

Who Owns What? Some Reflections on the Foundation of Political Philosophy

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Works in political philosophy typically build—either explicitly or implicitly—on a foundational concept of rights or of justice; neither of these, however, is satisfactory as a starting point. The concept of rights is unsatisfactory because it is either defined in terms of something else, which is in that case the real foundation, or else it is employed arbitrarily as a matter of intuition. But of course intuitions differ. Presumably, the most plausible candidate for a foundational concept of rights would be natural rights. Natural rights are so called because they are supposedly rooted in human nature. Yet the inherent normativity in the concept of rights is not easily or clearly derived from a non-tendentious account of human nature.¹ As for intuitions about rights, few political philosophers seem to limit their accounts of rights to what have been called negative rights.² A foundational concept of negative rights faces the intuition problem: which rights, whose rights? But with the introduction of positive rights, the possibility of a conflict of rights inevitably arises and a truly foundational rights theory has in principle no resources for resolving these.³ Founding a political philosophy on a concept of justice has seemed more promising to some. Yet, if “justice” is not merely a formal term like “good,” then neither is “injustice.” And one is then obliged to provide an argument for the claim that a certain specific state of affairs is unjust. So, for example, if one holds that justice is equality, then one must explain why inequality is unjust. Appeals to intuitions are obviously irrelevant since there are those whose intuitions lead them to maintain the opposite.⁴ Appeals to hypothetical individuals making foundational decisions on the basis of pure rationality are ultimately no

different. For the hypothetical individual usually looks suspiciously like an avatar of the author, thus making “just” anyone who agrees with that author and “unjust” anyone who does not.

I shall argue that in fact the concepts of justice and rights are derivative – the concept of rights is in particular a highly derivative one. More particularly, I shall argue that rights are to be defined in terms of justice and that justice is to be defined in terms of property.⁵ That is, the only injustice there is is the deprivation of property. Admittedly, this heterodox conclusion will require some explaining. I begin not directly with a concept of property, but with the necessary ontological subject of property, moral agents. The view for which I shall argue is that only individual human beings are moral agents. I am especially keen to show that groups – such as corporations or states – are *not* moral agents. The relevance of this to discussions about the foundation of political theory will I hope emerge as we go along.

§1. Moral Agency

I begin by offering a brief account of what an agent is, and then go on to consider what additional factors could turn agents into moral agents. With the intention of being as uncontroversial as possible—at this stage—I offer this account of moral agency at a rather high level of generality, so high in fact that it is shared by many philosophers with radically differing moral theories. Most, if not all, of the controversy in political philosophy springs from the conclusions that are variously drawn on the basis of this account.

An agent is a source of change in another or in itself as other. By ‘source of change’ I mean that which will serve as an explanation of a given change. Both living things like plants and animals, and non-living things like machines and hurricanes are all examples of agents.

Animals, for the most part, differ from the rest because they not only can cause changes in other things but, owing to their self-locomotive power, they can change themselves.

For the sake of simplicity, it is well to distinguish agents from the instruments of their agency. One *could* say that the flying rock was the agent of change in the window or that the boy who threw the rock was the agent. I would prefer to say that the boy was the agent and that the rock was the instrument, largely because attribution of agency is usually part of an explanatory framework. Explanations are conceptually tied to criteria for the adequacy of explanations. In reply to the query about the agent responsible for causing the window to be broken, only the boy would take the attribution of agency to the rock as explanatorily adequate. But owing to the fact that genuine agents typically cause changes in other things by means of instruments, it is possible to layer attributions of agency. Such layering is relatively unproblematic in cases when we are dealing with individual agents, when, for example, we say that the hand turned the doorknob or the woman turned the doorknob with her hand. But the above very general account of agency allows for the possibility that there should be group agents, in which case the layering may be more complex and controversial.⁶

It seems to me that it is perfectly reasonable to say that Italy can defeat Germany in soccer competition or that one can be fired by a corporation or that the party upstairs is disturbing my sleep. One may, however, also say that the defeat was owing to the goal made by one player or that the firing was caused by the words of the personnel manager or that it was the voice of one reveller that kept me awake. These people would seem to be both instruments of group agency and to be acting as agents in their own right. Someone affecting metaphysical parsimony might maintain that Italy's defeat of Germany is nothing but the result of the action of the individual agent or, perhaps more plausibly, the complex sum of the acts of individual agents.

I find this approach overly fastidious, principally because the explanatory role of the individual agent only makes sense within the framework of the group action. The reduction of group agency to individual agency is no more compelling than is the reduction of individual agency to agency at the microscopic physical level. I take it, though, that one who wished to deny that groups can be agents would, *a fortiori*, deny that groups can be moral agents. Conversely, one who wants to argue that groups are moral agents is committed to the view that groups are agents.

The concept of a moral agent seems to me to provide the relevant link between the metaphysical concept of person and the implicit normativity of ascriptions of personhood. Moral agents are not logically co-extensive with human beings. It is I take it an empirical matter whether a particular human being or a particular non-human being is a moral agent. But it is not similarly an empirical matter whether persons are moral agents, or so I shall argue. Part of what is meant when ascribing personhood is the presence of moral agency. The normativity implicit in the ascription of personhood is revealed in this fact.

As John Locke famously argued, the term “person” is a “forensic one, appropriating actions and their merit; and so belongs only to intelligent agents, capable of a law, and happiness and misery.”⁷ The forensic dimension of personhood appears in the determination of moral responsibility in law. It is the moral agent who is morally responsible. That we do not typically deny personhood to those who have been determined not to be morally responsible for a particular action is owing precisely to the non-arbitrariness of the ascription of personhood. We suppose that personhood has, at least paradigmatically, *something* to do with humanity and so we are disinclined to deny it to the human being who is declared innocent in court owing to his not having been morally responsible. We believe he *could have been* morally responsible because he is a person.

A claim that we ought or ought not to ascribe personhood to a particular human being is thus a function of the ascription of moral agency. A moral agent is, at the very least, one who could be, under suitably defined circumstances, held morally responsible for his or her actions. To be held morally responsible is to be thought to be capable of acting according to some norm. And so a claim about ascription of personhood understood as implying claims about how we ought to act in regard to a person is connected to a claim about how that person ought to act as well.⁸

The presence of moral agency or personhood in an individual guarantees at least the intelligibility of the ascription of moral responsibility. Roughly, moral agents or persons are the sort of thing we suppose could understand the nature and consequences of their actions and have that understanding inform their actions as well. Daniel Dennett has shown with characteristic clarity that the intentionality that is a facet of this understanding is not sufficient in itself for personhood or moral agency.⁹ He argues that any object whose behavior can be predicted by assuming the “intentional stance” in regard to it can be considered an “intentional system.” Adopting the intentional stance “consists of treating the object whose behavior you want to predict as a rational agent with beliefs and desires and other mental states, exhibiting what Brentano and others call “intentionality.” As Dennett proceeds to show, adopting the stance can work perfectly well even for plants or natural phenomena like lightning. Thus, assuming that the plant *wants* to blossom or that the lightning is trying to find the fastest way to the ground, enables us to take steps in response to this in order to achieve *our* goals—in these cases, to get flowers in our garden or to avoid being struck down by lightning.

If the possession of intentional states by plants and lightning just means that it makes sense for us to adopt the intentional stance in regard to them, we should for this reason be wary

of supposing that the possession of intentional states is sufficient to constitute personhood or moral agency. What the proponent of the view that nations or corporations are moral agents needs is a sense of “intentionality” such that the putative moral agent with the intentional states—the nation—can be intelligibly classified with unquestioned moral agents and not with plants and natural phenomena. What is that sense?

If we consider for a moment the grounds for our attribution or denial of moral agency, we typically say something like, “he is aware of what he is doing” or “he is no longer aware of what he is doing” or even, “he is no longer aware of who he is.” Self-awareness or cognition of one’s own states, intentional or otherwise, is surely what we find missing in someone whom we have decided is no longer a moral agent. This self-awareness is to be distinguished from the awareness that consists in behavioral responses to various external stimuli. The response to stimuli may, of course, be attributed to anything capable of what in biology is recognized as a response, like a plant, or even, if we extend the applicability of the term “response” to something like lightning, which can in a sense respond to our strategies employed to divert it from its natural path.

