Libertarianism, Left and Right

Libertarianism is a school of moral/political thought that is committed to full or near-full individual self-ownership. In the realm of distributive justice, libertarianism is probably most famous (or infamous) for its rejection of redistributive taxation. However, the libertarian view of distributive justice is less monolithic and more complex than is often recognized, and in this chapter we aim to clarify (and in in places tentatively defend) this view.[1] We begin by briefly defining "distributive justice" and "libertarianism" (Section 1). We then turn to considering self-ownership (Section 2), property rights in natural resources (Section 3), and property rights in human-made goods (Section 4). Finally, we consider directions for future research (Section 5) and conclude.

1. Preliminaries

1.1 Justice and Distributive Justice

While there are many ways of understanding "justice" (Vallentyne, 2003a), for the purposes of this chapter, we take justice to be concerned with *enforceable* moral duties, that is, those duties whose compliance may be permissibly induced using force or threat thereof.[2] We define *distributive* justice as that area of justice relating to the distribution of economic benefits and burdens.

[1] One of us, Peter Vallentyne, is a left libertarian. The other, Joseph Mazor, is a sympathetic critic of libertarianism. However, in this chapter we adopt the perspective of defenders of libertarianism.
[2] There are coherent pacifist versions of libertarianism that recognize various libertarian duties but *no enforceable duties*. Such libertarian theories would have nothing to say about justice as we define it here. Since every prominent libertarian thinks that coercive force may be used to protect property rights, we will not consider these pacifist libertarian theories here.

1.2 Libertarianism

As the term suggests, libertarianism entails a commitment to respect for liberty. However, this is a commitment to a very particular conception of liberty: liberty as *full or near-full self-ownership*. The commitment to this type of liberty can be justified on a variety of grounds,[3] including consequentialism (e.g., Epstein, 1998), social contract (e.g., Narveson, 1998), autonomy (e.g., Grunebaum, 2000), natural rights (e.g., Mack, 1990), and the value of freedom from interference.[4] We will not explore the foundations of the commitment to self-ownership in this chapter. We will focus instead on explaining this commitment and its implications for distributive justice.

2. Full and Near-Full Self-Ownership

Self-ownership is simply a special case of ownership where the owner and the thing owned are one and the same. We therefore begin our discussion of self-ownership by considering the more general concept of ownership.

2.1 Ownership

Ownership can be best understood as a collection of certain Hohfeldian liberties, claim-rights, powers, and immunities that some person has with respect to some entity.[5] We will refer to these rights as *property rights*. These include:[6]

[3] For a critique of the libertarian commitment to self-ownership, see (Lippert-Rasmussen, 2008).
[4] For a debate on whether maximal equal negative liberty leads to traditional libertarianism conclusions, see (Narveson and Sterba, 2010). For a discussion, see (Vallentyne, 2011).
[5] For a more detailed account of the nature of these rights, see (Hohfeld, 1919).

(1) *Control rights* over the entity (liberty-rights to use, a power to authorize use or encroachment by others, and a claim-right that others not use or encroach upon the entity without one's authorization),

(2) *Rights to transfer* one's property rights over the entity to others (by sale, rental, gift, or loan),

(3) *Enforcement rights* (e.g., rights of prior restraint, punishment) with respect to others' violations or potential violations of one's property rights over the entity,

(4) *Rights to compensation* when someone violates one's property rights over the entity without one's permission,

(5) *Immunities to the non-consensual loss* of one's property rights over the entity.

We will not take a position on which property rights are precisely necessary and sufficient for ownership. However, we will assume that an entity's owner must at least have liberty-rights to use the entity and either a claim-right against others' encroachment on the entity or a right to appropriate compensation if others use the entity without her permission.[7] We take it that these are the minimal requirements for ownership. The more property rights an owner has with respect to an entity, the stronger her ownership over the entity is.

It is worth emphasizing straightaway that even the strongest form of ownership over an entity does not guarantee a person the effective moral freedom to make use of that entity in any practical sense. After all, there are basically no actions that someone takes with respect to an entity that use or encroach upon *only that entity*. For example, when I ride my motorcycle, I occupy space, discharge pollution into the air, and generate sound waves that encroach on other individuals. Ownership of my motorcycle only grants me a liberty-right to use *the motorcycle*

[6] This list is enumerated and briefly discussed in (Vallentyne, Steiner, and Otsuka, 2005: 203-204).
[7] We set aside here the important question of what constitutes appropriate compensation.

itself. Before we can conclude that I have moral permission to ride my motorcycle somewhere, we need to know about my property rights with respect to all the entities that my motorcycle ride would use or encroach upon. This is a general point that applies to all types of ownership, including self-ownership, which we turn to next.

2.2 Self-Ownership

Self-ownership is ownership of one's own person.[8] Setting aside a variety of complex issues about personal identity, we will make the simplifying assumption that a person is her body. Thus, one can think of self-ownership intuitively as giving an individual (moral) rights over her body that are similar to the *legal* rights that slave-owners had (and in some parts of the world unfortunately still have) over their slaves (Cohen, 1995: 68).

A wide variety of theories are committed to granting individuals some type of self-ownership (e.g., Thomson, 1992: Ch. 8). What distinguishes libertarianism from these other theories is the commitment to the following key moral claim (or something similar to it): Every rational agent initially possesses *full* self-ownership.[9] We will refer to this as the *full self-ownership thesis*.

[8] As Cohen (1995: 68-69) argues, the term "self" in self-ownership has a purely reflexive significance.
[9] More accurately, the thesis requires that every agent possess *the same* set of self-ownership rights. By "initially," we mean before the agent contracts away any of these rights or loses these rights as a result of engaging in rights violations.

