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Some Worries About the Coherence of Left-Libertarianism**

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Can There be “Libertarianism without Inequality”? Some Worries About the Coherence of Left-Libertarianism¹

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1. Left-libertarianism is not a new star on the sky of political philosophy, but it was through the recent publication of Peter Vallentyne and Hillel Steiner’s anthologies that it became clearly visible as a contemporary movement with distinct historical roots. “Left-libertarian theories of justice,” says Vallentyne, “hold that agents are full self-owners and that natural resources are owned in some egalitarian manner. Unlike most versions of egalitarianism, left-libertarianism endorses full self-ownership, and thus places specific limits on what others may do to one’s person without one’s permission. Unlike right-libertarianism, it holds that natural resources may be privately appropriated only with the permission of, or with a significant payment to, the members of society. Like right-libertarianism, left-libertarianism holds that the basic rights of individuals are ownership rights. Left-libertarianism is promising because it *coherently* underwrites both some demands of material equality and some limits on the permissible means of promoting this equality” (Vallentyne and Steiner (2000a), p 1; emphasis added).

It is easy to see why left-libertarianism is philosophically appealing. We are asked to accept an apparently plausible and minimal claim about persons (“who *would* own them if not they themselves?”), as well as an equally plausible and minimal claim about external resources (“surely all persons must, in some sense, be situated equally with

¹ I am most grateful to Sharon Krause, Jennifer Pitts, Peter Vallentyne, Leif Wenar, and Jonathan Wolff for helpful comments on drafts. Unless otherwise noted, page references are to Otsuka (2003).

regard to such resources, since it is nobody's accomplishment that those exist").² However, the main goal of this study is to question what Vallentyne claims in that last sentence: as far as *coherence* is concerned, at least one formulation of left-libertarianism is in trouble. This formulation is Michael Otsuka's, who published it first in a 1998 article, and now in his thought-provoking book *Libertarianism Without Inequality*. In a nutshell, my objection is that the set of reasons that support egalitarian ownership of natural resources as Otsuka understands it stand in a deep tension with the set of reasons that would prompt one to endorse Otsuka's right to self-ownership. In light of their underlying commitments, a defender of either of the views that left-libertarianism combines would actually have to reject the other. The only ways around this incoherence are to choose either an approach that renders left-libertarianism incomplete in a way that can only be fixed by endorsing more commitments than most left-libertarians would want to, or an approach that leaves left-libertarianism a philosophically shallow theory.

To be clear: I grant that Otsuka's brand of libertarianism is *consistent*: there may well be circumstances under which individuals find both their libertarian right to self-ownership and egalitarian ownership of external resources respected. However, there is no unified point of view, no single stance from which the positions combined here look jointly plausible. To put my main point differently: Otsuka's left-libertarianism brings two views together that are compatible in the sense of being consistent, but not compatible in the sense of being coherent; it is possible that the two principles could be jointly realized, but the reasons for accepting the principles cannot be harmonized – lest one renders left-libertarianism incomplete in a manner that its defenders will have trouble

² If one finds talk about *self*-ownership mysterious, one would not find that claim about who owns one's person intuitively plausible. But let us set that concern aside.

fixing, or turn it into a shallow theory.³ If I am right, the objection does not stand and fall with Otsuka's specific formulation of self-ownership, nor with his version of egalitarian ownership of resources. The problem lies in the attempt to combine two ideas that resist such combination, and thus raises doubts about the very possibility of a credible *left-libertarianism*. While I sense that this concern about left-libertarianism is widespread, I state my objection with caution: more is worth saying here, so left-libertarians may well command resources to respond that I am unaware of. This is so especially since my concern, once properly spelled out, turns on a broad range of substantive and methodological issues.⁴

The idea that natural resources are owned in an egalitarian manner, central to left-libertarianism, and more generally the subject of the original ownership status of the world, is under-explored. This is surprising, because on the face of it, that subject matters profoundly. If external resources are commonly owned, radical changes in domestic and international politics may seem mandatory. Associations of people keeping others off their territory without compensation (states) would become questionable. Individuals would not be entitled to disproportionate wealth because of inheritance, luck, or accomplishment if less fortunate co-owners have overriding claims. Also, common

³ The kind of "unified point of view" required for my argument is weak, one allowing for the articulation of different views in such a way that articulating the one does not undermine the other. My argument does not require a stronger notion of coherence according to which those views can be *supported* by the very same arguments. That is, I will dwell on the "not-being-in-tension" aspect of coherence, rather than its "being-in-harmony" aspect. While this weaker notion of coherence makes my objection to Otsuka stronger, it also makes it easier for left-libertarians to respond.

⁴ Other left-libertarians are Steiner, Vallentyne, and van Parijs (though he speaks of "real libertarianism"). This essay was commissioned as a review of Otsuka's book. However, I focus on Otsuka's first chapter, a modified version of his 1998 article. I neglect most of his rich book, such as material on the justification of punishment in part II and on political legitimacy in part III. Otsuka's goal is to develop these themes from a left-libertarian perspective, and thereby also give a better expression to that perspective. All of that is very much deserving of philosophical discussion. Still, it is chapter 1 that formulates the core idea of Otsuka's brand of left-libertarianism, and that chapter is thought-provoking enough for me to restrict myself to it.

ownership of external resources provides strong reasons to care about the environment: we are guardians of resources that we *possess* only because we are currently alive, but that we do not *own* any more than our 22nd century offspring do (we are “but tenants for a day,” as Henry George put it (Vallentyne and Steiner (2000b), p 199).

Since in spite of such potential implications, the original ownership status of the world is rarely subject to scrutiny, I investigate both that idea and how it can be combined with libertarian self-ownership in a broader manner than required for assessing Otsuka’s views. While I will be unable to follow up on important questions that this inquiry touches, it is a secondary but distinct purpose of this essay to trigger more interest in this subject of the original ownership status of the world. The challenge posed by this subject is to explore what arguments favor one thesis about original ownership over another, and more philosophical light is needed here. My focus in this study, at any rate, will be on ideas about original ownership and how they can be combined with self-ownership, rather than on exploring different versions of self-ownership itself.⁵

A note on right-libertarianism. If we define right- and left-libertarians as mutually exclusive and jointly exhaustive groups, right-libertarianism’s *differentia* is the denial of any recognizably egalitarian ownership of external resources. There are different ways of subscribing to such a denial. Jan Narveson (2001) seems to deny that any compensation is owed if unowned resources are acquired (cf. pp 82-85). Right-libertarians of this kind

⁵ A few words on what it means to ask about “the original ownership status of the world.” The term “original” seems to imply a historical question, but I take this to be a hypothetical device for thinking about what it makes sense to say about what we can or ought to own, or what we owe each other. One account that can find its place here says that ownership does follow historical principles of sorts. But talk about “original ownership” should not by itself be taken to entail that view. Asking about original ownership involves questions about what precisely is owned by whom, and how it is to be valued. We will touch on different aspects of this question, but I think it is clear enough that one can meaningfully ask about the moral ownership status of things in this world (including animals) that were not designed by human beings.

do acknowledge constraints on appropriation, but only non-moral constraints, such as the requirement that appropriation by first occupancy extend only to things the occupier can meaningfully be said to occupy. Other right-libertarians insist that objects of appropriation *in the relevant sense* are not “external” to begin with. So no question about ownership of “external” objects arises. Israel Kirzner, for one, argues that “until a resource has been discovered, *it has not*, in the sense relevant to the rights of access and common use, *existed at all*” (Vallentyne and Steiner (2000a), p 201).⁶ Although *left*-libertarians tend to place Nozick in the right-libertarian camp, *right*-libertarians like Kirzner criticize even Nozick’s weak proviso (cf. p 206/7 in Vallentyne and Steiner (2000a); cf. section 9 of this paper for a formulation of Nozick’s proviso). Appearances notwithstanding, Nozick should *not* be taken to be a paradigmatic right-libertarian.⁷

2. Let me now introduce self-ownership and the core idea of Otsuka’s left-libertarianism.⁸ “Self-ownership” is a contested idea. Puzzles arise easily; for instance, if I own myself, do I own my actions, and if so, what exactly does this mean, and what follows from it? A glance at the literature shows worries such as the following: Gaus (1994) questions the idea that “all rights are property rights” (and so the centrality that many libertarians give

⁶ Paul (1987) expresses a related view: “I maintain that 100 percent of the value of a good is the work of human creativity” (p 230). In an article that belongs to a very different corner of philosophy, Bittner (2001) attacks the idea that we ever create anything.