Apart from our typical ordinary-language characterization of what differentiates a moral agent from one who has lost this status, there are many technical versions of this characterization in the literature. Dennett himself characterizes it as a “special sort of consciousness, namely, self-consciousness.” Robert Sokolowski uses the term “moral categoriality” to describe it, by which he means, “thoughtful behavior” and “the installation of reason into our likes and dislikes.”¹⁰ Harry Frankfurt, in a series of justly renowned papers, understands a person—by which Frankfurt means what I mean by a moral agent—as one who is capable of having first and second-order desire, that is, desires about one’s own occurrent desires.¹¹ These second-order

desires Frankfurt calls “second-order volitions,” desires that the first-order desire be or not be effective in action. Richard Moran uses the technical term “avowal” to describe the fundamental feature of self-knowledge and rational agency.¹² An avowal is a statement of one’s belief when that belief is “transparent” to oneself.¹³ John Martin Fischer uses the term “guidance control” as the basis for the ascription of moral responsibility.¹⁴

What these views (and many, many other versions) have in common is a recognition that moral agency requires internal complexity of a particular sort, what I shall call ‘self-reflexivity.’ It requires that agents have mental states and also that they have cognitive access, at least at some of the time, to those mental states. It is not enough for moral agency that one possesses a desire; one must be able to recognize and somehow respond rationally or cognitively to that desire. Having a desire or ascribing a desire is sufficient grounds for adopting Dennett’s intentional stance. But having a cognitive relation to one’s own desire is necessary for moral agency. The reason why this fact in itself leaves open the question of whether non-humans are moral agents is that we have no means of going beyond the intentional stance in our encounter with them. For all we know, a cat *may* be thinking about its own desire for a tasty mouse-treat when it sniffs through the bush. But our responses to cats do not presume this and it is difficult to know how, short of having a conversation with the cat, we could ever conclude that it is so.

Can the requisite self-reflexivity belong to a group, specifically, a group of moral agents? Assuming a psychological, as opposed to a biological, criterion for personhood or moral agency, we cannot just assume that the answer to this question is no. One strategy for arriving at the conclusion that groups can be moral agents is to argue for the existence of irreducible group intentions.¹⁵ The idea here is to show that any group, even one as small as a group of two, can collectively intend to do something, where the intention is not reducible to the ‘sum’ of each

person's individual intention. These shared intentions or we-intentions, should they exist, might be thought to import with them a form of moral agency. If, for example, you and I have a shared intention to commit a crime, then it might be supposed that you and I bear a shared moral responsibility which, on my accounting, would be a necessary and sufficient condition for moral agency.

Shared agency (as opposed to mere agency) depends crucially on the social practices that give meaning to that sort of agent. That one football team can defeat another only makes sense in the context of the conventions of the game. Indeed, this is equally the case for corporate legal responsibility. I strongly suspect that the plausibility of the view that groups can be moral agents derives from treating moral responsibility as if it were legal responsibility. This plausibility dissolves if we can track—as we surely can—the moral responsibility of the members of the corporation through the process of affirming shared intentions to the acts of commission or omission of the corporate body to which we wish to assign moral responsibility.¹⁶

A crucial property of moral agents is the ability to act voluntarily. Broadly speaking, if such an ability were to be defined negatively, that is, as an absence of constraint or ignorance in acting, then non-moral agents, including animals would in fact seem to be moral agents. Agents like animals can act voluntarily, but their volition is non-rational, by which I mean that they are incapable of conceptualizing their desires, so far as we can tell. Such conceptualization is a prerequisite for practical syllogistic reasoning. And it is such reasoning that is the core of the idea of volition in moral agents.

The ability for voluntary or, if one likes, rational voluntary action, must be sharply distinguished from a supposed ability to act freely. Such an ability typically has as its hallmark the property expressed in the phrase “I could have done otherwise.” It is I think a confusion to

maintain that if one could *not* have acted otherwise, then one is not acting voluntarily. For not being able to do X or not being able to refrain from doing Y can only mean one of two things. Either it means that one was constrained by force (or ignorance), in which case the action was not voluntary, or else it means that, in light of “facts on the ground,” including one’s desires and beliefs, one thought that it was better not to do X than the opposite or better to do Y than the opposite. If I am not free to go to the movies with you tonight, that does not mean that I do not voluntarily stay home and write this paper. If no one acts voluntarily when constrained, then there is no such thing as moral agency and the normativity that is supposed to come into play in deriving a political philosophy from so called facts about the constraints under which people act is a fiction.

The standard Marxist complaint that the proletariat has no choice but to sell its labor to capitalists who in turn steal the excess value of that labor rests ultimately on the above confusion. I do not mean to dismiss the Marxist complaint on the grounds that the proletariat always has the choice to starve. I acknowledge that, practically speaking, a poor man has no choice but to sell his labor. Apart from the nonsense of the labor theory of value itself, my point is that the constraints faced by the poor have the same logical status as the constraints faced by any other moral agent. Most of these are less dire than those faced by the poor; some are more so. That which distinguishes moral agents is not an absence of those constraints of which the rich are supposedly free, but rather rational voluntary action.¹⁷

Another crucial property of moral agency is that all and only moral agents have the ability to enter into what I shall call “associations” with other moral agents. These associations include the full range of interpersonal activities: sexual, familial, recreational, protective, entrepreneurial, religious, intellectual, etc. All associations are, in my account, voluntary, and

include only moral agents. Obviously, moral agents enter into associations in order to achieve some goal that they could not otherwise achieve alone or not achieve so effectively. Since these associations are voluntary, they can end voluntarily, when one or more of the parties no longer find the association valuable. An involuntary relation like slavery is not an association. In an association, the voluntariness is revealed in the agreement that the parties enter into to pursue some goal in concert. The agreement may be written or verbal, explicit or implicit. Moral agency is required for agreements because only moral agents can make such agreements, that is, make and understand the terms of the agreement and the commitments that they and the others assume.

The relation between a pet and a pet owner is not an association because there is only one moral agent in the relation acting voluntarily. If it should turn out that, to our great surprise, dolphins are moral agents, then it would be possible for human moral agents to enter into an association with a non-human one. Although I think it highly unlikely, nothing in my account would in principle need to be altered if it should come to pass one day that associations between members of different species were to be possible.

I claim that a moral agent is a natural kind. That is, the determination of how many moral agents there are in a given place is an empirical matter. It is not arbitrary or stipulative. Most importantly, it is the only natural kind I know of the recognition of which by others involves a normative judgment. Thus, to recognize someone as a moral agent is to recognize that person as capable of entering into associations with other moral agents, including oneself. Since associations are mutually voluntary among the parties who enter into them, the trust each moral agent places in another implies a normative judgment regarding what the other may be expected to do and what the other may be held morally responsible for not doing. Thus, no one would

enter into an agreement or association within another moral agent unless he or she expected the other to honor that agreement. I take it that a failure to do so would incite what we would all recognize as a moral judgment: he did not do what he said he was going to do and *therefore* he did not do what he should have done. If we base our concepts of justice and rights on the foundation of the natural kind that is a moral agent, these thereby acquire such non-arbitrariness as they may have. Neither justice nor rights are natural kinds since they are not kinds; they are properties of moral agents and of relations among them.

I add in passing that if a moral agent is a natural kind as described above, it seems wrong to suppose that one can determine *a priori* that to which the agent moral agent would give hypothetical consent. Assume that what someone supposedly would hypothetically consent to is constructed or determined on the basis of some theory of practical rationality. That theory must employ a normative criterion of rationality, that is, what one ought to do in the given circumstances. But the sort of rationality that is a necessary and sufficient condition for moral agency is only non-normative. That is, moral agents, while acting rationally, sometimes act counter to how they ought to act according to some theory or other. It is one thing to speculate on how one ought to act according to a theory; it is quite another to impose one's conclusions on anyone else. For in doing so, one denies the moral agency of those who are supposedly the subjects of the theory. It is only in the associations among moral agents that normative rationality meets non-normative rationality. For it is here that the former is applied to instances of the latter.