2.3 Full Self-Ownership

Full self-ownership assigns each person *the logically strongest* control rights (1) and transfer rights (2) over herself possible.[10] By "logically strongest" we mean both *maximally stringent* and *maximally extensive*. "Maximally stringent" means that the ownership rights can never be overridden by other moral considerations (e.g., those having to do with human welfare). "Maximally extensive" means the most complete list of Hohfeldian rights within the relevant categories possible.[11]

However, full self-ownership does not assign a person the logically strongest self-ownership rights possible in categories (3), (4), and (5). The reason is this: It would be impossible to grant every person (or indeed, even more than one person) full self-ownership were it defined this way. After all, the stronger we make one person's rights of compensation and enforcement (i.e., what she may do to others in self-defense), the weaker we have to make others' immunity to the non-consensual loss of self-ownership rights, and vice versa. Thus, libertarians define full self-ownership instead as granting a person a set of self-ownership enforcement rights (3), compensation rights (4), and immunity to loss of self-ownership rights (5) that are as strong as possible subject to the constraint of being compatible with others having *the same set of rights* in categories (3), (4), & (5) over themselves (Vallentyne, Steiner, and Otsuka, 2005: 203-205).

[10] We also assume that a full self-owner cannot be deprived of her *other* property rights simply because she exercises her self-ownership rights. So depriving a person of her right to breathe air (assuming that she already has that right) simply because she smiled would violate the full-self ownership thesis.

[11] Our discussion of extensiveness and stringency follows (Wall, 2009: 400).

Having defined the concept of full self-ownership, we now turn to considering three prominent criticisms of the full self-ownership thesis having to do with indeterminacy, small encroachments or risks of encroachments, and enforceable duties to assist.

2.4 Is Full Self-Ownership Indeterminate?

Some theorists have criticized libertarianism by arguing that the concept of full self-ownership is indeterminate (Fried, 2004: 78-80). And indeed, there is *some* truth to this criticism. Full self-ownership is indeterminate when it comes to the question of what a person may do in self-defense. Since it is the case that the stronger we make one person's enforcement and compensation rights (3 & 4), the weaker we have to make another's immunity to non-consensual loss of self-ownership rights (5) and vice versa, there are admittedly many possible bundles of rights in categories (3), (4), and (5) that would satisfy the definition of full self-ownership.[12] One conception of full self-ownership could grant me full rights to defend my body, including the right to kill you if you are threatening to punch me. Another could deny me the right to do anything to you in response to your attack on my body. Another might provide me with enforcement rights that are proportional in some way to the threat you pose. Each of these is an admissible conception of full

[12] However, full self-ownership is not *completely* indeterminate in the realms of rights in categories (3), (4), and (5). For example, full self-ownership cannot include both strong rights in (3) & (4) and strong rights in (5) (since this would not be compatible with granting others the same set of rights). It also cannot include both weak rights in (3) & (4) and weak rights in (5) (since it would be possible to give a person stronger property rights in one of the categories in this case without violating the compatibility constraint).

self-ownership. Thus, full-self ownership is indeed indeterminate when it comes to the question of self-defense.

However, some theorists (e.g., Fried) have claimed that full self-ownership is also indeterminate when it comes to the question of whether one person may exercise her self-ownership control rights in ways that violate others' self-ownership control rights (Fried, 2004: 79). Libertarians, on the other hand, argue that there is no conflict between self-ownership control rights. For example, though you have full control rights over your fist, you cannot use your fist to punch my nose. Fried is unconvinced. She argues that such intuitively obvious examples simply obscure the indeterminacy regarding the conflict between different self-ownership control rights.

To evaluate Fried's criticism, let us consider the following example: Realizing that I am running late to an important appointment, I start jogging while others are walking nearby, thereby introducing a small risk that my hand will accidentally hit someone else's body. Is such jogging permissible? Fried's argument suggests that full self-ownership thesis does not provide a determinate answer to this question.

However, Fried is mistaken. She seems to think that libertarians must evaluate the permissibility of jogging by somehow balancing the control rights I have over my body against the control rights others have over their bodies to see which one would "win" (Fried, 2004: 79). This is wrong. The property rights I have over my body, even in their logically strongest form, do not include a right to take whatever actions I want with my body (just as full ownership over my motorcycle do not give me a right to ride the motorcycle wherever I want). To evaluate the

permissibility of my jogging, we need to know what rights I have with regards to *any other entities that my jogging might encroach upon or use.* Since my jogging generates a risk of incursion on others' bodies, and since granting every person the logically strongest possible control-rights over their body gives them rights against even small risks of incursions, the full self-ownership thesis *condemns my decision to start jogging*, *and does so in a fully determinate way.*[13] Although the prohibition on my jogging is admittedly problematic, the problem here is not indeterminacy.

2.5 Full Self-Ownership and Small Incursions or Risks of Incursions

The problem illustrated by the jogging case is this: libertarianism seems committed to an implausibly strong version of self-ownership. The full self-ownership thesis implies that any action that causes small incursions or risks of incursions on others is impermissible. Yet this seems to generate unacceptable restrictions on human activity.

Libertarians have considered this problem in the context of pollution and driving a car (Nozick, 1974: 78-81). However, as the jogging example suggests, the problem is more ubiquitous than is commonly recognized. In fact, almost any action (e.g., even carefully walking to the grocery store) will impose *some* additional risk of incursion on another's body relative to the option of not doing anything. And since full self-ownership does not grant any weight to positive freedoms or human welfare in a contest with the rights that people have against (even tiny risks of)

[13] Note that, while others' self-ownership rights place moral restrictions on my *actions* in this case, these moral restrictions do not conflict with my self-ownership rights in any way.

bodily incursions, the troubling upshot of the full self-ownership thesis seems to be universal, morally-required paralysis (Mack, 2011: 112-113).

