sup>18</sup>

A second objection concerns the obligation to help the needy. The Georgist and full-benefit-taxation approaches hold that in general agents have no (enforceable) non-contractual obligation to help desperately needy people even when the cost of helping is small (e.g., throwing a life preserver to a drowning person). For, assuming that one has committed no relevant injustices, and made no relevant contractual commitments, no one else is permitted to coerce one into performing actions that help others. And yet, at least where we can provide significant help to a person who is needy through no fault of his/her own, and at a small cost to ourselves, it seems that we have an obligation to do so.

There are, however, several well-known ways of softening this objection. One is to agree that it is highly morally desirable that one help in these cases, but to insist that one has no obligation to do so. Another is to agree that one has an obligation to help, but to insist that it is not an enforceable obligation (an obligation that others may legitimately coerce you to fulfill). And an enforceable obligation to provide help to the needy is a case of forced service. Yet another way to soften the objection is to point out the radical implications of recognizing an obligation to help even in just these special cases (great benefit at small cost to provider). For there are typically a great number of people that would greatly benefit from an hour's service everyday (or every week), and it's not clear that we have a duty to provide such service.

Furthermore, on the form of libertarianism being considered here (Georgist or full-benefit-taxation, with spending to promote equality of opportunity for well-being), agents have a duty to pay at least competitive rent of any natural resources that they appropriate, and perhaps up to 100% taxation of the benefits of appropriation. The social fund from these rents is used to promote equality. Consequently, the social fund will typically be used to help the needy, and

often this will involve paying people to provide voluntarily services to needy persons. But as long as one has paid the full rent and taxes, one owes as a matter of justice no further aid to the needy. The mere fact of need imposes no obligations of justice on others, although it is relevant for determining how the social fund should be spent.

So, I'm inclined to endorse these aspects of full self-ownership. But even if they should be rejected, it does not follow that no form of self-ownership should be endorsed. A defensible form might include all the rights of full self-ownership except the right to voluntarily enslave oneself and the right to refuse aid to the needy under certain conditions.<sup>19</sup> Even this weakened form leaves some important protection for individuals.

The remaining objections against secure full self-ownership are more telling and may require weakening self-ownership and of the rights over natural resources.

A third objection concerns the right to make gifts. If someone fully owns a thing, then he/she has the right to transfer that ownership by gift to others. The unrestricted right to make gifts, however, allows for the transfer of privileges of wealth from one generation to the next—with the benefits possibly lasting for many generations (wealth dynasties). Egalitarians will therefore be rightly suspicious of the unrestricted right to make gifts.<sup>20</sup>

The equality-disrupting effects of gifts is more severe under Georgism than under full-benefit-taxation libertarianism. For Georgism holds that appropriators of natural resources fully own the natural resources and the products therefrom except that they owe competitive rent. No taxation of gifts (except for the competitive rent on the underlying natural resource) is thus permitted. Under the full-benefit-taxation approach, the problem is less severe. First, because of its taxation of the benefits of ownership, there will be less inequality in accumulated wealth. (There would be no such inequality if benefits were taxed at 100%). Second and more

importantly, the benefits that gifts of material resources bring their recipients are fully taxable as are all benefits of ownership.

It might thus seem that gifts create no problem for the full-benefit-taxation approach, but this is not so. For this approach only taxes the benefits of appropriation of natural resources. Consequently, the benefits agents would realize under common use of all natural resources are not taxed. Under such common use there is no private property of natural resources, and hence no gifts of natural resources or artifacts involving natural resources. But there is—assuming the full self-ownership of libertarianism—private ownership of agents, and agents can make gifts of (as well as sell) their services, and of services owed to them by others. Thus, for example, I might give massages in exchange for the transferable right to two hours service of some type (e.g., gathering apples). I may accumulate a large number of such rights over the services of others, and if so, then the problem of gifts arises in the form of gifts of services of others. Of course, under many conditions the inequalities to which such gifts give rise will be relatively small, but in principle they could be enormous. So even full benefit-taxation (which only applies to the benefits of appropriation of natural resources) can give rise to problematic wealth dynasties.<sup>21</sup>