Obviously, *if* it is true that a moral agent is a natural kind, the plausibility of the claim that a group can be a moral agent is severely diminished. The claim that the two persons in a marriage constitute three moral agents and so three natural kinds sounds more like a joke than a

serious position. There is nothing in the association that is a marriage or in any other association beyond the moral agency of the individuals involved that needs to be posited to account for any normative judgment in politics or in ethics. This is the case even if we wish to acknowledge the agency of the group in various ways. The concept of group moral agency has no independent or unique explanatory role to play.

§2. Moral Agency and Self-Ownership

Since, the ownership of possessions is dependent on the existence of a possessor, the ownership of self—including one’s body, desires, concepts, talents, etc.—is primary. It is not just primary; it is unique, for unlike any other possession, I am the only one who can have self-ownership of me.¹⁸ The substance of self-ownership is identical with moral agency. That is, all and only moral agents are self-owners. Anything that destroys or undermines self-ownership equally affects moral agency. The recognition of someone as a moral agent is at the same time a recognition of him or her as a self-owner. As we saw previously, a moral agent is an agent with the capacity for having second-order or self-reflexive beliefs and desires. Alternatively, we can characterize this as autonomy or self-directedness. We can also express this in terms of self-ownership: a moral agent is one who is authoritative over his first order beliefs and desires.¹⁹ He owns them because he can reject them or endorse them. He can do with them as he likes; that is, he can act or not act on them. As with ownership in general, one who “owns” himself can do with his own beliefs and desires what he wills.

The virtual equivalence of moral agency and self-ownership is the starting point for reflection on the normative basis for politics, whether national or international. Where self-

ownership is denied, the basis for morality vanishes. Any creature whom we do not recognize as being a self-owner, such as a pet, is simultaneously and necessarily—on pain of logical incoherence—denied status as a moral agent. The denial of self-ownership that is the practice of slavery is abhorrent to those who believe that the enslaved and the slave masters are both moral agents.²⁰ Whatever limitations on the ownership or use for which one might argue only make sense insofar as these limitations are required for the recognition of the self-ownership and moral agency of others.²¹

The virtual equivalence of moral agency and self-ownership also provides a perspicuous basis for understanding the human associations that, ultimately, can culminate in the founding of a state. The state is an association and so, in my terminology, voluntary. If individual moral agents have agreed to a political authority for the sake of achieving the good they seek, the starting point is obviously the individual ownership of one's own desires and of the body in which they reside, that is, self-ownership. To remove these is to cancel the premise of the enterprise, namely, that persons mutually recognize the self-ownership of the other members of the state. The natural limitation on the pursuit of goods is when that pursuit impeded the attainment of goods by others. To own one's body is also to own its use, where, again, the limit on its use is at the point that it impedes the use by others moral agents of *their* bodies.²² By “impede” I mean prevent voluntary behaviour, not the imposition of limitations on others entailed by, say, the ownership of a finite resource.²³

Those who are suspicious of the very idea of self-ownership argue that one does not own one's own body in the same way that one owns, say, a house.²⁴ A hand is a part of me in a way in which my house is not. Indeed. Yet underlying both the undisputed ownership of the house and the putative ownership of my hand is my being in a position of “control” or ‘sovereignty’ as

Mill put it, over each. I can do with each as I please. And the fact or the claim that there are limitations on what I can do with each does not gainsay the ownership any more than the constraints or limitations on our choices gainsay our voluntary agency.

Some who endorse the idea of self-ownership would distinguish this sharply from ownership of the products of one's activity. If I own my body and talents and desires, it does not follow that I own that which I make of them.²⁵ If the consequences of self-ownership are to be restricted beyond the prohibition of interference with the self-ownership of anyone else, on what principle is this to be done?

I can use my own body and its powers to satisfy my desires in countless ways. Say I use it to sing for passing individuals who, enamored of my remarkable voice, offer me money. If I own the use of my body in this way, it would seem that I also own the money voluntarily given to me in exchange for my service. To interfere with my ownership of the money is to interfere with my use, provided that I used my body in order to get money.²⁶ More to the point, to interfere with my ownership of the money would mean to interfere with the ownership of the money by my customers who voluntarily transferred it to me.

A more contentious example is this. I use my body to go prospecting in the remote Arctic, where I discover gold. Do I own the gold in the way that I own the money in the previous example? Some would say that the second example is significantly different from the first because the second example involves my appropriation of a natural resource of which I do not have and cannot have exclusive ownership.²⁷ That is to say, unlike my body, since I obviously did not own the gold before I existed and my mere existence is only trivially different from my stumbling on it sometime after I began to exist, I do not own it now.

§3. From Self-Ownership to Property

More generally, let us consider the following question: who today owns the nickel and other base metals at the bottom of the Atlantic Ocean? Logically, there are three possible answers to this question: (a) no one; (b) everyone (all moral agents); and (c) more than no one but less than everyone. In order to answer this question in a non-arbitrary way, we need to look more closely at the notion of property itself, that is, we need to generalize from the case of self-ownership and consider how property generally is related to moral agency.

In this section of my paper, I raise the question of the normativity of the concept of property.²⁸ On the one hand, it seems that the normativity of the concept of property is reflected in our distinction between property and mere possession. Someone who steals my property possesses it, though she does not own it. The mere fact of possession no more entails ownership than does the mere fact of homicide entail murder.²⁹ Implicit in this distinction between possession and property is the claim that if *x* is the property of *S*, then it would at least be *prima facie* wrong to deprive *S* of *x* against her will.³⁰ On the other hand, there is nothing more common in political theorizing than to maintain that property claims are defeasible. For example, one might defend the imposition of estate taxes on one's property. The claim here is not that, like the thief, it was not that person's property in the first place, but merely in his possession. Rather, the claim is that in this case property is to be treated non-normatively, just like possession. Since there is apparently no theoretical upper limit to an estate tax, there is no inviolable property within an estate and the normativity of the concept of property seems to evanesce. But then we are left to wonder about the difference between the thief who merely possesses something and the owner of property in the face of an impending estate tax. To make

the normative claim that someone's property may be or ought to be confiscated seems to be not much different from making the normative claim that the thief ought not to be prevented from acting as if he owned what he possessed. If, returning to the first alternative, we should conclude that the concept of property is irreducibly normative, what will the political consequences be?

Some maintain that the concept of property is inseparable from a political matrix.³¹ Hence, the determination of what property is and of whether there is a distinction between property and possession cannot be made apart from the articulation of general political principles. I agree that the normative concept of property requires some sort of association wherein the members or participants recognize possession as property. But this does not entail that only in the particular association that is a state does property exist. More to the point, it does not entail that an association, the hallmark of which is having coercive powers, be the determinator of property.

Political associations are constituted by moral agents. Hence, the capacity for reciprocal recognition of other moral agents is another attribute of moral agency. The conceptual connection between being capable of entering into a political association, being a moral agent, and owning property is fairly clear. Rabbits are not moral agents; therefore, they are not capable of entering into a political association. Not being moral agents, they are incapable of the reciprocal recognition of moral agency that is a necessary condition for any contractual relationship. Not being moral agents, they cannot own property. They cannot own property precisely because there is in regard to them no distinction between property and possession. Even if I freely gave a rabbit all the lettuce in my garden, that lettuce would not be its property; it would simply be in its possession. To claim that there is a distinction between the rabbit who

possesses the lettuce against my will and the rabbit who “owns” the lettuce because I gave it to him is to insist that the mode of acquisition of the lettuce alone entails a distinction between possession and property.