⁷ (1) Murray Rothbard is another well-known right-libertarian (cf. Rothbard (1974), chapter 4; Rothbard (1996), pp 26-37). He does not stress “creation” as much as Kirzner does. His point is that objects must belong to somebody, and whoever has “added” to them has a stronger claim than any other individual or group. (2) Although I argue that Otsuka’s version of *left*-libertarianism is incoherent, and although I suspect that the only credible way of being libertarian is being *right*-libertarian, nothing I say should be taken to support *right*-libertarianism. Instead, my critique is part of a general resistance to libertarian thought.

⁸ For the Lockean roots of the idea, see *Second Treatise*, II, 27. Cf. also section 3 of Vallentyne’s introduction to Vallentyne and Steiner (2000a). For Cohen on self-ownership, cf. Cohen (1995), p 67ff.

to self-ownership) and suggests replacing it with a more pluralistic understanding of rights, while Ryan (1994) finds talk about self-ownership useless and suggests replacing it with talk about liberty. Munzer (1990), after discussing what sorts of rights it makes sense to have in one's body, concludes that, given the constraints that apply to what one can do with oneself, this does not amount to full ownership. Ownership in one's body cannot establish ownership in anything outside the body, and anyhow, transformations from self-ownership rights into rights that resonate through the ages seem dubious.

Yet this study does not focus on self-ownership, and thus we ignore all that and restrict ourselves to introducing Otsuka's notion of self-ownership and the problem raised by Cohen (1995) that Otsuka aims to answer. Otsuka's "libertarian right of self-ownership" is a conjunction over the two following rights (p 15): ⁹

1. A very stringent right of control over and use of one's mind and body that bars others from intentionally using one as a means by forcing one to sacrifice life, limb, or labor, where such force operates by means of incursions or threats of incursions upon one's mind and body (including assault and battery and forcible arrest, detention, and imprisonment).
2. A very stringent right to all of the income that one can gain from one's mind and body (including one's labor) either on one's own or through unregulated and untaxed voluntary exchanges with other individuals.¹⁰

The controversial bit is the second part, as Otsuka also points out: liberal egalitarians, in particular, tend to endorse the first point, but not the second.

The crucial claim of Otsuka's 1998 article and chapter 1 of this 2003 book is that, contrary to criticism by Cohen (1995), a combination of self-ownership with an

⁹ Otsuka defines his "libertarian right to self-ownership" by way of contrast with what he calls the "full right to self-ownership." That full right also prohibits unintentional incursions upon one's body, and the sheer strength of that prohibition leads to problems, cf. pp 12-15.

¹⁰ There is an ambiguity in the second line. This might mean either "through those voluntary exchanges with other individuals that are unregulated and untaxed" or "through voluntary exchanges with other individuals, which remain unregulated and untaxed." I assume Otsuka means the second.

egalitarian idea of world ownership can merge into a viable political theory. (Section 3 introduces Otsuka's specific version of egalitarian ownership of external resources.) To see the conflict that Cohen thinks undermines left-libertarianism, imagine an island with two inhabitants: one is able-bodied (Able), the other is incapable of productive labor (Unable). Able is a non-altruistic ascetic and thus easily satisfied without caring whether Unable is satisfied as well. Because of Able's disposition, equality of opportunity for welfare (Otsuka's proviso, to be introduced in section 3) seems to require that Unable obtain the lion's share of the land, conceivably so much of it that Able cannot draw the sustenance necessary for survival. So in virtue of their egalitarian ownership of external resources (here captured in terms of an equality-of-opportunity condition) Unable can force Able to work for him and render Able's right to self-ownership mute and worthless. So depending on their abilities and preferences, says Cohen, some people's claims on the strength of common ownership (or no ownership) of resources are so strong that others are left without a meaningful right of self-ownership. Yet Otsuka argues that

the conflict between libertarian self-ownership and equality is largely an illusion. As a matter of contingent fact, a nearly complete reconciliation of the two can be achieved through a properly egalitarian understanding of the Lockean principle of justice in acquisition. (p 11)

Otsuka's response to Cohen is to distribute holdings in a manner that provides disabled members of society with income to engage in transactions with the able-bodied, while the able-bodied themselves possess enough holdings to support themselves without providing forced assistance. Under such conditions, says Otsuka, everybody has a *robust* right to self-ownership, where such a right is robust

if and only if, in addition to having the libertarian right itself, one also has rights over enough worldly resources to ensure that one will not be forced by necessity

to come to the assistance of others in a manner involving the sacrifice of one's life, limb, or labor (p 32).

So Otsuka claims Cohen's point is false for a broad range of circumstances. Yet just what ability types and preference structures allow for a reconciliation of self-ownership and common ownership of external resources? More precisely: under what conditions on ability types and preferences can we divide given external resources in such a way that both equality of opportunity for welfare (in Otsuka's sense) and each individual's right to self-ownership are realized? This question lends itself to economic modeling. Otsuka does not undertake such work (or other work with the same goal). So his claim that there is "a *nearly complete* reconciliation" (p 11, my emphasis) of the two pillars of left-libertarianism remains under-argued. Here one would have hoped for more insights in the book as compared to the 1998 article, especially since the book acknowledges a challenge by John Roemer probing for precisely this sort of work (p 34).

At any rate, a "reconciliation" Otsuka should also be after but is not concerned with is coherence in the sense that the underlying commitments of the two views combined by his left-libertarianism, fleshed out in their most convincing way, are not in a tension. If they are, it will become implausible to yoke together self-ownership and egalitarian ownership of natural resources. To see the point, recall Arrow's Impossibility theorem. That theorem is important because it shows that several conditions that one *wants* to endorse simultaneously (they generalize desiderata for majority rule) cannot be jointly true. If one had no reason to endorse all of Arrow's conditions (because they come with underlying commitments that, if fleshed out in their most convincing way, would not plausibly stand together), the impossibility would be irrelevant, as would have been a

demonstration of their consistency. So it is only because those conditions do *not* stand in a tension (are coherent) that their consistency becomes an interesting area of inquiry.

My goal is show that, indeed, the underlying commitments of Otsuka's right to self-ownership and of egalitarian ownership of resources are such that these views cannot plausibly stand together (lest one renders left-libertarianism either seriously incomplete or philosophically shallow). Thus their consistency becomes irrelevant: it merely teaches us that there are compromise policies that allow for both views to be accommodated, as a coalition government would implement some points from Party A's agenda and some from B's although there is no Party C with a coherent agenda that stands for all these points. In ideal theory (which is what Otsuka is after) we would not want to combine self-ownership and egalitarian ownership of resources. Unless one is willing to accept (or defend and develop) either the incompleteness or philosophical shallowness of left-libertarianism, there is no unified standpoint from which the different views combined by left-libertarianism as outlined above by Vallentyne and defended, in this case, by Otsuka look jointly plausible. Or so I shall argue in due course.¹¹

3. Next, then, I start discussing Otsuka's version of the idea that "natural resources are owned in some egalitarian manner." Drawing on Nozick's Lockean (and thus ultimately Locke's) Proviso, Otsuka does not discuss this subject explicitly, but instead straightforwardly introduces the following proviso (p 24):

¹¹ Parallels to social choice results suggest themselves because what is at stake is the compatibility of different conditions. As I say above, Arrow's theorem lists conditions that one would want to endorse jointly. As I argue elsewhere (Risse (2001)), Sen's Liberal Paradox introduces conditions that are motivated on entirely different grounds, but not distinctly incoherent (a Pareto condition and a condition that assigns agents a privilege to determine the relative ranking of two options in a social ranking).