This is a difficult issue, but I'm inclined to think that full-benefit-taxation provides an adequate approach. It holds that up to 100% of the benefits of gifts of rights over natural resources (including the benefits of rights over any artifacts involved) can be taxed away. It insists, however, that agents fully own themselves, and hence their services. Gifts of rights over agents are thus not taxable. Although this clashes with pure egalitarian ideals, this is unlikely to be significant in actual practice. In any case, the plausibility of full self-ownership seems, to me, greater than the plausibility of the view that gifts of one's services are taxable.

Of course, this is highly controversial, and egalitarians less committed to full self-ownership will want to explore ways of weakening full self-ownership by restricting the right to

make gifts. One view is that there is no right to make gifts free of taxation.<sup>22</sup> Another is that people have a right to make untaxed gifts to people no younger than themselves, but no right to make untaxed gifts to those who are younger. This view holds that it is only transmissions of wealth to subsequent generations that are morally problematic.<sup>23</sup> Another view holds that people have a right to make untaxed gifts to anyone alive (no matter what their age) as long as the gift is drawn from wealth they own and created, but people have no right to make untaxed gifts to others when the gift is drawn from wealth that they received as a gift (e.g., inheritance).<sup>24</sup>

A fourth objection to Georgist and full-benefit-taxation libertarianism concerns market failures. According to these views, agents fully own themselves and the natural resources they appropriate, except that they must pay the competitive rent, and perhaps benefit taxes. Consequently, it is unjust to impose further taxes, or to require involuntary service, for the provision of public goods (such as police protection)—even when some would be better off, and no one would be worse off, with such taxation providing the public goods. But this is implausible. There is nothing unjust in taxing people, or even requiring them to provide service (e.g., part-time police service) when on balance no one is made worse off and others benefit.<sup>25</sup> Given the prevalence of market failures—public goods, imperfect information, transaction costs and the like—everyone may be better off under a regime that allows some infringements of their rights than under a regime that allows no such infringements. Under such conditions, surely concern for people's well-being takes priority over respect for their rights.

Obviously, this view, which is welfarist in a weak sense (since it allows the relevance of rights) is controversial. It is relevant here because it highlights the fact that the rights of self-ownership and the ownership of natural resources can (and should, I suggest) be understood as determining, for each agent in a given context, a welfare-baseline (and not as absolute constraints that may not be violated without the right-holder's consent). On this approach, rights may be

infringed, but only if doing so makes no one worse off than his/her baseline.<sup>26</sup> This approach avoids the inefficiencies that market failures can generate.

Viewing ownership rights in these ways is a significant departure from the standard libertarian view. For the standard view holds that rights protect choice, whereas the above views hold that rights protect the well-being of the agents. The latter allows, but the former prohibits, (non-consensual) infringements of rights when the infringement benefits people appropriately. The wills of agents—as reflected in their choices and consent—is no longer determinative of what is just.

If I am correct that a plausible theory of justice must allow for the infringement of rights when this benefits some and harms none in terms of well-being (and perhaps even restrict the right to make gifts), then strictly speaking no version of libertarianism is plausible. This is not, however, to say that left-libertarian principles are irrelevant for the theory of justice. For (perhaps with appropriate modification to restrict the right to make gifts), they may be relevant for determining minimum well-being baselines for agents (a non-agreement point) from which some Pareto superior, Pareto optimal option must be selected (e.g., by appeal to mutual advantage or equality-promotion). Indeed, I believe that some such theory is plausible. But I have done no more than suggest that this is so. The arguments must await another occasion.