However, this problem does not necessitate abandoning a commitment to strong self-ownership rights altogether. Instead, libertarians can respond to this problem by slightly stepping back from the full self-ownership thesis to endorse some version of the *near-full* self-ownership thesis: the thesis that every rational agent initially has a set of self-ownership rights that is "close" to full self-ownership rights (where "close" entails minor, circumscribed deviations either in terms of stringency or in terms of extensiveness).[14] For example, in order to permit actions like jogging while others are around, libertarians might weaken individuals' control rights over themselves to allow sufficiently small (i.e., "trivial") incursions or risks of incursions by others. Needless to say, this theoretical move would require accounts of what counts as a *trivial* incursion and why such sufficiently small incursions are permissible. We will not explore these important issues further here.[15]

2.6 Full Self-Ownership and Duties of Physical Assistance

We turn instead to a third criticism of the full self-ownership thesis relating to its rejection of enforceable duties to assist others. Even if a child is drowning in a shallow puddle next to the only person who is able to help, a commitment to the potential rescuer's full self-ownership prohibits anyone (including the state) from

[14] Admittedly, libertarianism is sometimes understood as requiring *full* self-ownership. On this view, any move to merely near-full self-ownership would be an abandonment of libertarianism in the strictest sense. However, such an understanding of libertarianism seems to us to be overly restrictive (it would exclude a large number of theorists commonly referred to as "libertarian").
[15] For a discussion of the different libertarian approaches to address the problem of small incursions, see (Sobel, 2012).

forcing the person to help (even if doing so would be quite easy for her) (Arneson, 2010: 183). Most people find this implication of the full self-ownership thesis to be unacceptable.

Libertarians have several responses to this important objection. First, they can point out that their theory does not reject all duties to physically assist. The core libertarian claim is only that individuals have no *general, enforceable* duties to physically aid others. This is compatible with their having special enforceable duties (e.g., from contract or past wronging) to aid specific others. It is also compatible with individuals having non-enforceable general moral duties to aid others.

Second, libertarians can highlight the unappealing implications of principles that allow for blanket violations of self-ownership in order to assist the disadvantaged. For example, Nozick (1974: 206)pointed out that such principles might grant some entity (e.g., state) the right to forcibly remove non-essential organs (e.g., an eye from a person with two) in order to help those who are suffering (e.g., the congenitally blind). Such a forced transfer of eyes seems morally unacceptable.

Third, some libertarians have pointed out that it is often possible to alleviate suffering without violating anyone's self-ownership. A great deal of human suffering could be alleviated if only the badly off owned more resources. Indeed, some libertarians (left-libertarians) have been particularly interested in the role that the distribution of natural resources can play in increasing the welfare of the less fortunate. We turn now to discussing the libertarian debate over natural resource property rights.

3. Property Rights in Natural Resources

Natural resources can be defined (roughly) as objects of value[16] that (1) have not been produced by any rational agent and (2) are not part of a being with moral standing.[17] The debate over the ownership of natural resources defines the left/right libertarian divide. Left libertarians endorse some type of egalitarian ownership of natural resources. Right libertarians do not.

Note that this debate cannot be settled by an appeal to the full or near-full self-ownership thesis. Natural resources, by definition, are not part of, and have not been produced by, any rational agent. Moreover, since self-ownership rights are not rights to take action, full self-ownership rights do not include rights to use or encroach upon any natural resources. Having full self-ownership does not even guarantee a person the right to breathe air!

Since the central moral principle that unites libertarians says nothing about natural resource property rights, it is perhaps unsurprising that natural resources have been a locus of significant disagreement among libertarians. We will attempt to clarify the different basic positions in this contentious debate by considering three interrelated questions:

1. Are natural resources initially owned?

[16] By objects of value, we mean objects that serve someone's needs, desires, wants, interests, or values. See (Narveson, 1998: 15). There are also natural objects without value (e.g., a worthless rock) and objects that are bad for humans in some way (e.g., toxic natural chemicals). These are not resources given our definition and, for simplicity, we do not address the libertarian view on these objects here.

[17] A being has moral standing just in case its will or interests matter morally for their own sake. We leave open here the possibility that there may be beings with moral standing other than rational agents.

2. If not, are there any moral restrictions on appropriation of natural resources?

3. If so, what are these restrictions?

In considering these questions, we will assume for simplicity a single generation of adults living in a single nation-state. We will briefly consider issues relating to minors, intergenerational, and international justice at the end of this chapter.

3.1 Are Natural Resources Initially Owned?

The first question that divides libertarians is this: Are natural resources initially owned? If they are initially owned, then no one may use the owned natural resources without either obtaining the owner's permission or providing the owner with appropriate compensation.

A variety of thinkers (including some libertarians) have endorsed the claim that natural resources are initially owned. Some have suggested that natural resources should be seen as *jointly-owned* in the sense that their utilization requires a collective decision-making process such as majority decision-making (Grunebaum, 2000: 54-59) or unanimous consent (Cohen, 1995: 94-95).

However, the initial joint-ownership idea is open to criticism. As both Narveson (1998: 12) and Rothbard (2000: 224) point out, Cohen's joint-ownership proposal would leave individuals unable to enjoy *any* substantive liberty (since they would need others' permission to even breathe).[18] Moreover, Rothbard (2000: 224)

[18] Rothbard's and Narveson's appeals to substantive liberty to dismiss Cohen's collective ownership proposal open them up to the charge of inconsistency. After all, in dismissing the claims of the desperately poor to assistance, Rothbard and Narveson reject the value of substantive liberty and defend self-ownership instead. Indeed, Cohen's (1995: 94-102) purpose in introducing his joint

argues that it is simply impractical for billions of people to jointly exercise *any sort* of collective ownership rights over the world's natural resources.

Cohen (1995: 102-103) also considers a different type of initial ownership: Namely, he suggests that each person might be seen as having initial ownership of an *equal share* of all available natural resources.[19]

However, the equal-share initial ownership proposal is also problematic. For one thing, it is not clear who should be granted ownership of which share of natural resources. And while we could rely on some central authority to allocate ownership of particular shares to particular individuals,[20] such an authority did not always exist and it is unclear how equal-initial-ownership proposals would work in its absence.