Egalitarian Proviso: You may acquire previously unowned worldly resources if and only if you leave enough so that everyone else can acquire an equally advantageous share of unowned worldly resources.

He explicates “equally advantageous shares” of resources in terms of equal opportunities for welfare, resorting to ideas of Richard Arneson. Details do not matter for us, but this welfarist proviso interprets (in what Otsuka takes to be the philosophically preferable way) the idea that all individuals are in some sense *equally entitled* to external resources. However, a necessary condition for Otsuka’s proviso to be an acceptable understanding of such entitlement is that it does not conflict with the world’s original ownership status. If external resources are originally unowned and belong to individuals in accordance with a first-occupier principle, Otsuka’s proviso will be an unacceptable interpretation of the idea of originally equal entitlement to resources. The only acceptable interpretation will then be that *anybody* who happens to be first occupier is the owner. So to add appropriate depth to Otsuka’s account, the subject of original ownership must be addressed directly. We need to know on what basis to choose among different views on original ownership, and it is for this reason that that subject occupies such an important place in this paper.

Let me pause to elaborate on why we need to press Otsuka (and left-libertarians in general) on this point. When Grotius, Pufendorf, Selden, or Locke wrote, they resorted to a theistic framework in which it makes sense to state that the crown of God’s creation collectively *received* and thus *owns* the rest. Disagreements about what God had in mind about property (of which those authors had several) would have been addressed within this framework.¹² Waldron (2003), for one, emphasizes the centrality of Christian views

¹² For the four authors mentioned, cf. Tuck (1999). Consider how the theistic framework shapes also Henry George’s reasoning: “If we are all here by the equal permission of the Creator, we are all here with an equal title to the enjoyment of his bounty – with an equal right to the use of all that nature so impartially offers.

for what egalitarian views we find in Locke in particular. Yet Otsuka wishes “better to apprehend and more accurately to represent the system of truths of political morality that Locke first sketched in the *Second Treatise*” (pp 1f), that is, better than possible in Locke’s day with its “ideology and prejudice” (p 1). I guess he includes Locke’s Christian convictions under this rubric. At any rate, Otsuka does not use a theistic framework, and so must use other means to make his proviso plausible (a point that applies to Nozick too, though that is not my concern). Otsuka cannot simply drop Locke’s theistic framework and still assume views that (like the appropriation proviso) Locke derived from a Christian stance. Claims about resource-ownership are not the kind of view one can take as basic: they require an account of why one endorses *that* particular view. Otherwise, one has nothing to say to somebody who picks some other such view with profoundly different implications. Otsuka, we start suspecting, owes us something.

So let us introduce some ideas about world ownership to start our exploration of the original ownership status of external resources. To begin, “ownership,” as I view it following Christman (1991), consists of a set of rights and duties: First, we have the right to possess, use, manage, alienate, transfer, and gain income from property. Derivative of these are rights to security in ownership, transmissibility after death, and absence of term (specifying absence of temporal limitations on ownership). In addition, there are the

This is a right which is natural and inalienable; it is a right which vests in every human being as he enters the world and which during his continuance in the world can be limited only by the equal rights of others. There is in nature no such thing as a fee simple in land. There is on earth no power which can rightfully make a grant of exclusive ownership in land. If all existing men were to unite to grant away their equal rights, they could not grant away the right of those who follow them. For what are we but tenants for a day? Have we made the earth that we should determine the rights of those who after us shall tenant it in their turn? The Almighty, who created the earth for man and man for the earth, has entailed it upon all the generations of the children of men by a decree written upon the constitution of all things – a decree which no human action can bar and no prescription determine. (...) Though his titles have been acquiesced in by generation after generation, to the landed estates of the Duke of Westminster the poorest child that is born in London today has as much right as his eldest son” (Vallentyne and Steiner (2000b), p 199).

prohibition of harmful use, residuary character of ownership (laws specifying rules of ownership in cases of lapsed interest), and liability to execution in case of insolvency.¹³

There are, roughly, four *types* of ownership-status object X may have (“roughly” because ownership is a complex notion, and these complexities emerge for each of these forms): no ownership; joint or collective ownership (co-owners are part of a process deciding what to do with or about X, or at least ownership is directed by a collective preference); common ownership (X belongs to several individuals who are each equally entitled to using it, under constraints that make sure that they all get to use the property *equally*, without undergoing a joint decision procedure); and private ownership.¹⁴

The difference between “no ownership” and “common ownership” shapes my argument, so let me elaborate on it. (“Joint ownership” will soon drop out of the picture.) One may say that, if we refer to “all inhabitants of town Z,” these ownership types are distinguishable, but not if we refer to all of humanity. Earlier days found the Boston Commons in common ownership of the citizens of Boston. Its status was distinct from being unowned, as any citizen of Cambridge would have found out the hard way had he tried to keep cattle across the Charles. There is a difference between common ownership and no ownership because most of humanity happens not to reside in Boston. However, if we are talking about the earth belonging to humankind, nobody is excluded, and so it seems there is then no difference between no ownership and common ownership.

Yet the difference emerges if we ask what it takes to create *private* property out of a situation of either no ownership or common ownership. To do so, the no-ownership

¹³ For the concept of property, cf. Honore (1961), Becker (1997), Reeve (1986), and references therein.

¹⁴ Groups might also privately own something, but such complications do not matter for our purposes.

scenario requires a theory of *acquisition*, the crucial issue being how to create rights and duties constitutive of property in the first place. The common-ownership scenario requires a theory of *privatization*, the crucial issue being how to derive rights and duties constituting private ownership from an already existing bundle constituting common ownership. Since on this view things are originally held in common, private ownership must derive either from a contract, or in a way that renders a contract superfluous. I will speak of “appropriation” when staying neutral between acquisition and privatization.¹⁵

Depending on whether resources are originally unowned, collectively owned, or commonly owned, we can distinguish three versions of left-libertarianism. Each view also endorses the libertarian right to self-ownership introduced above:¹⁶

No-ownership based left-libertarianism: External resources are originally unowned, but acquisition must be guided by moral constraints. Such constraints will either disallow certain forms of acquisition altogether, or require compensation for others in exchange for compensation.

Collective-ownership based left-libertarianism: External resources are originally collectively owned, and privatization can occur only on the basis of universal agreement, or at in accordance with general preferences.

Common-ownership based left-libertarianism: External resources are originally commonly owned, and privatization occurs in such a way that the equal ownership rights of all individuals are respected.

Otsuka reveals himself as a no-ownership based left-libertarian, claiming that

¹⁵ As Tuck (1999) demonstrates, the common-ownership view and the no-ownership view interact powerfully with views on the question whether property rights are conventional or natural. Different views on these issues lead to different views on matters like ownership of the sea and legitimacy of colonization.

¹⁶ (1) Steiner’s (1994) approach in terms of an equal division of external resources can be taken either as a constraint on acquisition, which would make Steiner a no-ownership based libertarian, or as a constraint on privatization, which would make him a common-ownership based libertarian. (2) This picture of how ideas about ownership of external resources can be matched with libertarian self-ownership is oversimplified. One might want to distinguish between claims about appropriation and claims about use, which would then easily multiply the possibilities. However, not much would be gained for the argument of this study, except that things would be more cumbersome. The basic concerns to be articulated later would still apply.

in the absence of any such belief that the earth was previously owned by some being who transferred this right of ownership to humankind at the outset, it is reasonable to regard the earth as initially unowned (p 22, note 28).