The mode of acquisition is indeed crucial for the distinction between possession and property, but only in regard to moral agents. In order to see this point, imagine a single moral agent alone on the proverbial desert island. There is in this case no basis for a distinction between that which is in his possession and that which is his property because there are no other moral agents present. The presence of rabbits or other animals would make no difference. The presence of other moral agents immediately makes possible reciprocal recognition, hence the possible recognition of property that is not merely a possession. It is reciprocity, that is, an agreement about what is property and not mere possession that makes property a normative concept. It may be wrong to deprive an animal of its food, but not because that food is its property as opposed to being its possession. I presume that if it is wrong to deprive the rabbit of its lettuce, it is wrong whether or not I freely gave it the lettuce. However, the deeper point is that if one wanted to insist that the way the rabbit obtained the lettuce makes a moral difference such that in one case it merely possessed the lettuce but in the other it owned it, then I suggest that one is thereby attributing moral agency to the rabbit. If the moral difference is that depriving the rabbit of its property is wrong, whereas depriving it of its possession is not wrong, then one would again be employing the concept of property normatively. I don't believe that rabbits are moral agents, but that is neither here nor there in regard to the conceptual connection between moral agency and the normativity of the concept of property.

The fundamental issue underlying questions of ownership in political discussions is whether it is the case that if no person owns something, then everyone owns it or else if when no

person owns something, then, simply, no one does.³² The question about the ownership of the nickel at the bottom of the Atlantic Ocean is in principle the same as the question about self-ownership. The range of logically possible answers is the same in each case. The view that all the people in the world today own a fractional share of the nickel is so far as I can see no different from the view that all the people in the world today own a fractional share of me.³³ Somewhat less extreme views would take it either that national boundaries are the limit of the group ownership of resources within those boundaries, whether known or not.³⁴ Over against these views is the view that ownership is the result of a transfer of a good from a state of being unowned to one of being owned. In the case of self-owners, this view amounts to the claim that self-ownership arises when moral agents claim it, that is, when they act as moral agents.

I have never encountered anyone who has argued that some but not all, the persons in the world own the nickel at the bottom of the ocean, for example, all the persons living in countries that begin with the letter “N.” It is clear why this is so: such a claim would be purely arbitrary, to say nothing of the fact that the determination of the moral agent who is to make the determination regarding those who own the nickel and those who do not is purely arbitrary, too. But the reason why this answer to the question about ownership is arbitrary is exactly why the answer that everyone in the world owns the nickel is arbitrary, too. For the arbitrariness of holding that X, Y, and Z own the nickel is the same whether X, Y, and Z are all or some of the moral agents in the world now. For if they are “all,” they are reduced to being merely “some” by the appearance of new moral agents. If the new moral agents have a claim on the nickel, then X, Y, and Z did not own it in the first place, or at least they did not own that portion on which the new moral agents now have a claim. In addition, since no potential member of a “future generation” is a moral agent, their putative ownership of anything is highdoubtful.

When ownership is claimed for a group such as ‘society,’ the word “ownership” is used in a special sense. For normally, when we say that X owns something, that means that X is free to use it or dispose of it as he pleases. By contrast, social ownership is never represented in these terms. No one supposes that individuals each own a fraction of the sum of what is socially owned and that he or she can use and dispose of that fraction at will.³⁵ Rather, ‘social’ or “public” ownership is always represented as consisting of a right to use or benefit derived from that which is owned. Since this right is more or less a creation of those in power, it can be adjusted to meet some goal or other. That is, the right can be limited in whatever way the rulers judge is appropriate for achieving the aims of the state. Thus, the benefits deriving from the right can be variously distributed, say, through taxation or rent.³⁶

I would contend, however, that deriving the benefits of ownership from rights is to get things backwards. A right, if it is not arbitrarily conjured up, must rest on some principle of recognition of some attribute or other possessed by those who therefore possess some right. When those who derive ownership from rights are asked for the relevant principle, the one most widely acknowledged is egalitarian. Everyone has a right to x because everyone is equal. This is specious. For one thing, it is never equality that governs the terms of distribution; rather, it is some perceived *inequality*. More fundamentally, the notion of equality itself is not the sort of real attribute that could ground a right. People are equal and unequal in countless ways, where “equal” and “unequal” must be glossed as ‘same’ and “different.” However, the equality that supposedly grounds some right to property is nothing but the patently circular equal right to that property. Indeed, equality is frequently represented as a *goal* derived from a right or from a principle of justice.³⁷

Those favoring some sort of group ownership of resources, like to talk about ‘social ownership’ or “the world’s resources” as if the world owned them. But “the world” is not even a group. It is held that because these resources were not created by anyone in particular (in the way that my music is), they are owned by everyone. This is manifestly a non-sequitur and it is in fact a false claim precisely for the same reason that the claim that some arbitrarily selected group of people own the world’s resources. Most typically, the claims made for group ownership of resources are made on the basis of some principle of justice.³⁸ Not surprisingly, it would be an egalitarian principle that concludes to equal ownership by all the members of the relevant group. My contention, by contrast, is that the notions of justice and rights are derivative and that there is no non-arbitrary way of determining a just distribution of resources without having *already* established ownership, for justice, basically, looks to the restoration and maintenance of ownership.³⁹ There are no grounds whatsoever for holding that everyone owns a bit of all the gold in the world *because* that is what justice demands. Justice demands nothing unless and until we know the factors in the equation, namely, where exactly a balance has been disrupted. But the principal factors in the equation concerned with property and ownership are who owns what.⁴⁰ Justice cannot determine that. That is why when philosophers speak of group ownership of the world’s resources, they are really claiming that all the members of the relevant group *should* own a fraction of those resources. They therefore have no special theory of ownership, though they do have a theory about the results they would like to achieve and which they believe can only be achieved if the members of the group own the resources.⁴¹

If we decline the temptation to try to derive ownership from justice, what limitations on the ownership of resources might independently be determined? One of the most influential attempts is to be found in John Locke’s theory of acquisition.⁴² The theory actually contains two

parts, the first of which maintains that ownership of something is established by the mixing of one's labor with that something; the second part, the so-called Lockean proviso stipulates that in order for this initial acquisition to be just, there must be "enough and as good left in common for others." The proviso has been universally understood by both defenders and opponents of Locke to be a condition of justice. If what is left over after the initial acquisition is not enough and as good left in common for others, then that acquisition was unjust. What Locke must mean here is that a theory of justice is prior to a theory of ownership, for he is evidently maintaining that if property was acquired in a way that violated the proviso, it is in fact not owned. Or at least that portion of the acquisition that violates the proviso is not owned. But interpreting Locke in this way obscures the reasoning behind the first part of the theory. If my labor mixing establishes ownership, why is it the case that my ownership, assuming it violates the proviso, is defeasible? If I must relinquish the putative ownership, I take it that I did not in fact own it in the first place. In short, on Locke's theory ownership unjust initial acquisition of property does not seem even possible.⁴³

The problem with Locke's theory is the intrusion of considerations of justice into the definition of ownership.⁴⁴ I say this is a problem because nowhere does Locke tell us why violation of his proviso is unjust, unless we take seriously his theological assumptions; indeed, I would maintain that there is no non question-begging way that he *could* tell us. My point is not, however, that violation of the proviso is never unjust. My point is that in those cases in which it is unjust we must show that this is so already having established ownership. But in that case, the injustice does not reflect on the initial acquisition, but on the relation between an owner of property and someone else.⁴⁵

Another way of making the same point is to distinguish the establishment of ownership as a case of treating someone else unjustly and a case of depriving someone else of an opportunity. Every single object over which I establish ownership is thereby unavailable for someone else to own. If, like Alexander the Great, we lament the fact that all the really lovely places on earth have already been conquered, our having unavailable to us such opportunities is not thereby an injustice. The point is that if we confuse the necessary constriction of opportunities owing to the establishment of the ownership of anything with an injustice done to someone else, we shall be less likely to see that the establishment of ownership does not entail injustice to anyone.⁴⁶

It may be urged that preventing someone from acquiring property in a specific locale by retaining all the property for oneself is far more than a limitation on another's opportunities. It is, in fact, a direct threat to one's moral agency. Assume that someone owns an entire island and when someone else washes ashore, the owner forbids him access to his property. The unfortunate visitor faces almost certain death if he leaves. In my view, the most important feature of this well-known example is that neither justice nor rights are here at issue. But in saying this, I am not claiming that the one who possesses the property (let us not call it "ownership") and who refuses to allow his visitor to stay has not done something immoral. I am not even claiming that the visitor would be immoral if he used violence in order to remain. Rather, I am claiming that matters of justice and rights are functionally related to the mutual recognition of moral agency. Such recognition would be constitutive of any agreement that the owner and the visitor came to in regard to the terms of the visitor's stay. To suppose that a refusal by the owner to allow the visitor to stay is an injustice or a violation of some right is to assume that justice and rights are features of the world that exist prior to moral agency. But to do this is to forego the only non-arbitrary means for articulating what justice and rights are in

any situation. For the supposed “features” of the world are nothing more than the intuitions various persons hold about how they would like to see the world go. Incidentally, resting a political philosophy on a supposed lesson to be drawn from such an extreme situation of dispute over initial acquisition of property is, to say the least, not promising since the vast majority of property disputes are not over initial acquisitions.