Due to these problems, the vast majority of libertarians reject the initial ownership view. They hold instead that natural resources are initially *unowned* and morally available for anyone's use. We will refer to this as the *common-use view* and the initial situation as the *common-use state.* On this view, actions like picking apples from a tree or bathing in a stream do not require anyone's permission nor do they generate any duties of compensation (Roark, 2012: 689)

Though quite popular among libertarians, the common-use view is also open to criticism. One key problem is that, intuitively, there seem to be significant moral restrictions even on mere natural resource use when there is scarcity and when a

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natural resource ownership proposal is precisely to force libertarians to recognize the importance of substantive liberty.

[19] Cohen mistakenly attributes this view to Steiner. Although Steiner holds that every person has an initial moral claim to an equal share of natural resources, he holds that no one initially has ownership of any *particular* share (Steiner, 1994: 235 fn. 211). The appropriation process determines which person obtains ownership rights over which particular natural resources.

[20] An example of this is Dworkin's (1981: 283-290) natural resource auction.

person uses a large portion of the available natural resources (Roark, 2012: 695). For example, it seems wrong for a person in the common-use state to bathe in the only source of potable water (thus fowling it for everyone else) or to pick one of the three remaining apples in society without providing any compensation to others. Yet the proponents of the traditional common-use view seem committed to permitting these actions.

Despite this criticism, the majority of contemporary libertarians continue to endorse the common-use view. However, they do not insist that natural resources must remain in the common-use state forever. Instead, they hold that individuals have a moral power to *appropriate* (i.e., acquire ownership of) previously unowned natural resources, at least under certain conditions.[21] The key philosophical question, which we turn to next, concerns the conditions under which an individual may appropriate natural resources.

3.2 No Moral Restrictions on Appropriation

One answer to this question, endorsed by libertarians like Rothbard (2000) and Narveson (1998), is that there are *no moral restrictions* on natural resource appropriation (libertarians who endorse this position are sometimes called *radical*-right libertarians). On this view, individuals not only have a liberty-right to use natural resources in the common-use state, they also have an unconditional moral

[21] An interesting question, which we cannot address here, concerns the boundaries of the appropriated property. When I appropriate land, do I also obtain rights to the space above the land? If so, how far up? Do I obtain rights to what is below the land? How far below?

power to acquire permanent ownership of currently unowned natural resources by some taking action (e.g., laboring on the resource).[22]

However, many theorists have criticized this radical-right libertarian position. Primarily, critics have questioned whether merely being a first-comer should entitle a person to the enormous value of undeveloped natural resources.[23] And while some radical-right libertarians (e.g., Narveson, 1998; Rothbard, 2000: 225-226) have argued that human activity is responsible for the entire value of natural resources, this position has been criticized (Mazor, 2009: 43-52). If natural objects indeed have a value that has not been created by anyone, it is not clear why first-comers should be able to appropriate this entire value for themselves.

3.3 The Equal Claims View and Restrictions on Appropriation

In fact, many libertarians endorse restrictions on natural resource appropriation. They hold (implicitly or explicitly) that all individuals have some type of *initial moral claims*[24] to natural resources – claims that fall short of initial ownership, but which nevertheless ground, not only liberty-rights to use natural resources, but also conditional immunities against the loss of these liberty-rights. In this section, we will consider theories that hold that individuals have equal initial moral claims to natural resources. We will refer to this as the equal claims view.

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[22] There is significant debate over the precise actions that are necessary to appropriate natural resources. Some libertarians argue that appropriation requires mixing one's labor with a natural resource (Rothbard, 2000: 223-227). Others insist that first possession is all that is necessary for appropriation (Narveson, 1998: 11). Still others suggest that it is only necessary to publically stake a claim (Vallentyne, 2007: 273). We will not explore this debate here.

[23] For a version of this criticism, see (Otsuka, 2003: 23-24).

[24] These are moral claims in the broad sense of the term rather than Hohfeldian claim-rights.

Under what conditions can individuals lose their liberty-rights to use particular natural resources? Several prominent libertarians have answered this question by appealing to Locke's (1980: §33) famous contention that one person's appropriation of natural resources may be permissible (i.e., does not run afoul of others' initial moral claims to natural resources) as long as it leaves others with "enough and as good." This is known as the Lockean Proviso. The key debate among these libertarians has been about the interpretation of this proviso.

Nozick (1974: 176-177) defends the following interpretation of the proviso: He suggests that one person's appropriation must leave "enough and as good" only in the sense that others are no worse off than they would have been had all natural resources remained in the common-use state.

Nozick's account of permissible natural resource appropriation is open to a wide variety of objections (Kymlicka, 2001: 111-121), and here we will focus on the one we take to be the most important: Like the natural resource appropriation theories of Rothbard and Narveson, Nozick's theory condones enormous, seemingly arbitrary inequality in the distribution of natural resource wealth.[25] As G. A. Cohen (1995: 79-80) points out, Nozick's theory would allow one person to appropriate all available natural resources as long as she pays others a wage to work her natural resources that is just high enough so that they are no worse off than they would have been in the common-use state. And since the common-use state is likely to be quite poor (due to the lack of sufficient incentive to develop or forebear from

[25] While Nozick (unlike the radical-right libertarians) accepts that there are restrictions on natural resource appropriation, he ultimately condones very unequal distributions of natural resource ownership (which is why he is classified as a right libertarian).

overusing natural resources), the morally required wages would be fairly low. As Otsuka (2003: 23-24) argues, this outcome seems both blatantly unfair and implausible as an interpretation of the requirement to leave "enough and as good" for others.

Hillel Steiner offers a different account of the Lockean Proviso. Steiner claims that a person has left "enough and as good" if and only if she has appropriated no more than *an equally valuable share* of pristine natural resources (1994, pp. 235-36). Since the first appropriator is not morally permitted to appropriate a share that is any greater in value than the share taken by the last appropriator, Steiner's proviso is not subject to the criticism that it grants a significant unfair advantage to first-appropriators.[26]

However, the equal share interpretation of the Lockean Proviso is subject to a different criticism: Namely, it is insensitive to unfair inequalities in individual circumstances (Quong, 2011: 68-70).

