UNIVERSITY OF CALIFORNIA SAN DIEGO

United by Nature: A Left-Libertarian Theory of Justice

A dissertation submitted in partial satisfaction of the requirements
for the degree Doctor of Philosophy

in

Philosophy

by

Thomas Kirkpatrick

Committee in charge:

Professor Richard Arneson, Co-Chair
Professor David Brink, Co-Chair
Professor Saba Bazargan-Forward
Professor Dana Nelkin
Professor David Wiens

2023

The dissertation of Thomas Kirkpatrick is approved, and it is acceptable in quality and form for publication on microfilm and electronically.

University of California San Diego

2023

DEDICATION

For my mother and father

TABLE OF CONTENTS

VITA

2011 Bachelor of Arts in Philosophy, Willamette University

2015 Master of Arts in Philosophy, Brandeis University

2023 Doctor of Philosophy in Philosophy, University of California San Diego

ABSTRACT OF THE DISSERTATION

United by Nature: A Left-Libertarian Theory of Justice

by

Thomas Kirkpatrick

Doctor of Philosophy in Philosophy

University of California San Diego, 2023

Professor Richard Arneson, Co-chair
Professor David Brink, Co-chair

In what follows, I present a left-libertarian theory of justice, according to which we all have rights of full self-ownership and equal world-ownership. While these ideas are appealing, many have objected to them, both on their own and as a pair. Egalitarians often say that full self-ownership violates equality by letting some amass far more than others due to sheer luck. Libertarians often say that distributive equality violates liberty by taking the fruits of the labor of some to give to others. Many who accept either idea thus reject the other as unjustified, and eschew theories which conjoin the two, as my theory does, as incoherent. My contribution is to

state a form of left-libertarianism which answers these criticisms in a more decisive way than others have thus far. We can indeed justify both full self-ownership and equal world-ownership in a way which addresses these objections.

INTRODUCTION

In what follows, I will address one of the most central and basic questions in political philosophy, namely that of what justice is and what rights we have. Across the chapters to come, I will present and defend an answer to this question, which will take the form of my own distinctive theory on the subject. While my theory will cover many specific topics in this broad area, my account will focus especially on rights to individual freedoms and economic resources.

In particular, the theory I will set out will belong to the category of *left-libertarian* viewpoints on justice. As a first step towards explaining what this means, and thus what the most central contents of my view will be, let me go over a few points of context about certain prominent debates in the relevant literature.

Within discussions of distributive justice over the last half-century or so, there are two viewpoints which have been especially central. On the one hand, there are the egalitarian theories of figures like Rawls, Dworkin, and Cohen. On the other hand, there are the right-libertarian perspectives of authors such as Nozick, Narveson, and Mack. The theorists who affirm these two viewpoints appeal to them to defend opposite answers to one of the most contentious questions in the field. This is the issue of whether economic resources should be distributed in some equal manner, and redistributed if necessary from those who have more to those who have less, for example through progressive taxation and welfare state spending, among other possible means.[1]

Egalitarians often argue in favor of such redistribution largely by invoking more general and abstract principles of equality. These have tended to be principles to the effect that material

[1] Rawls, *A Theory of Justice*; *Justice as Fairness: A Restatement*; Dworkin, *Sovereign Virtue*; Cohen, *Self-Ownership, Freedom, and Equality*; Nozick, *Anarchy, State, and Utopia*; Narveson, *The Libertarian Idea;* Mack, "The Natural Right of Property." Of course, authors who do believe in redistribution are not uniform in thinking it should take the form of conventional welfare state programs; many argue for alternative approaches, as Rawls does in his account of property-owning democracy.

inequities are unjust when they arise from factors or causes which are in some sense arbitrary, such as from mere luck. Thus, for example, Rawls contends that if some individuals have more than others simply because of the sheer accidents of natural fortune or social contingency, then this is an injustice, and taking resources from the former and giving them to the latter is just.[2]

Right-libertarians, by contrast, have argued against such redistribution on the basis of principles of full self-ownership. According to such principles, we have absolute property rights over ourselves, our own bodies and minds, and our own talents and labor – including rights to all the fruits we gain from these sources. Thus Nozick, for instance, on one construal, holds that since we own ourselves and our labor, we have rights to all the income we earn from our labor, and taking this income from some and giving it to others to promote equality is unjust.[3]

In addition to these positive arguments for their stances on the debate over redistribution, authors on each side have also raised negative objections against the principles the figures on the other side tend to present as the foundations for their views.