An attempt to link a revision of the Lockean proviso to a principle of justice in initial acquisition is made by Michael Otsuka.⁴⁷ He argues that the Lockean proviso needs to be replaced by an “egalitarian proviso” according to which “enough and as good left in common for others” is interpreted to mean “equality of opportunity for welfare.” This in turn is defined as “a state of affairs in which the levels of welfare that people have attained differ only as the result of choices for which they can be held morally responsible.”⁴⁸ The idea is that those who through no fault of their own are less able than others to convert worldly resources into welfare are entitled to acquire additional resources (relative to others) in order to compensate for their lesser ability.

The idea of compensation here suggests a principle of justice is being employed. Apart from the obvious objections that the measurement of abilities other than by achievement is problematic, to say the least, and that one might calculate that evincing a relative lack of achievement in order to be “compensated” might be a desirable substitute for achievement itself, my main issue with Otsuka is that his egalitarian principle of justice is nothing more than an assumption. That *any* principle of justice obtains apart from an association entered into by individual moral agents is itself an assumption. More particularly, that an egalitarian principle of justice obtains assumes that assigning ownership is a means for compensating individuals for an injustice, in this case, the injustice of different abilities.⁴⁹ But nowhere does Otsuka tell us who it was that committed the injustice. But I fail to see how compensation for injustice has any

meaning if no one committed an injustice. And, of course, if groups, such as society, are not moral agents, then that group *could not* commit an injustice on the one to be putatively compensated. Otsuka, unlike Gerry Cohen, thinks that the subordination of the ownership of property to the satisfaction of a principle of egalitarianism does not entail (even if it practically leads to) the subordination of *self*-ownership to the satisfaction of such a principle.⁵⁰ But insofar as self-ownership or moral agency encompasses property, it is difficult to see why claims to compensation for imaginary injustices do not compromise the moral agency of those from whom compensation is to be extracted.

When we speak of the moral responsibility or the duty of society, specifically, in the compensation for injustices, we typically use the concepts of responsibility and duty in a normative way. The normativity of these concepts is, of course, contingent upon their use in reference to moral agents. If states are not moral agents, then states do not, for example, have a moral responsibility to help the poor, *even if it could be shown that every single member of that state has such a moral responsibility*. Without there being such a group moral responsibility, the justification for all of the welfare or redistributionist policies of the modern state is eliminated. Since such policies practically entail the use of force or the threat of the use of force against those who do not subscribe to the putative moral responsibility of the group, it is difficult to see how the force or the threat of it does not negate moral agency. And, as I have already argued, once moral agency is compromised or negated, there is no non-arbitrary foundation for a state at all.

Otsuka's left-libertarianism aims to combine a principle of self-ownership with a principle of egalitarian justice that determines subsequent property ownership, both initial ownership and the ownerships that result from transfers.⁵¹ Cohen thinks that a principle of

egalitarian justice would eliminate self-ownership. I maintain that self-ownership is virtually equivalent to moral agency and that without moral agency there is no political foundation possible. In my view, a principle of justice depends on a prior principle of self-ownership.

Self-ownership is, of course, negated by involuntary servitude. And though it is probably the case nowadays that there is not much enthusiasm for a theoretical defense of slavery, other forms of involuntary servitude such as military conscription do have ardent defenders. I am not here concerned with the substantive issue of whether military conscription violates someone's property, but rather with the question of the conceptual relation between property in general and moral agency. Those who defend military conscription and other putative violations of property agree that property may belong to all and only moral agents, but they also believe that society or the state or the government is a moral agent. And, though the claim that the entire human race owns my body is absurd, the claim that the state is a part-owner of my body is not so obviously absurd. As part-owner of my body, presumably, sometimes the state's ownership claim trumps mine; sometimes it does not. The point is perfectly general, of course, and would apply equally to any property that I own, whether it be my body or my land or my chattels, and so on.

Now here we do have a really big problem. Grant that all and only moral agents own property (at least their own bodies), if there really are other legitimate claimants to ownership of one's property, then the issue is clouded, to say the least. Some would argue that the state is the foremost such claimant. But in order to make good this claim, one would first need to show that the state is a moral agent, it having been agreed that only moral agents own property. One would attempt to show this, presumably, by showing either that an aggregate of moral agents is a moral agent or that the state is a moral agent over and above the aggregate of moral agents. The first alternative seems unintelligible given that the aggregate could include simultaneous contrary

exercises of moral agency (e.g., I want to do x and you want to do not-x). The second alternative either amounts to the anthropomorphizing of the state or, more typically, to the claim that the expression of the will of some members of the state requires us to postulate a moral agent above and beyond the sum of moral agents within the state. It is important to see that if it is the expression of the will of one member of the state, whoever that may be, there is no plausibility whatsoever in claiming that this expression of will belongs to any moral agent other than the one individual who expresses it. So, somehow the expression of the will of some requires the postulation of a moral agent over and above the moral agents who express their will. The state is this supposed hypothetical moral agent. And it is the state as moral agent that may at times have a legitimate claim on what would otherwise be my property.

An alternative to this line of reasoning is to deny that only moral agents own property, and to insist that the state, though it is not a moral agent, is the sort of entity that can own property and not just possess it. Someone defending the idea of public property might want to concede that the “public” is not a moral agent, but that the public can indeed be said to own property where “property” is used normatively. Whether we say “public” here or “state” or “society” seems to make little difference. The idea of public or state property is so ubiquitous that it seems preposterous to maintain that there is no such thing, if indeed “property” is being used normatively. Consider a public park or a public building. Are these not owned by the public or the state in a robust sense of “own”? My contention is that they are not the state’s property, but only its possession, and the question of whether they are mere possessions depends entirely on whether they have been stolen from someone whose property they were. Thus, the impossibility of the state owning property is analogous to the impossibility of, say, a corpse having the right to free speech.

The reason why it is natural to suppose that the state owns property despite the fact that the state is not a moral agent is that there is a legitimate concept of collective property ownership with which the putative state ownership of property is easily confused. That more than one moral agent can jointly own a piece of property is unproblematic. The simplest case is when two persons, for example, jointly own a house. The hallmark of joint ownership is that it is possible to attribute fractional ownership. Say two persons each own 50% of the house. Ownership of 50% of the house means that, as in the case of every other piece of property that a moral agent owns, the owner has authority over the use of the fraction of the property that he owns (up to and including 100%). A more complex situation arises when there is fractional ownership in a corporation. But the principle is identical. If S owns 1/1,000,000 of the shares in the corporation, then S has authority over the use of this fraction of the property, which, practically speaking, is of course expressed in money, not chattel. This is exactly why corporations, which are not moral agents, do not own property in the normative sense of “property.”

Group ownership of public property is most like group ownership of a corporation, but with the crucial difference that there is in fact no fractional ownership. Even if a public “asset” is priced, there is no way for me to cash in my share in this asset, even assuming I am willing to forgo further use of it. So, I do not own the hypothetical fraction. And if the state is not a moral agent, as I have argued, the state does not own it either.⁵²

This conclusion is, admittedly, a surprising one. If property is a normative concept and if normative concepts are intelligibly applicable only to moral agents, and if groups cannot be moral agents, then groups cannot own property, except in the specific sense in which individual members of a corporation have fractional ownership of the corporation and its property. Neither the state nor the government nor society nor the public nor the pernicious collective “we” own

anything; only moral agents own anything, in particular that which was acquired in the course of exercising their moral agency. Consequently, the involuntary use of my owned resources or, indeed, myself, for purposes other than those I specifically endorse, is unjustifiable. The differences among regimes in the extent of their appropriation of my property is only a matter of degree.