To see the problem, assume a world with only two people and a single natural resource called manna. Imagine that one of the people has an illness (through no fault of his own) that makes it the case that he needs two thirds of the available manna to survive while the other person only needs one third to survive. Would it be just to permit to healthy person to appropriate half of the manna?

Otsuka argues that it would not. He explicitly rejects the position that all individuals have equal initial moral claims to natural resources. Instead, he holds

[26] Steiner (1994, p. 268) does, however, like most libertarians, condone individuals' appropriation of more than the benchmark share as long as they pay redress for the excess share equal to the market value of the over-appropriated natural resources to those who have under-appropriated. We do not address this part of Steiner's theory here.

that those who are unfairly disadvantaged have *greater* initial moral claims to natural resources than do the unfairly advantaged (Otsuka, 2003: 29). Otsuka endorses conditions on natural resource appropriation that aim to mitigate these unfair inequalities (as does Vallentyne). We now turn to considering this type of view on permissible appropriation in greater detail.

3.4 Equality-Aimed Restrictions on Appropriation

To understand Otsuka and Vallentyne's accounts of permissible natural resource appropriation, it is first necessary to understand their conception of unfair inequality. Vallentyne (2002) and Otsuka (2003: 25) hold that it is unfair that some have less *opportunity for welfare* than others. Although it is impermissible on their view to violate anyone's self-ownership to correct for inequalities in opportunities for welfare, they endorse restrictions on natural resource appropriation that go at least part of the way towards correcting these inequalities. That is, they endorse equality-of-opportunity-for-welfare-aimed restrictions on natural resource appropriation (or *equality-aimed restrictions* for short).

While Ostuka and Vallentyne's theories (like Steiner's) do not significantly advantage first-comers, they are subject to a variety of other potential criticisms. One potential criticism (from the left) is that these theorists give too much weight to self-ownership relative to equality of opportunity for welfare. Once it is conceded that equality of opportunity for welfare is an important moral value, it seems strange (though not philosophically incoherent) to effectively grant self-ownership *lexical* priority over this egalitarian value. Why are fairly minor violations of self-

ownership (e.g., painlessly taking a small amount of blood) more important than very large gains in equality of opportunity for welfare (Arneson, 2010: 184)?

A second criticism is that these theorists do not go far enough in their pursuit of equality of opportunity for welfare, even given an unwavering commitment to self-ownership. After all, it is possible to have a regime of natural resource ownership that is wholly consistent with full self-ownership while at the same time *fully achieving* equality of opportunity for welfare (e.g., by requiring the advantaged to transfer sufficient resources to the disadvantaged as a condition of breathing air). Yet neither Vallentyne nor Otsuka calls for such a regime.[27]

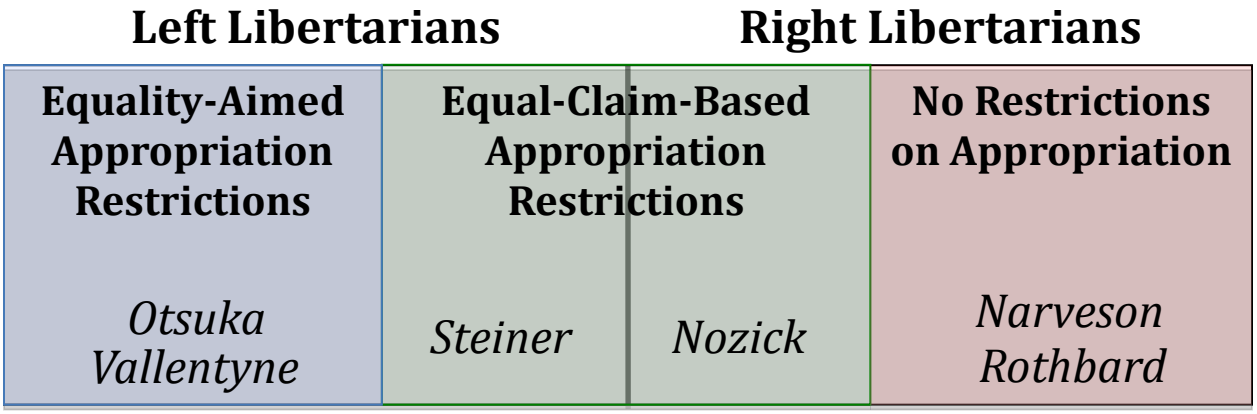
A third criticism, this time from the right, is that this type of libertarian theory appeals to the wrong notion of fairness. Many theorists, including several right-leaning liberal theorists, argue that, rather than requiring any type of equality, fairness requires respecting individuals' claims to the fruits of their labor (including natural talents).[28] If this is what fairness requires, then it would be unfair to adjust downward the amount of natural resources a person can appropriate simply because her labor has been (or can be anticipated to be) particularly productive (e.g., as a result of more economically valuable natural talents). A fuller discussion of

[27] Vallentyne (Tideman and Vallentyne, 2001: 451-452) holds that appropriation makes the appropriator morally liable for transferring *only* the competitive market value of the natural resource *and no more* to those with lower opportunity for welfare. Yet this limit seems somewhat ad hoc. Otsuka (2003: 32) argues that the natural resource appropriation regime should be structured to promote equality of opportunity for welfare subject to the caveat that the resulting natural resource property rights regime not excessively curtail the substantive liberty (i.e., what Otsuka calls the "robust self-ownership") of the more advantaged. However, it is unclear why the value of "robust self-ownership" is appealed to here whereas elsewhere Otsuka finds non-robust (i.e., traditional) self-ownership to be a sufficient conception of liberty.