Hence Rawls in effect argues against the principle of full self-ownership, namely by saying that if people had the right as full self-owners to keep all they earn from their labor, then those who by sheer luck have greater natural endowments of inborn talents would reap greater rewards than the rest. This, he holds, would be a morally arbitrary and therefore unjust inequality – and so natural endowments must instead be in a sense common property.[4]

Hence, also, Nozick for his part argues against principles of distributive equality, saying that if we redistribute what someone earns from her labor, then in effect we force her to labor for others, and even give those others partial ownership over her. Nozick therefore rejects such

---

2 Rawls, *A Theory of Justice*, p. 86.

3 Nozick, *Anarchy, State, and Utopia*, p. 172. Nozick does not explicitly affirm a principle of self-ownership here or elsewhere, but commentators tend to agree in ascribing him a commitment to such a principle, as Cohen for example does in *Self-Ownership, Freedom, and Equality.*

4 Rawls, *A Theory of Justice*, p. 87.

principles as entailing unjust infringements on our rights of full self-ownership, which make our labor and talents, natural or otherwise, our exclusive property.[5]

These familiar positions and arguments sum up a great deal of what has been said on both sides in contemporary controversies over the most basic principles of distributive justice, and they form the backdrop against which left-libertarian theories of justice have reemerged in political philosophy in recent decades, though in fact their ultimate origins are much earlier. Left-libertarianism's contemporary defenders include Steiner, Vallentyne, and Otsuka, along with a number of others, such as Quong, Fisher, and Roark.[6]

What defines left-libertarian theories of justice is that they combine two principles which are fundamental to the opposing positions of right-libertarians and of other egalitarians. First, like right-libertarians, but unlike other egalitarians, left-libertarians affirm the principle of full self-ownership, contending that we have over our own bodies, minds, labor, and talents all the rights that the full proprietors of anything have over what is theirs. But secondly, like other egalitarians, but unlike right-libertarians, left-libertarians also assert a principle of distributive equality, and specifically one of equal world-ownership, arguing that the world's resources, and especially natural resources, are owned by everyone on some equal basis.[7]

Left-libertarianism can thus be thought of as the combination of two principles which are for the most part today associated with opposing political philosophies. Left-libertarians have sometimes pointed to this unifying quality as an advantage of their accounts.

The principle of full self-ownership, they have said, is attractive because it aptly expresses the widespread political ideal of personal liberty. For us to fully own ourselves is just

---

5 Nozick, *Anarchy, State, and Utopia*, p. 172.

6 Steiner, *An Essay on Rights*; Vallentyne, "Left-Libertarianism: A Primer;" Otsuka, *Libertarianism Without Inequality*; Quong, "Left-Libertarianism: Rawlsian Not Luck Egalitarian;" Fisher, "A Left-Libertarian Proposal for Egalitarian World Ownership;" Roark, *Removing the Commons: A Left-Libertarian Approach to the Just Use and Appropriation of Resources.*

7 Steiner, Vallentyne, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant."

for us to have, among other things, rights to do with ourselves as we choose, as well as rights against anyone else's making us do otherwise. In the same way that full proprietors of anything are the ones who get to say what they and others may do with what belongs to them, we as full proprietors of ourselves are accordingly the ones who get to say what we and others may do with our bodies, minds, labor, and talents. And for us to have such rights is, in effect, for us to have the right to be free to live as we choose, in accordance with our own personal, cultural, religious, or other values.[8]

Symmetrically, the principle of equal world-ownership is appealing because it effectively captures the pervasive political ideal of economic equality. On one construal, which a number of left-libertarians accept, for us to have equal ownership over the world's natural resources is for each of us to have rights to a certain amount of private property. In particular, it is for us to have rights to property worth an equal portion of the unadded value of all external resources, which is to say the value that resources have due to their natural features – the features they have on their own, apart from any improvement or cultivation of them on our part. And for us to have such rights is for all of us to be born endowed with a certain equal share of external property, and for none of us to be born consigned to propertylessness.[9]

In short, left-libertarians have argued along these lines that principles of self-ownership and principles of equal world-ownership are both compelling ideas. Some have then gone on to note that Nozickian right-libertarianism and Rawlsian egalitarianism both include only one of these two principles – and thus can boast the attractions of only one of the two. By contrast, left-libertarianism encompasses both principles, and thus can claim the appeal of both at once. Left-libertarians have in some cases suggested that this provides us with a reason to embrace left-

[8] Ibid.
[9] Ibid.

libertarianism over either of these alternatives in the debate over distributive justice.[10]

However, in the ensuing dialogue between left-libertarians and their interlocutors, most of whom have been either right-libertarians or other egalitarians, this unification of opposing ideas has proven in many ways to be a liability rather than an advantage.