Yet as Wenar (1998) points out, no ownership does not possess this default character if we acknowledge natural rights (as Otsuka does, cf. p 3f). For then there is no rights-free pre-state space, so the absence of rights over a domain (here: resources) loses its default status and must be argued for as well. So my argument must also address common-ownership based left-libertarianism, as it should anyway, since Cohen (1995) resorts to it, as does Locke (the philosophers who inspired Otsuka). Collective-ownership based left-libertarianism has few contemporary defenders, and thus I disregard it.¹⁷ For simplicity, I assume the argument about original ownership is between the theses of no ownership and common ownership. I shall argue later that common-ownership based left-libertarianism is incoherent, and then extend that argument to the no-ownership based version.

4. At this stage, however, I would like to raise a question for both types of left-libertarians. The puzzle concerns the value of what exactly all individuals have an equal entitlement to, either in the manner of having common ownership of it, or in the manner of having to respect constraints on its acquisition. For simplicity I will develop this scenario only in common-ownership language, but a parallel case can be made in terms of no ownership with constraints. The relevant question is the same.

¹⁷ Joint property is central to Grunebaum (1987), who claims that autonomy is inconsistent with private ownership: such ownership is a mutual agreement to disregard one another's interest, which does not respect autonomy. Instead, property must be handled as joint property: so some democratic process is required in order for autonomy to remain respected. Otsuka (p 30, footnote 50) rejects joint ownership as rendering self-ownership worthless. I should note that, if my argument succeeds, Grunebaum's may be the way to go if one is concerned to combine ideas of autonomy with egalitarian ideas of world ownership – but this would most plausibly be a way with which most libertarians would be rather unhappy.

Let me make the point with a simplistic island scenario. Suppose emigrants start populating an uninhabited island on Founding Day. Within some generations they multiply and develop a prospering self-contained economy. How should they think about what they commonly own on Later Day? This question matters greatly. For on the one hand, it is income from common possessions that they use for public projects, or distribute to each new generation. But on the other hand, they cannot (or should not, if they are in their right minds) evacuate the island with each new generation and let the game begin anew; instead, they must assess what is owned in common while leaving intact what previous generations have built, literally and figuratively.

Obviously, one may say, they own in common what their ancestors owned in common on Founding Day. Yet this answer is incomplete. For they may value these possessions either at Later Day rates (“how much would they get for all they own in common on Later Day if they sold it?”) or at Founding Day rates (“how much would they have gotten for all they own in common had they sold it on Founding Day?”, with appropriate purchasing power parity adjustments to translate that amount into a current amount of identical purchasing power).¹⁸ If they do the former, they grant each member of a new generation a share in the collective achievements of their ancestors. For the Later Day value of resources depends on what one can *then* do with them, which turns on Later Day technology and culture. This is appealing since generation n is in the same position vis-à-vis achievements of the first $n-1$ generations as the original emigrants were vis-à-vis the island: they contributed nothing to what they found. Yet libertarians may loathe this, since it means curtailing individuals’ rights to dispose of the products of their

¹⁸ That is: the general thrust of this question is to explore to what extent accomplishments of earlier generations become part of the common stock.

hands and minds: in particular, they would be unfree to bequeath them at will. But if they do the latter, the value of what they own in common diminishes with each generation. If the population grows, per capita income from resources becomes ever smaller while the value of the economy grows, which is based on the original common resources. Yet this diminishing takes place even if there is no population growth. As long as the original resources are improved, the ratio of value arising from the “natural” part to that of the “improved” part of resources continues to shrink.

Otsuka (at a point that takes him, and other left-libertarians, furthest from what many regard as quintessentially *libertarian*) renounces inheritance and bequest and so may happily endorse the first option. Yet one wonders about his reasoning. He says that “[s]ince individuals possess only a lifetime leasehold on worldly resources, they have nothing more than a lifetime leasehold on whatever worldly resources they improve” (p 38). More generally, Otsuka’s discussion draws on the claim that, if individuals “mix their labor” with worldly resources, they do not acquire a right to pass on those resources; on the contrary, those must be returned to the common pool, even if therefore the labor itself must be added to that pool. For those resources are still material, even if labored on.

However, clearly this move focuses on material objects that are improved during an individual’s lifetime, whereas important objects of ownership include patents and other forms of intellectual property, which after some point in the development of an economy account for a substantial share of the increase in the set of things that can be owned. Surely such things cannot be excluded from inheritance and bequest on Otsuka’s grounds. His examples are yachts, but ideas are not of that sort: something must be said

about them.¹⁹ Yet even if one does not want to venture into the realm of intellectual property (since all approaches to property have trouble here), Otsuka's response faces a problem. Suppose we grant that individuals gain only a lifetime leasehold on resources. Yet since the improvements are the result of their using their self-owned minds and bodies, why do they not obtain a full property right in the "improved" aspects of resources they work on? After all, individuals are said to have "very stringent" rights to what they earn using their bodies and minds. Why then should they only own their efforts for the rest of their lives and after that all of humanity owns their efforts for eternity?

To return to the starting point of this discussion: Otsuka does not seem to offer resources to assess whether what is commonly owned should be evaluated by Founding Day or by Later Day rates. Both options have pros and cons, but only one can be adopted. I set this question aside (assuming a satisfactory answer is in place), but we need an answer to it, and one that makes clear why the respectively other stance is not adopted.²⁰

5. Back to common ownership. Sections 5-8 explore that thesis, and by the end of section 8 we will see that common-ownership based left-libertarianism is incoherent (lest it be incomplete or shallow). Section 5 and parts of section 6 address issues that sympathizers of left-libertarianism will not find problematic, and thus they may skim them; yet I *must*

¹⁹ If one gives up on inheritance and bequest, one also starts wondering about other aspects of ownership, in particular alienability: if I cannot bequeath something I own (at least if I hold that view for the kind of reason that Otsuka has), can I give it as a wedding present? Labor-mixing scenarios shows how I get to own something, namely by mixing my labor with "stuff." Yet this does not show that I could acquire anything in any other way, including reception of gifts from you. But let us not press this.

²⁰ On pp 36/37 Otsuka discusses the related but different question, whether at the time of the original acquisition the settlers should leave enough for the members of all subsequent generations or only for the members of their own generation and worry about subsequent generations later. My concern arises if we assume Otsuka's answer ("worry about subsequent generations later") and then ask how to go about it.

address these issues because I do not want right-libertarians to dismiss left-libertarianism for the wrong reasons. Left-libertarians will then be under fire beginning in section 7.

Unsurprisingly, some think that, outside a theistic framework, the thesis of common ownership is meaningless (Narveson (2001), p 73, *seems* to think so). Yet that view is wrong, and so common-ownership based left-libertarianism cannot be ruled out on its basis. Like any form of ownership, common ownership of resources stipulates a relation between objects that are owned and subjects that own (or between subjects regarding what they can do with certain things). What leads to worries about meaningfulness is to some extent concerns about what exactly is owned and who owns, and to a larger extent concerns about the sort of ownership-relation that can hold in this context. Worries of the first sort are vagueness concerns. Nothing turns on how we answer them. We know well enough what is meant by humanity, and for the sake of this argument I assume that “external resources” are land, water, air and anything about which it makes no sense to say that human beings created it. This approach may lead to puzzles on the fringes, but those fail to render such common ownership unintelligible.²¹

More perplexing is the idea of humankind as an *owner*. This thesis envisages as the owner a group whose members come into existence gradually, and there is going to be ever more of them as time goes by. Yet while this ownership relation is unusual, it is intelligible. Ownership is a set of rights and duties, and to the extent that we can make sense of rights and duties outside a legal context, we can also make sense of property outside such a context. To the extent that we can make sense of groups being owners outside a legal context, we can make sense of humanity owning something. The fact that

²¹ The idea of something’s “being created” is also problematic; cf. Bittner (2001); but this will not deter us.

the owners appear in succession entails that we must ensure that they can all use their rights, but does not make the thesis unintelligible.²² In particular, anybody who finds human rights intelligible (*qua* moral claims) should find common ownership intelligible (*qua* moral claims), for human rights just are rights that exist outside a legal context.