## 7. CONCLUSION

Libertarianism holds that agents are, at least initially, full self-owners. Some form of self-ownership, I have suggested, should be endorsed because it recognizes that there are some things that others may not do to an agent without his/her consent, but which they may do with that consent. Acceptance of some form of self-ownership is needed to recognize the formal rights of

control over the use of their person that agents have. I have suggested, however, that full self-ownership must be rejected on the grounds that a plausible theory of justice must allow the rights of self-ownership to be infringed when the right-holder and others benefit appropriately and no one is made worse off (and perhaps also because it must not recognize a right to make untaxed gifts of the services of agents).

Left-libertarians hold that natural resources are owned in some egalitarian sense. As we have seen there is a wide variety of forms of egalitarian ownership. I have suggested that a plausible conception of the ownership of natural resources must have the following properties:

(1) It should allow agents to use and appropriate unappropriated natural resources without the loss of any rights of self-ownership. (2) It should require appropriators to compensate those disadvantaged by the appropriation as compared with common use. It should further require them to pay at least the competitive rent value of the rights claimed, and perhaps also make them subject to up to 100% taxation of the benefits of appropriation. (3) It should allow the rights of ownership of natural resources of and artifacts to be infringed when doing so benefits some and harms none. (4) The funds generated by competitive rents and benefit taxation should be spent so as to promote equality (e.g., equality of opportunity for well-being).

The issues are of course complex, and many will disagree with my brief and undefended assessments. My purpose here has been to outline some of the main forms of left-libertarianism and to identify some of the problems that they confront.<sup>27</sup>

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## NOTES

<sup>1</sup> Early exponents of some form of self-ownership combined with some form of egalitarian ownership of natural resources include: Ogilvie [1781], Spence [1793], Paine [1795], Colins [1835], Huet [1853], Dove [1850, 1854], Spencer [1851], George [1879, 1892], and Walras [1896]. For insightful discussion of some of these early views, see Cunliffe [1987, 1988, 1990a, 1990b, 1998].

<sup>2</sup> The best discussions the relation of self-ownership to the ownership of natural resources are: Christman [1994], Cohen [1995], Grunebaum [1987], Kolm [1985, 1986, 1996a], Kymlicka [1990], Moulin and Roemer [1989], Roemer [1988, 1989a, 1989b, 1996], Steiner [1994], and Van Parijs [1991, 1992, 1995]. In addition to the works cited below, see: Ackerman [1980], Arneson [1991], Becker [1977], Gauss [1994], Gorr [1995], Levine [1988], Mack [1983, 1990, 1995], Reeve [1986], Simmons [1992], Thomson [1990], Waldron [1988], and Wheeler [1980].

<sup>3</sup> I leave open here the question of whether countries (or other political units) own the natural resources of a specified geographical area. One left-libertarian approach holds that the members of each country own the underlying natural resources. This is not, I believe, plausible. At the most fundamental level, national boundaries are morally arbitrary (although for practical purposes they are certainly important in many ways). The most plausible approach is to hold that all natural resources in the world are owned by all the agents in the world. Here, however, we shall not pursue this issue, and references to society should be understood as leaving open how this issue is resolved.

<sup>4</sup> See Mavrodes [1974] and Fressola [1981] for enlightening discussions of the rules of common use and related forms of ownership of natural resources.

<sup>5</sup> I leave open here what agents must do in addition to making an appropriate payment. The most plausible view, I believe, simply requires that they stake a claim (assert certain rights). The payment owed would thus depend on what rights are claimed. Other possible views are that agents must discover the natural resource, or that they must mix their labor with it. Although I believe neither of these view to be plausible, for generality I leave open this issue.

<sup>6</sup> Locke [1690] was not a Lockean libertarian. For he disallowed appropriation that would lead to spoilage, he rejected the right of voluntary self-enslavement, and he held that one had a duty to provide the means of subsistence to those unable to provide for themselves.