§4. Conclusion

I have argued that the correct, indeed, the only non-arbitrary foundation for political philosophy is the natural kind concept of moral agency. From moral agency flows self-ownership, including property ownership. Justice is a state of affairs in which persons are exercising moral agency, including participation in associations. Injustice is the deprivation of property, where “deprivation” implies involuntary transfer of property from the owner. For S to have a right is for it to be unjust to deprive S of that to which she has a right. Thus a right is a concept derived from justice. Since injustice is the deprivation of property, the only rights are property rights.

I have argued that making rights or justice foundational concepts is arbitrary or reduces to the bare assertion of one’s own intuitions. Intuitions, however, differ. Some may claim that the intuitions of some concocted majority may be authoritative, but they are no less intuitions for all that. One may reasonably wonder how minority rights fare when they are in conflict with the intuitions of a majority. Certainly, one cannot appeal to these intuitions as justification for such rights. But if the justification is going to sidestep the appeal to majority intuitions, one may also

wonder whether what establishes the rights also undercuts or makes irrelevant the majority intuitions altogether.

If moral agency is the necessary and sufficient foundation for a political association, then it is of the utmost importance to determine the range of the concept of moral agency. I doubt very much that cats or dolphins or chimpanzees are moral agents, but nothing in my argument logically precludes such a possibility. My argument does, however, conclude that groups are not moral agents. In particular, neither the state nor society nor some indeterminate “we” constitute a moral agent. Consequently, they do not possess moral properties including responsibility or rights or duties. “We” do not have a duty to the poor simply because “we” are not the sort of entity that can have duties. In saying this, I am prepared to concede that it is possible that each and every moral agent has a duty to the poor. I have no problem with the claim if this duty arises from a particular injustice that a particular moral agent has brought on another. Nor do I suppose that it is absurd to claim that this duty entails the practice of charity, though in this case the duty is presumably something like a duty to God to be charitable to the poor. But of course, the fact that charity is voluntary and, in this case, so too is the recognition of the duty, means that an appeal to universal charity (‘sell all that you have and give it to the poor’) is politically irrelevant.

I do not claim to have addressed, much less settled, all of the issues concerning the foundation of a political association. I am claiming, however, that ordered set of concepts—moral agency, self-ownership, property, justice, and rights—is the only non question-begging matrix within which to address them.

¹ See James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), 33, who argues that human rights “can be seen as protections of our human standing or, as I shall put it, our personhood.” So, for Griffin, human personhood is basic. But Griffin’s concept of human personhood is almost entirely derived from his intuitions about human rights. The concept of personhood is designed to generate exactly Griffin’s list of human rights. See, e.g., 51, where Griffin includes in his concept of personhood “minimum provision” for a human life. See 101, where Griffin concedes the arbitrariness of much of his account.

² One of these is Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 10, 118, who seems to rest political philosophy on a Lockean theory of “rights possessed by each individual in a state of nature.” These are negative rights.

³ Since, on a theory of negative rights, conflicts of rights are, at least in some versions, impossible in the way that they are not so on a theory of positive rights, the reason for rejecting the former is slightly different from the reason for rejecting the latter. The very rejection of positive rights in favor of negative rights presumes a criterion for the rejection which in turn requires some moral principle to justify that criterion. Hence, rights are not basic. I emphasize

here that my claim is that rights and justice are not basic in political philosophy. I am not here addressing the question of their role in moral theory as basic or not.

⁴ G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, Mass.: Harvard University Press, 2008), 4, frankly acknowledges that his radical egalitarian concept of justice is founded on his own “deepest normative convictions.” This certainly looks like an intuition that dare not speak its own name.

⁵ Cf. David Schmidtz, "Property and Justice," *Social Philosophy and Policy* 27, 1 (2010), 79-100, who provides a somewhat different argument for what is essentially the same claim.

⁶ The view I am developing here is a version of what is sometimes called a theory of agent causation as opposed to events causation. The basis for the general view is that agents are irreducible to events in an explanatory framework. Some proponents of agent causation do not distinguish agents from moral agents. See J. Hornsby, "Agency and Actions," in *Agency and Action*, ed. J. Hyman and H. Steward (Cambridge: Cambridge University Press, 2004), 1-23, for an argument for the explanatory superiority of agent causation to events causation.

⁷ See John Locke, *An Essay Concerning Human Understanding*. Book II, ch. 26.

⁸ See John Rawls, "Justice as Fairness," *Philosophical Review* 67(1958), 166, who includes under the concept “person” nations, provinces, business firms, churches, teams, and so on. He thinks that all of these are subject to laws of justice, though he acknowledges a “logical priority [to] human individuals.” In *The Law of Peoples ; With "The Idea of Public Reason Revisited"* (Cambridge, Mass.: Harvard University Press, 1999), 27, he distinguishes “peoples” from states, arguing that it is the former to which a “moral character” may be ascribed. Rawls seems to hold, however, that a state acting in a just way would be indistinguishable from a “people.” Kant,

Perpetual Peace, section 1.2, assumes that states or nations are moral persons and, accordingly, fall under (his) moral rules.

⁹ See Daniel C. Dennett, "Conditions of Personhood," in *The Identity of Persons*, ed. A. Rorty (Berkeley: University of California Press, 1976; reprint, *Brainstorms*), 176-8; *The Intentional Stance* (Cambridge, Mass.: MIT Press, 1987), 15-22.

¹⁰ See Robert Sokolowski, "What Is Moral Action?," *New Scholasticism* 63 (1989), 23-25.

¹¹ See, e.g., Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person," *Journal of Philosophy* 68 (1971), 5-20.

¹² See Richard Moran, *Authority and Estrangement. An Essay on Self-Knowledge* (Princeton: Princeton University Press, 2001), esp. chs. 3-4.

¹³ *Ibid.*, 101.

¹⁴ See John Martin Fischer, *The Metaphysics of Free Will* (Oxford: Blackwell, 1994), 132-4.

““Guidance control” is contrasted with “regulative control.” The latter indicates that the agent “could have done otherwise.” It is notable that in Fischer’s account, the possession of guidance control and so of moral responsibility does not exclude causal determinism. Cf. 204-05. So, too, on the account of Harry G. Frankfurt, "Alternate Possibilities and Moral Responsibility," *Journal of Philosophy* 66 (1969), 829-39. See Christine M. Korsgaard, "Self-Constitution: Agency, Identity, and Integrity," *The Locke Lectures Given at Oxford University, May, June 2002* (2002); Connie Rosati, "Agency and the Open Question Argument," *Ethics* 113 (2003), 490-527, for two similar accounts in terms of ‘self-constitution.’”

¹⁵ See J. Searle, "Collective Intentions and Actions," in *Intentions in Communication*, ed. P. Cohen, J. Morgan, and M. Pollack (Cambridge, MA: MIT Press, 1990), 401-15; M. Gilbert, "Walking Together; a Paradigmatic Social Phenomenon," *Midwest Studies in Philosophy* 15

(1990), 1-14; M. Bratman, 'shared Intention,' *Ethics* 104 (1993), 97-113; David Velleman, "How to Share an Intention," *Philosophy and Phenomenological Research* 57 (1997), 29-50; Philip Pettit, "Groups with Minds of Their Own," in *Socialising Metaphysics*, ed. F. Schmitt (Lanham, Md.: Rowman and Littlefield, 2003), 167-93. See for a response to this line of reasoning Jan Narveson, "Collective Responsibility," *Journal of Ethics* 6, no. 2 (2002), 180-98; Seumas Miller and Pekka Makela, "The Collectivist Approach to Collective Moral Responsibility," *Metaphilosophy* 36, 5 (2005), 634-51.