6. Since the thesis of common ownership is meaningful, even outside a theistic framework, it must be assessed as true or false, or at least as plausible or implausible. Let us explore, then, how to argue for the thesis. Once we have a better sense of how to do so, we will be able to see why one should not endorse both common ownership and the second part of Otsuka's libertarian right to self-ownership. To this end, we rebut one *reductio ad absurdum* and sketch three arguments in its favor. The *reductio* runs as follows: Can somebody seriously claim, asks Rothbard (1996), p 35, that a newborn Pakistani baby has a claim to a plot in Iowa that Smith just transformed into a field? As soon as one considers such implications of common ownership, says he, one realizes its implausibility. Smith has claims on the strength of his plight, but the baby has none.²³

This argument gains rhetorically from emphasizing features of Smith and the baby that are irrelevant to claims the baby may have. Such claims would arise in virtue of its being *human*, and Smith would have to acknowledge them on such grounds. Also, common ownership does not grant any individual a claim to just any object. That our baby, *qua* being human, has claims to resources on a par with Smith's is consistent with

²² One may say that ownership presupposes that some people are excluded from what is owned: "humankind" cannot be an owner, unless those who are excluded are animals or extra-terrestrials. ("Arriving on Earth, E.T. found himself sadly excluded from what is commonly owned by humankind.") Yet I think that ownership, in the limit case of humankind being an owner, loses this feature.

²³ Hospers (1971), p 65, makes a similar point.

its not having claims on Smith to vacate *that* land. Still, Smith may owe compensation for using that land. If the thesis of common ownership is true, Smith privatized common property, and this fact determines the conditions under which he is allowed to do so, regardless of how much trouble he went to cutting down the trees.²⁴ None of this establishes common ownership, but the *reductio* fails. Common ownership is not absurd.

Let us explore now how to argue for common ownership over no- ownership. I merely sketch these arguments, but section 7 shows that this sketch suffices to derive an important insight. The first argument is that the thesis of common ownership is the intuitively more plausible one. Intuitions, however, do not seem to play much of a role here, since we simply do not have any clear intuitions championing common ownership over no ownership, or vice versa. This point becomes obvious if one compares intuitions one may have about world ownership with intuitions most people have about torturing their parents. The thesis that resources are commonly owned is deliberately remote: one does not know how to make up one's mind about it vis-à-vis its negation, or vis-à-vis no-ownership. The only arguments that seem to hold promise are those trying to establish that one of the theses must carry the burden of proof, or that one of the theses follows from views on which we have a firmer grip. It seems this can be different only if a moral

²⁴ Schmidtz (1994) objects to the picture of the lucky first-comers who effortlessly appropriate and leave little for others. "Original acquisition diminishes the stock of what can be originally appropriated, but that is not the same thing as diminishing the stock of what can be owned. On the contrary, in taking control of resources and thereby reducing the stock of what can be originally appropriated, people typically generate massive increases in the stock of what can be owned. (...) Thus the idea that original appropriators have obligations because of what they took away from latecomers is a mistake.... [N]o obligation on the part of people now living has anything to do with the fact that not everyone had a chance to engage in original appropriation" (p 46). Yet if the thesis of common ownership is true, appropriation must be constrained by the fact that it results from privatization of common resources. Such constraints may have to accommodate the fact that appropriators are value-adders, but common ownership remains the decisive background fact. Even if there is a duty to cultivate wasteland, as Schmidtz suggests, any use of the privatized property will be constrained by the fact that it used to be common property.

framework is accepted within which the act of *giving* the earth to humankind can be accounted for, and this, in turn, seems possible only if theism is assumed.

To prepare the second argument note that Wenar (1998) helpfully suggests that no ownership embodies “equal freedom,” whereas common ownership embodies “equal voice” (p 804). The equal-freedom characterization is appropriate for the no-ownership thesis (unless moral constraints are added to it), because this thesis gives everybody the same freedom to occupy unowned land, but nobody has an obligation make room for those who arrive late in the process of acquisition. In this spirit, Cicero and later Grotius (a defender of the no-ownership thesis) compare the unowned world with a theater: everybody is equally entitled to a seat, but if somebody arrives late, nobody is obligated to share her seat. The equal-voice characterization is appropriate for the common-ownership thesis because in this case each person has a claim to be treated as an equal owner, not simply as somebody with an equal chance of becoming an owner. Recall that, in section 3, we encountered an argument to push the burden of proof on the common-ownership thesis. Our second argument now reverses that move, claiming that the “equal-voice” approach embodied in the common-ownership thesis pushes the burden of proof on the “equal-freedom” approach embodied in the no-ownership thesis.

According to this argument, any view on original ownership interprets the idea that everybody is *equally entitled* to resources, with different views endorsing different understandings of such entitlement. Unless one can show otherwise, “equal entitlement” must be explicated in terms of “equal voice,” since “equal voice” is the appropriate way of *respecting* individuals equally, which in turn is the vantage point of moral inquiry and motivates the “equal entitlement” perspective to begin with. Yet this argument begs the

question against “equal freedom” advocates. It is hard to see what mistake somebody makes saying that “equal entitlement” is to be explicated as “equal freedom” by insisting that it is “equal freedom,” not equal voice, that is the appropriate way of respecting individuals. (More on this in section 7: for now this can remain superficial.)

Let us turn to a third argument. Nagel (1991) argues that, if we endorse social, legal, and political equality (as we should because of the abysmal consequences of violating such equality), we must also endorse economic equality. Otherwise those equalities are insecure: abolishing formal status differences does not bring about social equality, securing an equal right to a jury trial does not bring about legal equality, and granting each person (only) one vote does not bring about political equality. In each dimension, economic inequality undermines equality. Is there a parallel argument for common ownership of resources? The most promising approach starts with a set of human rights, rights that apply to human beings independently of any legal system. The claim is that such rights can be guaranteed only if resources are commonly held, as substantive social, legal, and political equality require the presence of economic equality. Without a claim to a share of resources, circumstances in which human rights cannot be realized could legitimately arise. Yet starting with a minimal set of human rights, we cannot derive common ownership: at best we can hope for a claim to the satisfaction of basic needs (cf. Shue (1996)), a right to subsistence rather than common ownership. To derive common ownership we must make the assumed set of human rights very strong. A similar claim would be true if we did not start with human rights, but with a set of moral concerns that could be realized only in the presence of common ownership.

7. I have not pressed these arguments much, but both the second and the third teach a lesson. This lesson is that common ownership seems to be plausible only to those who hold a view that ties individuals' lives together and shares out fortunes and misfortunes, that is, a view that captures a much stronger understanding of what we owe to each other than endorsed by somebody who would find Otsuka's libertarian right to self-ownership plausible. This is straightforward for the third argument: only if a very comprehensive set of human rights is assumed (rather than merely negative rights not to be killed, maimed, or raped – and hence a set of such rights too strong for libertarians to accept) can we conclude that common ownership of external resources is required for maintaining it. The sheer strength of the common-ownership assumption (with its demand both to regard all of humankind as the owner of external resources and to consider each individual of each generation an equal co-owner) is required only if the set of rights we intend to maintain includes rights that are not commonly regarded as basic, perhaps the right to a substantial (rather than merely adequate) standard of living and an extensive set of social services. Those who are independently convinced that persons possess such rights may indeed find it plausible to conclude that the preservation of such rights requires the thesis of common ownership, just as the preservation of legal, social, and political equality may see to require economic equality. A normative vision of shared humanity focused on a substantial notion of *solidarity*, or some other grounds for advocating a rather *comprehensive understanding of what we owe to each other*, is required to deliver a set of human rights that in turn requires the common-ownership thesis for its preservation.