<sup>7</sup> There are many extremely important issues that I am here glossing over. A plausible approach will, I believe, take the morally relevant market conditions for the determination of competitive value to be the actual market conditions but with adjustments in the distribution of rights over resources so as to correct for past injustices. More specifically, for the first appropriators the morally relevant distribution of rights were the rights of self-ownership, and the rights of common use of natural resources, and the right to compensated if someone's appropriation makes one worse off. As long as agents at earlier times pay the full competitive value for any natural resources they appropriate—and any other debts of justice—then the resulting distribution of rights is the morally relevant one for determining the competitive value at a later time. Note also that there can be more than one possible market equilibrium for a determinate set of initial conditions, and hence more than one possible set of competitive prices for resources. The resulting indeterminacy in the notion of the competitive value, I would argue, can be tolerated on the grounds that justice itself is somewhat indeterminate.

<sup>8</sup> For discussion of the views of Henry George, and of contemporary Georgist economists, see: Andelson [1991], Harrison, Hudson, Miller and Feder [1994], Tideman [1994], and Wenzer

[1997]. Van Parijs [1995] also defends charging competitive rent for the appropriation of natural resources. He is not, however, a Georgist libertarian because he endorses charging rent on (or taxes equal to up to 100% of the value of) all non-personal assets that were “given” to an agent (as opposed to produced by him/her). He includes gifts from humans as well as gifts from nature (other than initial personal endowments) in the rent/tax base. He argues furthermore that employment rents—wages in excess of the market clearing wage—are a significant source of gifts.

<sup>9</sup> An alternative is to require the purchase price to be sufficient so that, if invested, the interest each year will be sufficient to pay the rent. The problem with this approach, however, is that, due to unexpected increases in the value of natural resources, the interest may not be sufficient.

<sup>10</sup> There are several important issues left open here concerning the nature of the benefits that are taxed. One is whether the benefits in question are realized benefits (e.g., money earned) or “reasonably realizable” benefits (e.g., money that reasonably could be earned) from the appropriation. This makes a difference concerning the tax owed by a person who, because of special talents, could reasonably realize a benefit (net of competitive rent), but fails to do so because she wastes her opportunities. Another question concerns whether the benefits in question are construed in material terms (e.g., money or apples) or in subjective terms (e.g., happiness). If only material benefits are considered, then the benefits of higher productive capacities may be taxed away, but the benefits of higher consumptive capacities (capacity to benefit, capacity for well-being) will not be subject to any tax. These are deep questions that I cannot address here. In practice a feasible approach—given our limited information—would probably be limited to taxing realized material benefits.

<sup>11</sup> As far as I know full-benefit-taxation libertarianism has not been explicitly defended by anyone (although the general idea is not new). The following, however, are some closely related approaches: Brody [1983] argues that the benefits of appropriation may be taxed to ensure that everyone gets a self-interestedly mutually advantageous share of the benefits. Christman [1994] defends control self-ownership, but denies that agents (even non-appropriators) have any right to the income they generate. White [1998] accepts control self-ownership, but argues that agents owe taxes on their income at a rate (varying depending their talents) that equalizes post-tax potential income. Otsuka [1998] argues that a robust right of self-ownership (encompassing full control rights and tax immunities) is compatible with a principle of just appropriation according to which agents are free to appropriate only as much resources as is compatible with equality of opportunity for welfare (and thus less appropriation is permitted for more talented agents).

<sup>12</sup> Liberal egalitarians will of course want to ensure that the system of taxation is public and non-retroactive, so that agents reap the full benefits of their choices relative to the rules in place at the time of choice (no unforeseen taxation).

<sup>13</sup> Thus, because of its endorsement of full self-ownership, even full-benefit-taxation libertarianism, combined with a radical equality-opportunity spending policy, differs from the unconstrained forms of egalitarianism of Arneson [1989, 1990], Cohen [1989], and Roemer [1993, 1996].

<sup>14</sup> Dworkin [1981b] advocates the equal division of natural resources. To compensate for unequal personal endowments he advocates a form of hypothetical insurance. For criticism of this insurance approach see Roemer [1985, 1996].