In the first place, since left-libertarianism affirms both the principle of full self-ownership and that of equal world-ownership, it has elicited all the same criticisms that have been raised against these principles taken individually. Right-libertarians including Feser and Narveson have objected to left-libertarianism in much the same way they have objected to other forms of egalitarianism, namely by saying that there are no strong positive arguments to support the principle of equal world-ownership, and some have even suggested that this principle clashes with that of full self-ownership.[11] Just so, egalitarians such as Cohen and Arneson have objected to left-libertarianism by contending that the principle of full self-ownership lacks compelling foundations, and by renewing their insistence that that full self-ownership rights, and especially rights to the fruits of one's natural endowments, bring about unacceptable material inequalities.[12] In brief, figures on both sides largely have not been impressed with the affinities between their own views and left-libertarianism, and have instead for the most part only taken issue with the divergences.

Beyond this, left-libertarianism has also elicited criticisms which do not specifically target either one of the principles constitutive of the theory, but instead challenge the attempt to combine the two into one viewpoint. The notion of conjoining principles that so many have seen as foundational to two diametrically opposed views can easily come across, not as an inventive

---

[10] Ibid.

[11] Feser, "There Is No Such Thing as an Unjust Initial Acquisition;" Narveson, "Property Rights: Original Acquisition and Lockean Provisos;" Mack, "What is Left in Left-Libertarianism?"

[12] Cohen, *Self-Ownership, Freedom, and Equality*, ch. 4, sec. III; Arneson, "Self-Ownership and World-Ownership: Against Left-Libertarianism."

and appealing compromise, but instead as a mere contradiction, or at any rate an incongruity of some sort. Authors such as Arneson, Fried, and Risse, while conceding that full self-ownership and equal world-ownership are formally compatible, have nevertheless gone on to argue that left-libertarianism is in a sense incoherent. To wit, as Risse puts the point, the strongest arguments for the principle of full self-ownership are at best unrelated to, and may indeed be profoundly in conflict with, the best arguments for the principle of equal world-ownership. Full self-ownership, for example, may seem to rest on deeply individualistic ideals, and equal world-ownership on ideals of solidarity. Hence, even if the two principles do not clash with one another directly, the considerations which support them cannot fit together as part of a single cohesive theory.[13]

Left-libertarians – in particular, Steiner, Vallentyne, and Otsuka – have replied to these challenges in effect by arguing that there is no need to answer them, at least not in the way their interlocutors demand. To the objection that they give no deeper arguments for their views, left-libertarians have responded that the justification for their principles is simply that they capture our intuitions about personal liberty and economic equality – and no more foundational case than this is necessary. To the objection that they do not answer the challenges to the principles of full self-ownership and equal world-ownership, left-libertarians do not seem to reply at all, perhaps supposing that they have already adequately addressed the criticisms directed towards each principle by affirming the other one. Lastly, to the objection that their two core principles lack coherent foundations, they respond again that it is not necessary to provide any more general or fundamental justification for these principles, and thus there is no danger that they will run into inconsistencies in the process of giving such a justification.[14]

My own stance is that these objections to left-libertarianism have a great deal of force,

[13] Fried, "Left-Libertarianism: A Review Essay"; Arneson, "Self-Ownership and World-Ownership: Against Left-Libertarianism;" Risse, "Does Left-Libertarianism Have Coherent Foundations?"

[14] Steiner, Vallentyne, and Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant."

and that these responses from Steiner, Vallentyne, and Otsuka do not effectively meet them. I agree with critics that left-libertarians should offer some general defense of the central principles of their theories, and should not merely rest their case on intuitions which many of their interlocutors would reject out of hand. I also agree that left-libertarians need to offer some answer to the objections that full self-ownership has unacceptably anti-egalitarian implications, and that equal world-ownership has unacceptably anti-libertarian implications. And finally, I agree that when left-libertarians offer, as they should, a principled argument for their theories from more general foundations, they should ensure that they rest their case on a unified and cohesive set of considerations, rather than deriving their commitments from wholly independent or potentially even conflicting premises. Left-libertarians, in sum, must indeed answer the questions that their interlocutors have raised, and must indeed do so in the ways that their interlocutors have called for.

In what follows, I aim to lay out a new version of left-libertarianism, one which draws a great deal from existing forms, but also adds and modifies a number of elements. Specifically, I aim to set forth a left-libertarian theory of justice which withstands these criticisms, among a number of others, more effectively than existing theories do. I aim, in other words, to present and defend left-libertarianism in a way which shows that there are indeed compelling foundations for the principles of both full self-ownership and equal world-ownership. I also aim in doing so to show that the grounds for each principle are compatible with the grounds for the other, and indeed the grounds in question are in large part the same in both cases.