Similar considerations apply to the second argument, which tries to establish the equal-voice approach as default. Suppose, following my discussion above somebody

objected that the equal freedom approach entails that the share of resources individuals can appropriate depends on the point in time at which they are born and on other apparently morally arbitrary factors. Advocates of the equal-freedom approach will respond that this is no problem *unless* there is some prior claim to a stronger sense of equal entitlement than equal-freedom – a claim they themselves deny. As in the third argument, the reply, can only be an appeal to a view that ties together individuals' lives and gives a prominent role to *solidarity* (or, again, on other grounds advocates a rather comprehensive understanding of what we owe to each other). For lack of a better name, let me call defenders of such views *solidarity-centered egalitarians*.

Now we can take a first shot at pinpointing the objection to common-ownership based libertarianism. Crucially, for anybody inclined to accept a move securing common ownership, this second bit of Otsuka's right to self-ownership will seem implausible:

A very stringent right to all of the income that one can gain from one's mind and body (including one's labor) either on one's own or through unregulated and untaxed voluntary exchanges with other individuals.

As far as solidarity-based egalitarians are concerned, advocates of this right endorse a conception of what we owe to each other that is at odds with their own. They could point out that economic interaction happens before a background of technology and culture achieved by earlier generations, or that economic transactions happen within markets composed of many individuals who therefore, collectively, should also be entitled to regulating it, and who thus would also regulate (possibly tax) voluntary exchanges. At any rate, they would give *some* elaboration on their view that fortunes are tied together and that, therefore, individuals will have to accept restrictions to ensure that some people's lives are not much worse than others' because of brute luck. Granting a "very

stringent right to all of the income that one can gain from one's mind and body" seems anathema to those endorsing the kind of view on what we owe to each other needed for acceptance of common ownership. This right will seem plausible only to those thinking that individual lives are not tied together at all, that is, to those who do not even require that income from voluntary exchanges with others be subject to regulation by those same communities that (through providing markets) make income possible in the first place.²⁵

So it seems, then, that common-ownership based left-libertarianism is incoherent. The set of reasons that would prompt one to endorse common ownership seem to stand in a deep tension with the set of reasons that would prompt one to endorse the second bit of Otsuka's right to self-ownership. I grant that this brand of libertarianism is consistent: there may well be circumstances under which individuals find both their libertarian right to self-ownership and common ownership of external resources respected. However, there seems to be no unified point of view, no single stance from which the positions combined by this brand of libertarianism look jointly plausible.

8. Yet we must pause now and state the objection more precisely and comprehensively. One may say we have not yet demonstrated that there could not be *some* way of reaching Otsuka's proviso that is coherent with self-ownership. Locke, in fact, suggests one such way by endorsing a theistic framework in which common ownership of resources can be secured as an independently given *factum* not calling for further justification that may conflict with self-ownership. Locke does not need to justify the *intrinsic* significance of common ownership; he merely needs to show that the belief that resources are common

²⁵ Christman (1991) and (1994) argue, from an egalitarian perspective, for a conception of ownership that excludes precisely that second bit of Otsuka's right to self-ownership.

property is warranted by divine authorization: no questions about how to reconcile this stance with self-ownership arise, provided self-ownership is similarly warranted.²⁶ While Otsuka may not endorse Locke's theism, this possibility suggests that common ownership can be defended in ways that do not run into the problem discussed in section 7. So we must formulate the objection with more care. The incoherence objection remains, but this formulation aims at precluding ways of avoiding the problem.

Suppose left-libertarians endeavor to justify the intrinsic importance of common ownership of external resources: that is, they want to justify the common-ownership thesis in its own right. Then section 7 reveals an incoherence between the set of reasons motivating the intrinsic importance of such ownership and the set of reasons motivating self-ownership. Such significance can be justified only if it derives from a starting point that already encapsulates the intrinsic significance of egalitarian ownership – a point of view that must be reconciled with self-ownership and comes in conflict with it. However, this leaves left-libertarians the option of arguing for their view without justifying the common-ownership thesis in its own right. There are two ways of doing so.

Either one takes common ownership as starting point, not in need of, or at any rate not given, further justification. This is unacceptable since it leaves left-libertarians without any response to critics holding some other view of ownership of resources. Yes, explanations must end somewhere, but as I argued above, assumptions about ownership are not where they should end. *Or* one justifies common ownership derivatively, through its relation to some other, independently acceptable view that supports common

²⁶ I am thinking of theism epistemologically, God being an authoritative source warranting beliefs. Only on that understanding does Lockean theism block the concerns of section 7. If we take theism to be a set of moral and metaphysical claims that lead to self-ownership as, say, the human-rights-based view above did we would have the coherence problem from section 7 all over again, this time in the mind of God.

ownership without bestowing any inherent significance to the fact that anything is owned in common. Such a relation can have different natures. Let us consider two cases, which should also make clearer the contrast to justifications of the common-ownership-thesis “in its own right” that I am trying to capture. For one thing, common ownership may be justified instrumentally, that is, required to further some other, independently given goal - - which goal would have to entail libertarian self-ownership as well, or at least be coherent with it. For instance, it may so happen, at least in some possible world, that utilitarian goals are best served by the adoption of left-libertarianism, or that an independently held doctrine of equal life chances is best supported in this manner. Such views give no inherent importance to the fact that ownership is held “in common:” the common ownership thesis will be readily abandoned by defenders of these views if this instrumental relationship fails to hold.

Alternatively, belief in such ownership may be warranted by an external source of authority, as in Lockean theism that includes common ownership in the canon of revelations -- and again, this source would have to warrant self-ownership too, or be coherent with it. Again, no inherent importance attaches to the fact that anything is owned in common: had divine revelation warranted some other belief, that belief would be equally supported. Crucially, no matter how this relation is spelled out, left-libertarians opting for this possibility have so far left their position seriously incomplete, and whatever they have not told us yet must change the nature of their view.²⁷

²⁷ (1) It does not matter for this argument whether each attempt to justify common ownership can be clearly classified as either “justifying common ownership in its own right”, or “justifying it in relation to some other view.” If uncertain cases remain, we can state the conclusion as follows: “To the extent that justifications are for common ownership in its own right, the incoherence problem arises; to the extent that they are for common ownership in relation to some other view, the incompleteness problem arises.” (2) Contemporary left-libertarians would probably not be happy to see that their view depends on, say, theism. Yet as Locke himself says near the end of his *Letter Concerning Toleration*: “The taking away of God,

Yet more needs to be added to this reformulation of the incoherence objection. Suppose left-libertarians try to avoid the argument laid out in the preceding paragraphs by suggesting that common ownership and self-ownership give the best expression of independently plausible ideas about fairness: It is fair that each person not injure others in pursuit of his own ends. It is also fair that each person should own what she produces. Finally, it is fair that each person should have an equal shot at acquiring resources. Common ownership and self-ownership are warranted by those ideas: that is all there is to. The problem with this and similar moves that try to “read off” the two planks of left-libertarianism from what one may call mid-level common sense principles of morality is that it chooses a rather impressionistic approach to philosophy. Left-libertarianism tries to reconcile ideas of liberty with ideas of equality, and recent philosophical inquiry into ways of doing so has reached a sophisticated level. By trying to sidestep our inquiry in this manner left-libertarianism would turn into a philosophically shallow theory.