<sup>15</sup> Something like this view is advocated by Brown [1977], Sartorius [1984], and Van Parijs [1995]. Van Parijs advocates equal division, but only after compensation for inequalities in personal endowments (as measured by his criterion of universal domination).

<sup>16</sup> See, for example, the discussion of this issue in: Arneson [1989, 1990], Cohen [1989], Dworkin [1981a, 1981b], Rakowski [1991], Rawls [1971], Roemer [1985, 1986, 1993, 1996], Sen [1980, 1992], and Van Parijs [1990, 1995].

<sup>17</sup> For recent articles on interpersonal comparisons, see Elster and Roemer [1991]. For discussions of envy-free and related measures of equality (which do not make interpersonal comparisons), see, for example, Thomson and Varian [1985], Arnsperger [1994], Fleurbaey [1994a, 1994b, 1995a, 1995b, 1996], Fleurbaey and Bossert [1996], Fleurbaey and Maniquet [1996, 1997], and Kolm [1996a, 1996b].

<sup>18</sup> For further defense of the right of voluntary enslavement see: Steiner [1994], pp. 232-34, and Nozick [1974], p. 331. For autonomy-based criticism, see Ingram [1994], pp. 38-9, and Grunbaum [1987], pp. 170-71. Note that Locke [1689] (vol. 2, sec. 23) rejected the right of self-enslavement. More strikingly, note that radical right-libertarian Rothbard [1982] rejects this right (p. 40) on the grounds that one cannot alienate one's will. (This is true, but irrelevant. For one can alienate the right-making powers of one's will (consent).)

<sup>19</sup> Grunbaum [1987] defends this weakened form of self-ownership, and Kolm [1985, 1996a] suggests that nothing stronger than it is plausible. Christman [1994] defends mere control self-ownership, which is much weaker still.

<sup>20</sup> Steiner [1992, 1994] has cogently argued that the unrestricted right to make gifts does not include the right to make bequests. For bequests are gifts from dead people, and dead people are not rights-holders. Any wealth they owned just before dying becomes common property like

natural resources. To this, I add that there may, of course, be good social policy reasons (e.g., incentives) for recognizing a legal right of bequest, but such a recognition is not required by full self-ownership or full ownership of natural resources.

<sup>21</sup> An important complication that I shall not here pursue: The very rationale for not recognizing a tax immunity for gift-giving also applies to a much broader range of ways of intentionally conferring benefits. A gift is an intentional transfer of rights (e.g., over money or physical objects) with the intention of benefiting the recipient. A favor is an intentional conferral of a benefit to someone else that does not involve any transfer of rights (e.g., helping someone with their gardening). Favors are also capable of generating wealth dynasties, and so presumably egalitarians need to reject the unrestricted right of granting favors as well.

<sup>22</sup> Roughly this view is defended by Sreenivasan [1995], Van Parijs [1992, 1995], and Varian [1975].

<sup>23</sup> Ackerman [1980] holds roughly this view.

<sup>24</sup> Something like this is the view of Rignano [1924] and Nozick [1989]. For related discussion on the taxation of gifts and bequests, see: Chester [1982], Haslett [1988], Munzer [1990], and Rakowski [1991, 1994, 1996].

<sup>25</sup> Note that I leave open whether paternalism is just. I am here only claiming that it is just to infringe rights when the infringe and others benefit, and no one is made worse off.

<sup>26</sup> I defend this view of rights in [Vallentyne 1988]. Kolm [1985, 1987a, 1987b, 1996a] has defended a similar position. He argues that on the most plausible on view of the libertarian rights they serve only to determine the non-agreement outcomes for a hypothetical mutually advantageous agreements among real agents. Thus, the ultimate rights are determined by

hypothetical agreements, and the rights of full self-ownership and the ownership of natural resources are not necessarily preserved in these agreements.

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