[28] See, for example (Munzer, 1990: 254-291). See also Chapters Seven and Eight of (Miller, 1999). For criticism, see (Vallentyne, 2012).

these criticisms and Vallentyne and Otsuka's potential responses is unfortunately beyond the scope of this chapter.

To sum up, most contemporary libertarians agree that natural resources are initially unowned. But they disagree about the restrictions on natural resource appropriation. Radical-right libertarians like Narveson and Rothbard hold that there are no restrictions on appropriation. Nozick and Steiner, on the other hand, endorse restrictions on appropriation that are based on the view that individuals have *equal* initial moral claims to natural resources. Vallentyne and Otsuka also endorse restrictions on appropriation. But they hold that those who are unfairly disadvantaged have greater moral claims to natural resources than do others. They endorse conditions on appropriation that aim to mitigate unfair inequalities. These different libertarian views on natural resource appropriation and their relationship to the traditional left/right libertarian divide are summarized below.



4. Property Rights in Artifacts and Distributive Justice

The final major category of property rights that we have not yet discussed is property rights in artifacts (natural resources that have been improved through

human action). If we accept a libertarian account of self-ownership and natural resource property rights, the libertarian account of property rights in artifacts is not at all complex. These property rights simply arise as a result of voluntary exercises of pre-existing property rights (self-ownership rights, natural resource property rights, and property rights in pre-existing artifacts).

Here is a simple example: Albert owns land with some apple trees on it. He makes Bella the following offer: If she would pick 100 of his apples, she can have 30 of the apples she picks. We can describe this offer more formally as follows: Albert conditionally transfers all of his property rights to 30 of his unpicked apples to Bella (while also authorizing Bella to encroach upon his land and apple trees) in exchange for Bella transferring certain limited, time-sensitive self-ownership control rights to Albert. Once Bella has picked the 100 apples, she gains ownership of 30 of them while Albert now owns 70 picked apples. The *picked* apples are examples of artifacts.

Having discussed self-ownership, property rights in natural resources, and property rights in artifacts (i.e., the vast majority of property rights in society),[29] surprisingly little remains to be explained about the libertarian view of distributive justice (at least as a matter of ideal theory).[30] This is because libertarians generally do not appeal to particular end-state principles to determine the proper distribution

[29] We have already explicitly mentioned certain entities (e.g., animals) that are not necessarily included in this discussion. We will raise some other exceptions (e.g., minors) in the final section of this chapter.

[30] We will briefly return to the issue of rectificatory justice (what should be done when property rights have been violated in the past) in the final section of this chapter.

of economic benefits and burdens in society.[31] The just distribution of benefits and burdens is simply that which arises from the voluntary exercise of property rights. Once we understand the libertarian account of these property rights (and particularly self-ownership and property rights in natural resources), the libertarian account of distributive justice follows straightforwardly.

However, while this account of distributive justice may be parsimonious, it is certainly not uncontroversial. We turn now to briefly considering several prominent objections to this account having to do with the role of luck, the moral limits of markets, discrimination, paternalism, unjust prices, the libertarian notion of freedom, the plight of the desperately poor, and the conflict between economic prosperity and property rights.

4.1 Brute Luck

Some theorists criticize libertarianism by pointing out that many of the differences in the economic benefits and burdens enjoyed by individuals can be traced back to factors for which the individuals themselves are not morally responsible. They are thus unjust (because unfair). For example, no one can be said to be responsible for the natural talents that they are born with (they are the result of an unchosen genetic lottery and thus a matter of brute luck). Many theorists who make this argument call for the rejection of the full or near-full self ownership thesis

[31] The exceptions are those libertarians who endorse equality-aimed restrictions on natural resource property rights. These libertarians still view distributive justice solely in terms of exercise of property rights. But the conditions on individuals' natural resources property rights (and, by extension on the artifacts made with natural resources) can change depending on how the owner fares in terms of equality of opportunity for welfare relative to others.

and advocate redistribution of wealth to correct for unfair inequalities in economic benefits (Arneson, 2006).

As we have seen, some libertarians have been willing to accommodate this concern to some extent by structuring natural resource property rights to address these types of unfair inequalities (see Section 3.4 above). However, they have not been willing to abandon the commitment to full or near-full self-ownership in response to this criticism.

4.2 The Moral Limits of Markets

Libertarians generally do not place any moral constraints on individuals' transfer rights. This means that in theory at least, *everything* is available for sale. This includes organs, life preservers, and sex. A person can even sell herself into slavery if she so chooses.

A variety of theorists have criticized this aspect of libertarianism. They have advocated limits to what can be bought and sold on the market based on protecting human dignity (Sandel, 2012), preserving the social meaning of the goods in question (Anderson, 1990), and respecting fellow citizens as moral equals (Satz, 2010). However, libertarians have generally refused to condone restrictions on transfer rights on the basis of these values.

4.3 Discrimination

Another troubling implication of the libertarian commitment to unrestricted transfer rights is the permissibility (as a matter of justice) of all forms

discrimination (Freeman, 2001: 135-136). Imagine that, although Carol is a better apple picker than Betsy, Albert refuses to hire her to pick his apples because she is black and Albert believes that blacks are "dirty." Although libertarians can condemn Albert's discriminatory action as immoral, they cannot condemn such action as unjust (Vallentyne, 2006).

4.4 Paternalism

Another problem with viewing voluntary choice as sacrosanct is this. People make mistakes, and sometimes their mistakes have very serious consequences for their well-being. Is it always impermissible to encroach on individuals or their property for their own good? If a person is about to cross a bridge that unbeknownst to him is rotten (and there is no time to inform him), is it really impermissible to physically prevent him from crossing the bridge?