Left-libertarians drawn to this move find themselves in famous company: Nozick (1974) proceeds at the level of such mid-level common-sense principles. Yet Nozick has long been accused of offering “libertarianism without foundations,” and if contemporary left-libertarians were to settle in *this* methodological camp, Nagel’s (1981) criticism of *Anarchy, State, and Utopia* would hit them just as well:

Despite its ingenuity of detail, the effort is entirely unsuccessful as an attempt to convince, and far less successful than it might be as an attempt to explain to someone who does not hold the position why anyone else does hold it. (...)

though but even in thought, dissolves all.” He is referring to promises and contracts, but my argument shows that, speaking anachronistically, he may have said the same of common-ownership based left-libertarianism. Locke’s views may come with problems of their own, though. For instance, one may say that “self-ownership” is not available within a theistic view that makes the earth and all individuals a divine creation. I suppose that problems of this sort are solvable (in this case, one may understand self-ownership as applying to human beings vis-à-vis each other, but not vis-à-vis God), but neither can I argue this here, nor is it in any way important for my overall argument.

[Nozick] has left the establishment of the moral foundations to another occasion, and his brief indication of how the basic views might be defended is disappointing. (p 192/193)

For left-libertarians to be in this camp would also make it hard to say why we should go with Otsuka, rather than with Nozick, or anybody else who claims that her principles best capture mid-level common-sense principles. More sophisticated inquiries than allowed by this approach itself will be required to answer a question that arises so naturally about it.

This completes the more precise and comprehensive statement of my main objection to left-libertarianism. Let me sum up, reversing the order of presentation. Left-libertarians might *either* claim that their principles capture a number of mid-level common-sense statements about fairness, add, perhaps, that we are more certain of such statements than about any results of “deeper” inquiry, and refuse to be further interrogated. In that case we end up with a shallow theory, one that does not offer means to decide whether we should prefer Otsuka to Nozick. *Or* left-libertarians might allow for more foundational inquiry. They can then either defend common ownership of resources in its own right, or not. If they do, they end up with the coherence problem from section 7. Or else they can either insist that common ownership should be taken as basic, which is a version of the first strategy of refusing deeper inquiry; or they end up with a theory that is destructively incomplete – “destructively” because any addition that would close the argumentative gap is likely to add commitments to the left-libertarian stance that many of its advocates would loathe to take on. At any rate, there is no road that does not at least require left-libertarians to say *a lot more* than they have so far.²⁸

²⁸ A contractarian version of libertarianism, as championed by Narveson (2001) or Gauthier (1986), can also be addressed in this framework. Such contractarianism will either directly encounter the question of the intrinsic value of common ownership (if questions about ownership arise in a kind of original position), or will have to adopt some other value, or set of values, of which common ownership would then be

9. Section 10 addresses objections to my argument, but first let us turn to no-ownership based left-libertarianism. Otsuka, after all, does not endorse common ownership, and thus is not immediately affected by that argument (Steiner, 1994), however, may be, if his equal-division constraint on resources applies to privatization of commonly owned resources.) However, no-ownership based left-libertarians are open to a version of the same objection. Recall that Kirzner and Rothbard reject any moral constraints on acquisition. As opposed to that, Nozick endorses the following proviso (Otsuka, p 23):²⁹

Nozick's Lockean Proviso: You may acquire previously unowned land (and its fruits) if and only if you make nobody else worse off than they would have been in the state of nature in which no land is privately held but each is free to gather and consume food and water from the land and make use of it.

Otsuka, finally, endorses this proviso:

Otsuka's Egalitarian Proviso: You may acquire previously unowned worldly resources if and only if you leave enough so that everyone else can acquire an equally advantageous share of unowned worldly resources.

The question is: on what grounds do we decide whether to accept a proviso, and if so, which one? Rejecting Nozick's proviso, Otsuka argues that as a means of ensuring

that nobody is placed at a disadvantage, Nozick's version of the Lockean proviso is too weak, since it allows a single individual in a state of nature to engage in an enriching acquisition in all the land there is if she compensates all others by hiring them and paying a wage that ensures that they end up no worse off than they would have been if they had continued to live the meager hand-to-mouth existence of hunters and gatherers on non-private land. (p 23)

derivative. Note that Rawls (2001) , for one, is a non-libertarian contractarian who thinks about property "to sketch in more detail the kind of background institutions that seem necessary when we take seriously the idea that society is a fair system of cooperation between free and equal citizens from one generation to the next" (p 136). So property rights, for Rawls, are merely instrumentally valuable.

²⁹ For some complications in the formulation of Nozick's proviso, cf. Wolff (1991), pp 108-112.

Further down, Otsuka argues for his own proviso as follows:

The egalitarian proviso has prima-facie plausibility for the following reason: One's coming to acquire previously unowned resources under these terms leaves nobody else at a disadvantage (or, in Locke's words, is 'no prejudice to any others'), where being left at a disadvantage is understood as being left with less than an equally advantageous share of resources. Any weaker, less egalitarian versions of the proviso would, like Nozick's, unfairly allow some to acquire a greater advantage than others from their acquisitions of unowned land and other worldly resources. (p 24)

But why should we care about placing people at such a disadvantage? The question arises for Nozick's proviso, but so much more for Otsuka's, which is a substantial strengthening. Kirzner and Rothbard have no qualms about placing anybody at such a disadvantage, insisting that nobody is *entitled* to not being so placed. The answer can only be given in terms of the same sort of views that in section 7 found *common ownership* plausible. Unless one adopts a view according to which we owe to each other more than captured by Nozick's proviso, one has no satisfactory defense against Nozick's claim that his proviso goes far enough, or against Kirzner and Rothbard insisting that there should be no proviso at all. Yet if one does accept such a view, one will dismiss the second part of Otsuka's right to self-ownership. So we find that no-ownership based left-libertarianism, if it includes Otsuka's proviso, is also incoherent. The reasons required for endorsing Otsuka's Egalitarian Proviso are in a deep tension with the reasons required for endorsing the second bit of his libertarian right to self-ownership. Again there is no unified stance from which one can endorse both -- or anyway, we are now back to where we were at the end of section 7, and whatever the force of the more comprehensive objection in section 8, it applies here as well and must be added accordingly.

10. Since my incoherence objection is now fully developed, I discuss some replies by way of concluding. For this discussion I adopt a kind of shorthand: I will continue to talk about my objection as an incoherence objection, but with the understanding that the full objection is stated in section 8. This will not matter substantively, but allows me to put things succinctly. To begin with, suppose we grant a right to income as stipulated by the second part of Otsuka's libertarian right to self-ownership, and ask how much individuals may appropriate. What then keeps us from permitting those with less lucrative talents to appropriate more than those with more lucrative talents? Why can we not coherently be egalitarians who grant the right that is under dispute while counterbalancing it with a right to appropriation that makes sure that, nevertheless, the desired kind of equality emerges (in Otsuka's case, equal opportunity for welfare)?

We must ask advocates of such a stance on what grounds they can dispose of external resources in this way. They may either simply stipulate that they can, in which case they have nothing to say to those who think otherwise about ownership. Or else they provide reasons for their choice of ownership status, in which case we must return to the arguments of sections 7-9: the reasons for which one would support an egalitarian ownership status render Otsuka's right implausible. The point remains that we need incompatible sets of reasons to establish libertarian self-ownership, on the one hand, and either common ownership of resources or no ownership with Otsuka's proviso, on the other. This objection highlights the difference between consistency and coherence that shapes this study. Left-libertarianism may be consistent, but it is not coherent. One cannot endorse one view of what we owe to each other for one domain (ownership of persons) and another such view for another domain (ownership of external resources).

A second objection wonders whether coherence really is a constraint on a theory of justice, or on any normative theory. If, say, Nagel's thesis of the fragmentation of value is correct, we should "not believe that all value rests on a single foundation or can be combined into a unified system, because different types of values represent the development and articulation of different points of view" (Nagel (1979), p 138). If so, could not left-libertarians safely bite the bullet this paper shoots at them? In response, distinguish two conceptions of value pluralism. The strong conception holds that different values represent the articulation of different viewpoints, with arguments for some values actually undermining the appeal of others. The weak conception holds that different values represent the articulation of different viewpoints in such a way that the reasons for them do not conflict. That is, there is no single foundation for those values, and they will not allow for ongoing simultaneous realization; nevertheless, we can give arguments for each value that do not undermine the others. On the weak conception, there still is a unified stance from which all values can be endorsed, although that stance will present separate sets of arguments in support of the respective values; such pluralism allows for a unified stance only insofar as the viewpoints it combines do not actually undermine each other. On the strong conception, there is not even such a stance.