¹⁶ See Peter A. French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984), 37-38, 46-47, 144, who argues that moral agency arises from the distinctiveness of group intention and action. Also, see Carol Rovane, *The Bounds of Agency. An Essay in Revisionary Metaphysics* (Princeton: Princeton University Press, 1998), 137-41, who finds group moral agency is a sort of unity or concurrence of actions among the individuals in the group. Andrew Vincent, "Can Groups Be Persons?," *Review of Metaphysics* 42 (1989) argues in reply to French, 712-714, French's notion of moral agency is not distinguished from a sense of mere agency sufficient to ground the legal responsibility of corporate entities. In reply to Rovane, the "rational unity" of the group, since it may be adventitious, is irrelevant to the moral agency of the individual.

¹⁷ See Serena Olsaretti, *Liberty, Desert and the Market : A Philosophical Study* (Cambridge: Cambridge University Press, 2004), 139, who distinguishes sharply between volition and freedom. But Olsaretti thinks that an action is non-voluntary if it is performed because there are no acceptable alternatives, where "acceptable" is determined by some objective standard such as well being. Thus, one is not acting voluntarily if the alternative is, say, starvation. But the only way that Olsaretti can distinguish the constraints that justify political coercion from those that do

not is to rely on her intuitions regarding some ideal political outcome. That is, she is *not* deriving her political philosophy from a concept of moral agency but rather the other way around.

¹⁸ Jan Narveson, "Property and Rights," *Social Philosophy and Policy* 27, 1 (2010), 105-6, makes a useful distinction between self-ownership and self-possession, with the latter term being descriptive and the former normative. I would add that the normative term follows automatically from the existence of any sort of human association. That is, it is intrinsic to the origin of any political foundation.

¹⁹ Cf. John Stuart Mill, *On Liberty* (Indianapolis: Bobbs-Merrill, 1956 [1859]), 13, for a similar description of self-ownership, "Over himself, over his own body and mind, the individual is sovereign." I am using "authoritative" in the way that Mill uses 'sovereign.' Perhaps Mill's description is virtually identical to Locke's "every Man has a *Property* in his own *Person*. This no Body has a Right to but himself" (*Second Treatise*, section 27)

²⁰ Daniel Atlas, "Freedom and Self-Ownership," *Social Theory and Practice* 26, 1 (2000), 7, argues that self-ownership does not in itself justify the rejection of slavery because defenders of self-ownership only condemn involuntary enslavement. What is wrong with *voluntary* permanent enslavement given the principle of self-ownership? The answer is that such an arrangement necessitates the disavowal of moral agency. If it really were voluntary, then the ongoing possibility of one calling off the arrangement would obtain, and that would not be permanent enslavement. The only way that permanent voluntary enslavement could be instituted would be by the use of force, in which case it would not be voluntary. Samuel Freeman, "Illiberal Libertarians: Why Libertarianism Is Not a Liberal View," *Philosophy and Public Affairs* 30, 2 (2001), 131-5, argues that absolute self-ownership entails the licitness of the

complete alienation of the self that is slavery. He takes this as a *reductio ad absurdum* of absolute self-ownership. One reply, that of Nozick, *Anarchy, State, and Utopia.*, 331, accepts the entailment but denies the *reductio*. A better reply is to insist that selling oneself into slavery is not possible according to any coherent notion of contract law. A contract, if it is to be licit and so enforceable must specify what each party to the contract must do fulfill it and at least implicitly what the sanctions are for non-fulfillment. But the one who enters into a putative contract to enslave himself to another either expects to get nothing in return for his slavery or he expects to get something. If the former, there is no contract, but only a promise, which is perpetually defeasible without penalty; if the latter, then we may well ask what the difference is between this situation and an employer-employee contract. But no contract based on wages (however small in amount) for labor is enforceable in perpetuity because one can only make a defeasible promise to “work forever” for someone. If one refuses to work, the penalty is loss of wages, nothing more. If one is paid and refuses to work, the employer or “slave owner” can sue for compensation.

²¹ G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), 234, argues that the appropriation by the state of the fruit of one’s own labor is not slavery because the state, unlike a true slaveholder, is not exercising discretionary power in doing so. We may agree with Cohen that the state is not a slaveholder just because the state is not a moral agent. But this hardly absolves the moral agents who run the state from the injustices committed in transferring by force property from its owners to others.

²² See Eric Mack, “self-Ownership, Marxism, and Egalitarianism: Part 1,” *Politics, Philosophy, and Economics* 1, 1 (2002), 75-108 and “self-Ownership, Marxism, and Egalitarianism: Part 2,”

Politics, Philosophy, and Economics 1, 2 (2002), 237-76, on the primacy of self-ownership and for a refutation of arguments against this.

²³ Do threats constitute an impediment to voluntary behavior? I would say that they do, but only if they are threats to physical aggression, not, say, the threat involved in blackmail. Only physical aggression negates the moral agency of another.

²⁴ See e.g., Atlas, "Freedom and Self-Ownership," 16-18.

²⁵ See e.g., Peter Vallentyne, 'Self-Ownership and Equality: Brute Luck, Gifts, Universal Dominance, and Leximin," *Ethics* 107, 2 (1997), 321-43.

²⁶ Some, e.g., Barbara Fried, "Wilt Chamberlain Revisited: Nozick's "Justice in Transfer" And the Problem of Market-Based Distribution," *Philosophy and Public Affairs* 24 (1995), 226-45, questions the right to the 'surplus' value of one's labor, owing to scarcity. I deny that the notion of surplus value makes any sense whatsoever. For the value of something is exactly what someone is prepared to pay for it. Hence, something has infinite values. What anyone is prepared to pay for something is *always* circumstantial, that is, he or she is prepared to pay so much for something here and now. Hence, nothing can have surplus value. Attempts to distinguish a "fair" price for something from the price that constitutes surplus value fail for the same reason. A fair price could only be something like the average among values at a certain time. But this average, like all averages in real life, is fictitious. Why is it not fair that I am willing to pay more than the average for something?

²⁷ Nozick, *Anarchy, State, and Utopia.*, 150-3, similarly distinguishes between justice in acquisition, justice in transfer, and justice in rectification. An unjust acquisition would taint a transfer, making it unjust. It would also mean that the restoration of property was not just. If I did not acquire the gold justly, I could not justly transfer it.

²⁸ Cf. Bernard A. O. Williams, *Ethics and the Limits of Philosophy* (Cambridge, Mass.: Harvard University Press, 1985) on “thick” ethical concepts like treachery, promises, brutality, and courage.

²⁹ I use the verb “own” and the noun “ownership” to indicate a relation between a subject and that subject’s property. As I shall argue below, the only subjects who own property are moral agents. Accordingly, all property is owned by moral agents.

³⁰ It would seem that if property is a normative concept, then so is possession when used in contradiction to property. I will henceforth distinguish “mere possession” used normatively from “possession” used neutrally or descriptively.

³¹ See Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (New York: Oxford University Press, 2002), especially 8-10, and *passim*.

³² See Matthias Risse, "Does Left-Libertarianism Have Coherent Foundations?," *Politics Philosophy and Economics* 3, 3 (2004), 344, who usefully distinguishes between an original state of non-ownership in which case what is needed is a theory of acquisition and an original state of group ownership (whether joint or common) in which case what is needed is a theory of privatization.

³³ The position known as left-libertarianism maintains both a commitment to self-ownership and a denial of the thesis that resources are unowned until they are owned by someone. See Michael Otsuka, *Libertarianism without Inequality* (Oxford: Oxford University Press, 2003). See Richard J. Arneson, “Self-Ownership and World Ownership: Against Left-Libertarianism,” *Social Philosophy and Policy* 27, 1 (2010), 168-94, for a critique of both left-libertarian claims. Arneson basically argues that self-ownership and access to world ownership on fair and equal terms are incoherent positions taken together because the differences among people will always

undercut access on fair and equal terms. All of these views seem to spring from Jean-Jacques Rousseau, *Discourse on the Origin and Basis of Inequality Among Men*, Part Two, “The first man who, having enclosed a piece of ground, bethought himself of saying *This is mine*, and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars and murders, from how many horrors and misfortunes might not any one have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows, “Beware of listening to this impostor; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.””