Some libertarians have entertained the possibility of allowing paternalism in cases in which the relevant interference does not violate a person's will. However, most libertarians have refused to endorse any type of encroachment on individuals or their property, even for their own good.[32]

4.5 Just Prices

Another important challenge to the libertarian account of distributive justice has to do with the distribution of the benefits from *individual transactions* (a critique that some have raised under the heading of just prices). A wide variety of

[32] For an excellent discussion, see (Wall, 2009).

theorists (e.g.,Wertheimer, 1996) have argued that the distribution of the benefits of voluntary exchange might in fact be unjust (e.g., because unfair or exploitative) in certain cases (e.g., when one of the parties holds a monopoly on the relevant good).[33] Libertarians generally reject such criticisms. On the libertarian view, as long as a bargain was agreed to voluntarily, there can be no legitimate claim that the term of the bargain are unjust.[34]

4.6 An Overly Narrow Notion of Freedom?

Others have criticized libertarianism for endorsing an implausibly narrow notion of freedom (Olsaretti, 2009b: 101-161). Although libertarians sometimes cast themselves as defending freedom very broadly, understood as a "right to decide what would become of [oneself] and what [one] would do…" (Nozick 1974, p. 171), libertarians are seemingly unconcerned (at least as a matter of justice) with individuals who are *forced by their circumstances* into certain courses of actions. A well-known example is the worker who has no acceptable choice (e.g., she would starve otherwise) but to work for the capitalist for whatever the wage the capitalist offers (Cohen, 1995: 34-37).

Some libertarians have responded by pointing out that, while the worker may be forced to work, she is not *coerced* into working. Unjust restrictions on freedom arise, on the libertarian view, when one person causes another person to

[33] Libertarians sometimes suggest that monopoly prices will not be a problem as long as unjust *legal* barriers to entry in markets are removed (Nozick, 1974: 17). When profits are very high, new firms will have incentive to enter the relevant market, and this will drive down prices. However, as economists (e.g., Stiglitz, 2000: 78) have long recognized, there are a variety of *non-legal* barriers to entry in many cases (e.g., very high fixed costs in certain industries).

[34] See, for example, (Nozick, 1974: 63-65). An important exception is Steiner (1984) who calls into question the justness of agreements whose terms were affected by a previous rights violation.

be forced to choose a certain path *by violating (or threatening to violate) her rights.* Since there is no rights-violating coercion in the case of the worker, it is perfectly coherent for the libertarian to resist seeing her plight as a matter of justice (Barnes, 2012).

Critics of libertarianism have conceded that coercion may raise special moral concerns. However, these critics continue to argue that the lack of acceptable alternatives by some individuals (e.g., the worker) can call into question the justice of the arrangements into which those individuals enter (Olsaretti, 2013).

4.7 Desperate Poverty

Another objection to the libertarian account of distributive justice is that it implausibly privileges individuals' property rights in artifacts over the moral claims of the desperately poor. Imagine that someone (e.g., David) is suffering from serious malnutrition even though he owns his rightful share of natural resource wealth.[35] Why should David not be given property rights to, say, some of Bella apples?

Some readers may view the moral claims of the desperately poor as obviously more weighty than the artifact property rights of the well-off. Libertarians can offer two responses that should at least give such readers some pause. First (and most famously), libertarians argue that redistribution of human-made wealth is on a par with forced labor (Nozick, 1974: 169-170). Redistributing 10 apples from Bella to David is morally akin to forcing Bella to work for David for the time it took Bella to pick those apples.

[35] For example, under Vallentyne's theory, if natural resources are perfectly plentiful so that they lack a market value, David would not be due any transfers from Bella.

There have admittedly been many criticisms of the analogy between redistribution of wealth and forced labor (e.g., Fried, 2004: 80). However, even if the analogy is not perfect, there is at least some sense in which redistribution morally akin to forced labor. When rights to the apples that Bella picked are transferred from Bella to David without Bella's consent, there is some sense in which Bella is used as a means for David's ends. After all, Bella's labor has benefitted David rather than Bella against Bella's will. Insofar as there is a problem with some individuals being used as a means for others' ends, there does seem to be at least a weighty argument against redistribution of human-made wealth.

Libertarians can also point out that an account of distributive justice that always allows desperate poverty (or even blameless desperate poverty) to trump respect for property rights in human-made wealth would have implications that few would be willing to accept. Such an account would, for example, require a massive redistribution of human-made wealth from individuals in wealthy countries to poor individuals in the developing world.[36] Some (e.g., Nagel, 2005) have tried to resist this implication by appealing to the moral relevance of state borders. However, for those unconvinced that political boundaries have this type of normative force, the libertarian insistence on the moral importance of property rights provides a promising alternative avenue for resisting the radical demands for massive global redistribution.

[36] Of course, not everyone finds this implication to be unattractive. Some (e.g., Unger, 1996) have even made the positive case for such redistribution.

4.8 Economic Prosperity vs. Property Rights

Libertarian society is often pictured as highly unequal but also wealthy overall due to the power of free enterprise, well-defined property rights, and the lack of stifling government regulation. However, in reality, an unwavering commitment to property rights can (counterintuitively perhaps) generate very serious economic difficulties. Indeed, as economists have long recognized in their discussion of market failures, a system of voluntary exchanges can fail to realize significant economic benefits in a wide variety of circumstances (Stiglitz, 2000: 77-90).

It is difficult to understate the economic problems that such market failures could potentially cause in a libertarian society. Who would build the roads? Who would have an incentive to undertake technological innovation in the absence of at least temporary protection from competition? How would money work? Libertarian society might not only have pockets of desperate poverty. It could also be fairly poor overall.

Libertarians have several responses to this objection. Some (e.g., Mack, 1986) have argued that critics underestimate the potential of private market solution to so-called market failures. Others (Nozick, 1974: 79) have responded to this problem by stepping back from their absolute commitment to property rights, often in contexts in which unaddressed market failures would have the most economically debilitating consequences.[37]

[37] Nozick (1974: 79) does not insist that a polluter must obtain the explicit consent of every person whose rights might be encroached upon by her air pollution (since insisting an explicit consent

However, libertarians can also point out that other theories of distributive justice either fail to address the conflict between respect for property rights and aggregate economic benefits or, in the case of utilitarianism, choose to sacrifice property rights for the sake of aggregate benefits in ways that are unattractive. For example, utilitarianism could easily condone policies that force a few people from their homes for the sake of a private redevelopment project that is only moderately beneficial for society as a whole. The unattractive implications of these alternative theories at least raise the possibility that, despite its problems, some version of libertarianism might be the most plausible account of distributive justice on offer, all things considered.