I endorse weak value pluralism, and the notion of coherence used in this essay should be understood as amenable to such pluralism (as pointed out in a footnote in the introduction); at any rate, that is as strong a notion as I need for my argument: a notion of coherence that emphasizes absence of tension, rather than one that emphasizes harmony. I reject strong value pluralism. Any agent whose normative commitments embody such pluralism, or any normative theory that does so, will endorse values that cannot be

defended without simultaneously undermining values that the agent or the theory also endorses, which I take to be a *reductio ad absurdum*. One could avoid such a scenario only by refusing defenses of any of the specific values or by claiming that only the general view of strong value pluralism can be defended. In neither case, however, does one have anything to say to an opponent who denies one of the values involved. More is worth saying here, but I hope to have made it plausible why strong value pluralism is a peculiar theory, to say the least. Left-libertarians should not want their success to depend on it. So “biting the bullet” by endorsing strong value pluralism is not a feasible response for left-libertarians, whereas weak pluralism delivers my incoherence objection.

The third objection insists that considerations of solidarity are not required for Otsuka’s proviso. Instead, Otsuka’s argument for his proviso rests on fairness grounds. However, right-libertarians object that fairness does not lead to anything like Otsuka’s proviso; they may even grant that it requires Nozick’s proviso, but find Otsuka’s too strong. To explicate why fairness requires more than what is captured by Nozick’s proviso we would again have to resort to an idea of what people owe to each other that is at odds with Otsuka’s right. So while Otsuka can dispense with the notion of solidarity, he still needs to operate with such a notion of what we owe to each other. And again, his proviso is plausible only on an understanding of what we owe to each other different from the understanding required to motivate the libertarian self-ownership.

The fourth objection is that consistency of self-ownership with common ownership of resources (or no ownership plus proviso) should suffice to establish the viability of left-libertarianism.³⁰ There is no additional requirement in terms of

³⁰ This is different from the second objection, which says that incoherence may not be problematic; this objection says that considerations of coherence do not arise.

“coherence.” Yet if so, the only permissible objection to a political theory would be that there are no conditions under which its principles are jointly realized (which would make it inconsistent). However, even if one grants that the principles of a theory can be jointly realized, one can reasonably inquire about whether one *should* embrace all those principles at once. If it is intelligible that the answer to this question (which turns on the underlying commitments of these principles) may be negative even if those principles are consistent, objections drawing on coherence must be answered. Much of everyday political discourse and of political philosophy would have to be discarded if one could only inquire about the consistency of principles, but not about coherence.

Consistency is a *conditio sine qua non* for any view, philosophical or other; but I think it is coherence for which we should be (and I think most of us are) aiming when we, as philosophers rather than as politicians trying to hold together a coalition government, inquire about the viability of an approach. At the same time, incoherence at the level of principles is inconsistency at the level of reasons. It is at that level that left-libertarianism is in trouble – or at any rate, the challenge for left-libertarians is now to make it plausible how anybody could coherently endorse some principle of egalitarian ownership of external resources and a libertarian principle of self-ownership; that is, to explain why anybody should want to be a left-libertarian.

Literature

Becker, L. 1977. *Property Rights: Philosophical Foundations*. Boston: Routledge and Kegan Paul

- Bittner, R. 2001. "Masters without Substance." In: R. Schacht (ed.), *Nietzsche's Postmoralism*. Cambridge: Cambridge University Press
- Christman, J. 1991. "Self-Ownership, Equality, and the Structure of Property Rights." *Political Theory* 19: 28-46; partially reprinted in Vallentyne and Steiner (2000a)
- Christman, J. 1994. *The Myth of Property: Toward an Egalitarian Theory of Ownership*. Oxford: Oxford University Press
- Cohen, G. A. 1995. *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge University Press
- Gaus, G. F. 1994. "Property, Rights, and Freedom." In Paul, Miller, and Paul (1994)
- Gauthier, D. 1986. *Morals By Agreement*. Oxford: Clarendon
- Grunebaum, J. 1987. *Private Ownership*. New York: Routledge and Kegan Paul
- Honoré, A. M. "Ownership." In: *Making Law Bind: Essays Legal and Philosophical*. Oxford: Clarendon
- Hospers, J. 1971. *Libertarianism*. Nash Publishing: Los Angeles
- Kirzner, I. 1978. "Entrepreneurship, Entitlement, and Economic Justice." *Eastern Economic Journal* 4: 9-25; partially reprinted in Vallentyne and Steiner (2000a)
- Locke, J. 1988. *Two Treatises of Government*. Ed. by P. Laslett. Cambridge: Cambridge University Press
- Munzer, T. 1990. *A Theory of Property*. Cambridge: Cambridge University Press
- Nagel, T. 1979. "The Fragmentation of Value." Reprinted in: *Mortal Questions*. Cambridge: University of Cambridge Press

- Nagel, T. 1981. "Libertarianism Without Foundations." In J. Paul, *Reading Nozick*. Totowa: Rowman and Littlefield
- Nagel, T. 1991. "Equality." Reprinted in: *Mortal Questions*. Cambridge: University of Cambridge Press
- Narveson, J. 2001. *The Libertarian Idea*. Ontario: Broadview Press
- Nozick, R. 1974. *Anarchy, State, and Utopia*. Cambridge: Harvard University Press
- Otsuka, M. 1998. "Self-Ownership and Equality: A Lockean Reconciliation." *Philosophy and Public Affairs* 27: 65-92
- Otsuka, M. 2003. *Libertarianism Without Inequality*. Oxford: Oxford University Press
- Paul, E. F. 1987. *Property Rights and Eminent Domain*. New Brunswick: Transaction Books
- Paul, E. F., F. D. Miller, and J. Paul (eds.) 1994. *Property Rights*. Cambridge: Cambridge University Press
- Rawls, J. 2001. *Justice as Fairness: A Restatement*. Cambridge: Harvard University Press
- Reeve, A. 1986. *Property*. Atlantic Highlands: Humanities Press
- Risse, M. 2001. "What to Make of the Liberal Paradox?" *Theory and Decision* 50: 196-196
- Rothbard, M. 1974. *Egalitarianism as a Revolt Against Nature, and Other Essays*. Auburn: von Mises Institute

Rothbard, M. 1996. *For a New Liberty. The Libertarian Manifesto*. San Francisco: Fox and Wilkes

Ryan, A. 1994. "Self-Ownership, Autonomy, and Property Rights." In Paul, Miller, and Paul

Schmidtz, D. 1994. "The Institution of Property." In Paul, Miller, and Paul (1994)

Shue, H. 1996. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. Princeton: Princeton University Press

Steiner, H. 1994. *An Essay on Rights*. Oxford: Blackwell

Tuck, R. 1999. *The Rights of War and Peace*. Oxford: Oxford University Press

Waldron, J. 2003. *God, Locke, and Equality: The Christian Foundations of Locke's Political Thought*. Cambridge: Cambridge University Press

Vallentyne, P., and H. Steiner (2000a). *Left-Libertarianism and Its Critics: The Contemporary Debate*. London: McMillan

Vallentyne, P., and H Steiner (2000b). *The Origins of Left-Libertarianism: An Anthology of Historical Writings*. London: McMillan

Wenar, L. 1998. "Original Acquisition of Private Property." *Mind* 107: 799-819

Wolff, J. 1991. *Robert Nozick: Property, Justice and the Minimal State*. Stanford: Stanford University Press