³⁴ See Lawrence C. Becker, *Property Rights : Philosophic Foundations* (London ; Boston: Routledge and K. Paul, 1977), 25; Cohen, *Self-Ownership, Freedom, and Equality.*, chs. 3 and 4; Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (New York: Oxford University Press, 1990), 117-118; Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994) for arguments on behalf of the position that with respect to resources, there is no such thing as a state of being unowned. Cohen, 103-104, recognizes that a regime of self-ownership plus the left-libertarian principle of the equal ownership of resources will potentially have anti-egalitarian results. Hence, Cohen, committed to egalitarianism, wants to deny self-ownership. Cf. Kaspar Lippert-Rasmussen, "Against Self-Ownership: There Are No Fact-Insensitive Ownership Rights Over One's Body," *Philosophy and Public Affairs* 36, 1 (2008), 86-118.

³⁵ In this regard, social ownership is as much a fiction as a social contract.

³⁶ See e.g., John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 101-102; Ronald Dworkin, "What Is Equality? Part 2: Equality of Resources," *Philosophy and Public Affairs* 10 (1981), 283-345.

³⁷ John Christman, 'self-Ownership, Equality, and the Structure of Property Rights," *Political Theory* 19 (1991), 37-39, distinguishes between "control rights" and "income rights," applying the former to self-ownership and the latter to the fruits of one's labor. He claims that income rights are subordinated to an egalitarian principle of justice whereas control rights are to be justified by principles of individual interests such as autonomy and liberty. Christman does not explain how constraining or regulating the value I put on the labor of others is not an infringement on my autonomy and liberty. He does not do so, I think, because the egalitarian principle of justice always trumps individual rights, if not in regard to my body itself but certainly in regard to what I accomplish with my skills, efforts, etc. It is odd that Christman says, 35, that "[income rights] cannot be said to be a manifestation of the individual's autonomy and liberty, since income is a product of things over which an agent can claim no independent sovereignty." What is the argument for the claim that a self-owner cannot "claim sovereignty" over his talents and the benefits from the value put on them by other self-owners?

³⁸ See, e.g., Philippe Van Parijs, *Real Freedom for All: What If Anything Can Justify Capitalism?* (Oxford: Clarendon Press, 1995); Cohen, *Self-Ownership, Freedom, and Equality*.

³⁹ Cf. Jan Narveson, *The Libertarian Idea* (Peterborough, Ont.: Broadview Press, 2001), 82-5. Contra Gerald Gaus, "Property, Rights, and Freedom," in *Property Rights*, ed. Ellen Frankel Paul, Jeffery Paul, and Fred Miller (Cambridge: Cambridge University Press, 1994), 209-40.

⁴⁰ As Cohen, *Self-Ownership, Freedom, and Equality*, 98, realizes: "It looks as though the suggested form of external resource equality, namely, joint world ownership, renders nugatory the self-ownership with which he [the advocate of the joint ownership regime] had hoped to combine it. Self-ownership is not eliminated, but it is rendered useless, rather as it is useless to own a corkscrew when you are forbidden access to bottles of wine." What Cohen calls "joint

ownership” is what I mean by “group ownership” of the world’s resources which is not fractional ownership. Group ownership undercuts, if not eliminates, self-ownership, if self-ownership includes ownership of the fruits of one’s own labor.

⁴¹ Edward Feser, "Classical Natural Law Theory, Property Rights, and Taxation," *Social Philosophy and Policy* 27, 1 (2010), 35, argues that “the concept of ownership *presupposes* the notion of rights” since to recognize someone as an owner of property is to acknowledge his right to it. Feser’s mistake, I believe, is in supposing that if “X owns P” and “X has a right to have others refrain from appropriating P against his will” are coextensive, then someone’s rights get to be logically prior. But the coextension itself cannot entail logical priority. In fact, if, as I have argued, moral agency is prior, we are then in a position to show that ownership is prior to rights even if it is in some sense coextensive.

⁴² See Nozick, *Anarchy, State, and Utopia.*, 174-8.

⁴³ The notion of “mixing one’s labor” is notoriously vague, though it should be noted that *any* labor added by X gives X a *prima facie* claim to ownership greater than a claim by any Y who mixes *no* labor. Cf. John Sanders, “Justice and the Initial Acquisition of Property,” *Harvard Journal of Law and Public Policy* 10, 2 (1987), 388-399, for criticisms of the “labor-mixing” condition and qualified support for it.

⁴⁴ See Fried, "Wilt Chamberlain Revisited: Nozick’s "Justice in Transfer" Andthe Problem of Market-Based Distribution.", 230 and n.14, who expresses the problem in this way. If I were to mix my labor with land and so acquire ownership of it, everyone else is deprived of the scarcity value of the land, and so it is not the case that “enough and as good is left in common for others.” I do not think that Locke’s proviso has to be read in this narrow way. ‘scarcity’ value is as

meaningless as ‘surplus’ value. Everything valuable as property is scarce. If any ownership is to exist, the owner is bound to benefit from the relative scarcity created by the ownership.

⁴⁵ See Sanders, “Justice and the Initial Acquisition of Property,” 376-87.

⁴⁶ See Leif Wenar, "Original Acquisition of Private Property," *Mind* 107, 428 (1998), 799-820, who assumes that the acquisition of property produces burdens on others, including duties. That is because he thinks of the acquisition of property as the establishment of a right. He assumes that matters of right and justice can be established independently of and prior to the establishment of property ownership. See also Barbara Fried, "Left-Libertarianism: A Review," *Philosophy and Public Affairs* 32, 1 (2004), 74-5, who, too, assumes that “all property rights necessarily infringe the liberties of others.” The word “liberty” here is set up for equivocal use: liberties which can and cannot be infringed according to some standard geared to outcome, such as “general welfare.”

⁴⁷ See Otsuka, *Libertarianism without Inequality.*, ch. 1 which is a revised version of Michael Otsuka, ‘Self-Ownership and Equality: A Lockean Reconciliation,' *Philosophy and Public Affairs* 27, 1 (1998), 65-92.

⁴⁸ Otsuka, *Libertarianism without Inequality.*, 25, n.39. I take it that the “initial” acquisition is not intended by Otsuka as an absolute historical moment, but only relative to some subsequent distributions. That is, “initial” means the state of property ownership before an egalitarian redistribution is enacted. I have no idea, however, how Otsuka supposes that the “world’s” resources are to be distributed across national boundaries. See Richard Arneson, "Luck Egalitarianism: An Interpretation and Defended," *Philosophical Topics* 32, 1,2 (2004), 1-20, for a defense of “luck egalitarianism” with ample references. The idea of “luck egalitarianism” is that inequalities that are merely a matter of luck should be eliminated. An analysis and a lengthy

criticism of various forms of luck egalitarianism can be found in Elizabeth A. Anderson, "What is the Point of Equality?," *Ethics* 109, 2 (1999), 287-337.

⁴⁹ As pointed out by Risse, "Does Left-Libertarianism Have Coherent Foundations?", 343, Otsuka's egalitarian assumption is actually more arbitrary than Locke's, since Locke, unlike Otsuka, assumes a theistic account of the origin of the world's resources and that therefore his proviso observes the *prima facie* claim that anyone has to these resources.

⁵⁰ Ibid, 20-21, and n26. So Christman, "Self-Ownership, Equality, and the Structure of Property Rights," 39-44.

⁵¹ Cf. Vallentyne and Steiner, eds., *Left-Libertarianism and Its Critics: The Contemporary Debate* (London: MacMillan, 2000).

⁵² Thus, I would disagree with J. Waldrom, "What is Private Property?," *Journal of Legal Studies* 5.3 (1985), 326-333, who thinks that private property is only one type of property. He calls "collective property" that which I am denying is possible for a state or a corporation. According to Waldrom, collective property is distinguished by access and use of material resources by all the members of the collective. But access and use are not, I think sufficient for property ownership. If I give access and use of my property to someone else, they do not thereby own it. It is not use, but the authority over use that determines property.