5. Directions for Future Research

Before concluding, we would like to briefly highlight five topics for future research that have particularly important implications for libertarian accounts of distributive justice.[38] These involve the moral status of minors, future people, and people in other nation-states, property rights in non-divisible natural resources, and rectificatory justice. In laying out these topics for future research, our focus will be on raising important questions and on providing the reader with references to further reading.

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would almost surely lead to a society in which no pollution at all could occur – a society which would be very poor indeed).

[38] Note that there are many other important areas for further research, including the moral status of animals and preventative justice (i.e., what a person may do to prevent potential rights violations), which we do not discuss here because they have relatively few implications for distributive justice.

5.1 Minors

Throughout this chapter, we have assumed that the only beings with moral standing are autonomous agents. This leaves out sufficiently young children as well as severely cognitively impaired adults (i.e., minors). The treatment of minors raises important questions for libertarianism. Can minors be owned by others? Do minors have any rights? [39] Should the proviso on appropriation of natural resources take minors into account? If so, how? Who has a duty to ensure that the rights of minors are respected?[40] Who, if anyone, has the right, and perhaps duty, to be the minors' custodians (Vallentyne, 2003b)? Since so much of what matters for distributive justice happens before we reach majority, the questions regarding the status of minors are clearly a pressing topic for future research.

5.2 Intergenerational Justice

We have assumed throughout that there is only a single generation of people. What is the moral status of past people and their wishes? Do future people who will definitely exist have moral standing? Do future people who may exist, but also may not exist, have standing? If they have standing, do they have full self-ownership (e.g., that can be violated by burying a toxin that will be released in 100 years)? Does the

[39] Those who endorse the choice-protecting conception of rights deny that minors have any rights (since they lack any autonomous agency to protect). Those who endorse an interest-protecting conception of rights (or a hybrid conception) can hold that minors have rights (since they have interests to protect). For a superb analysis of choice-protecting vs. interest-protecting rights, see (Kramer, Simmonds, and Steiner, 1998). For discussion of whether children have a form of self-ownership, see (Vallentyne, 2003b; Andersson, 2007).

[40] For discussion of who has the duty to provide children with their fair share of wealth, see (Rakowski, 1991: Chapter 7; Casal and Williams, 1995; Vallentyne, 2002; Olsaretti, 2009a; Steiner and Vallentyne, 2009).

proviso give them a right to some share of the value of natural resources?[41] The moral status of future people has important implications for a variety of issues in distributive justice such as obligations of environmental protection/conservation.

5.3 International Justice

We have assumed above a single nation-state. However, there are important questions of international distributive justice that arise once we relax this assumption. Libertarians uniformly agree that national boundaries make no difference with respect to self-ownership. But do individuals in a particular nation-state have special moral claims to the natural resources within their borders?[42] Who has property rights to natural resources that span national borders?

5.4 Non-Divisible Natural Resources

Another important area for future research concerns property rights in natural resources that cannot be straightforwardly divided into individually appropriatable portions. Consider, for example, rights to the atmosphere. Although we could try to grant individuals the power to appropriate specific portions of the atmosphere, the molecules will move around and thus the portions will not be stable. How, then, should rights to the atmosphere be assigned on the libertarian view?[43]

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[41] For a discussion, see (Fabre, 2009; Steiner and Vallentyne, 2009; Mazor, 2010).
[42] For an argument that natural resources are commonly owned, see (Risse, 2012: Chapter 6). For general discussion, see (Steiner, 1999; Tideman and Vallentyne, 2001)
[43] For one Lockean view on rights to the atmosphere, see (Bovens, 2011)

5.5 Rectificatory Justice

The final pressing area for future research is rectificatory justice (the rights that individuals have as a result of previous rights violation). Given the centrality of historical transactions in legitimating the current distribution of property rights in libertarianism, questions of rectificatory justice have enormous importance for the libertarian account of distributive justice. Is there a right to punitive damages, or is rectification limited to victim restoration/compensation?[44] Is the duty to compensate based on strict liability or is it sensitive to agent-responsibility for the harm imposed (e.g., how foreseeable it was)? Is there a moral statute of limitations on the rights of rectification (after which a right ceases to be valid)? If so what? If not, how should one proceed, given that we have very little knowledge of what rectification requires for the massive and systematic injustice of the distant past?[45]

6. Conclusion

Our goal in this chapter has been to explore the libertarian account of distributive justice, including internal disagreements, external criticisms, and areas for future research. We began with a discussion of self-ownership and considered criticisms relating to indeterminacy, small incursions (or risks of incursions) and enforceable duties of assistance. We then turned to natural resource property rights and considered the debate over whether natural resources are initially owned and, if not, the conditions under which they may be appropriated. Finally, we discussed

[44] See (Barnett, 1977; 1998) for a defense of the claim that there is a right only to victim restoration.
[45] Nozick (1974: 231) indicates an openness to a one-time Rawlsian redistribution of wealth to rectify massive past injustices. Narveson (2009), on the other hand, argues that, in the absence of specific compelling evidence, one should act as if the status quo is just.

the libertarian account of just economic activity, surveyed a variety of criticisms of this account, and concluded by raising important topics for future research.

As we recognized throughout this chapter, libertarianism is subject to many criticisms. Moreover, there are many gaps and unresolved issues. However, no theory is beyond reproach, and we believe that libertarianism has much to offer philosophers interested in questions relating to the just distribution of economic benefits and burdens.

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