I will begin, in the first chapter, by giving a history of the family of theories of justice to

which left-libertarianism belongs, namely the family of *natural rights theories*, and specifically the *liberal* and *egalitarian* branches of this family. I will trace natural law and natural rights theories back to ancient authors including Cicero and Ulpian; follow their development in works from medieval theorists such as Gratian and Aquinas; discuss the emergence of liberal natural rights theories in Locke, Kant, and a number of other early modern figures; and also examine the formation of egalitarian ideas within natural rights theories that reached maturity texts from later modern figures including Paine and George.

I will go over this intellectual history, in the first place for its own sake as a philosophically interesting subject in its own right, but also as a means to engaging with certain objections to left-libertarianism and similar viewpoints. For example, the history suggests a provisional answer to the charge that left-libertarianism's two principles are inconsistent or incoherent. As we will see, many natural law and natural rights theories across history, going back even to the medieval period, have been committed both to ideals such as personal liberty, often associated with private property and full self-ownership, as well as ideas of economic sufficiency or equality, often associated with some form of common ownership over the world's resources. If we are to interpret this long line of theories with any degree of charity, we must suppose, at least tentatively, that they are not all fundamentally self-contradictory or incohesive by virtue of their inclusion of these two sorts of principles at once.

In the second chapter, I will define and delimit the subject matter of my theory, namely the topic of justice and rights. What is most basic here is my account of directed duties, which is to say duties *to* someone or other being; in this area, I set forth what I call the *open theory* of such duties, which defines them in a deliberately minimalistic fashion as duties the reason for which is something about the person or other being who is their object. I also lay out an account of rights, namely what I call the *vindication theory*: rights are incidents which serve to vindicate

our side in disputes over directed and enforceable duties – establishing that we have not violated such a duty towards others, or that others have violated duties toward us, or else those we represent. I define justice, conventionally, as respect for the rights of others. In addition, I specify that my theory is concerned with justice and rights in particular among fully rational agents, a category I take to be almost entirely coextensive with the category of adult human beings.

I will discuss these matters, to begin with because the nature of justice and rights is of intrinsic importance in political philosophy, but also once again to preempt a variety of objections to left-libertarianism and similar viewpoints. My theory will not answer a number of crucial questions in ethics – ones about the nature of the good, about moral obligations towards friends and family members, about the moral status and entitlements of children and animals, about our obligations in cases of moral catastrophe, and so on. An understandable criticism might be that these omissions are serious shortcomings in my view. My answer will simply be that my theory does not purport to answer these questions: it neither explicitly asserts nor implicitly entails anything to affirm or deny any particular response to them, and is not supposed to do so. This is because these issues all fall outside of the purview of my theory as I define it, insofar as the moral duties they involve are undirected, or are unenforceable, or are not owed to fully rational beings.

In the third chapter, I will lay out an argument for the most foundational principle in my theory of justice, namely that we all have a natural right to sovereignty. I begin from the idea that any principles of justice which apply to all of us in all cases – which are universal and necessary in scope – must be ones which we can all in reason accept. I then argue that we cannot in reason accept a principle of justice which denies us at least some sphere within which we have rights to realize what we view as good, and where others lack the right to stop us from doing so. Next, I contend that such spheres are ones where we have full and supreme authority, insofar as what

justice permits and demands within these domains depends on the values we accept, and changes when our values change. Hence, I conclude, assuming there are any principles of justice at all which apply to us universally and necessarily, then we must have a natural right to sovereignty, so defined; and this in turn constitutes a natural right to a crucial form of liberty.

As before, I make this argument in part because it serves to support my own version of the ideal of personal freedom, and providing a basis for this ideal is well worth doing in its own right. But also as before, I make this argument with further purposes in view as well. The natural right to sovereignty will be at the foundations of nearly every other conclusion I draw in the remainder of my project, including both the principle of full self-ownership and that of equal world-ownership. As a result, in giving the argument for the natural right to sovereignty, I take the first step towards showing, contrary to what critics allege, that left-libertarians can indeed provide a justification from prior and general premises for these two principles, and moreover a justification which supports both principles at the same time in a cohesive way.

In the fourth chapter, I lay out an argument for the principle that we all have the right to private ownership – including over ourselves – and specifically to unilaterally acquire such ownership. Again, we all have a natural right to sovereignty, which consists in full and supreme authority within a sphere, specifically over the actions of ourselves and others within this sphere. Now, ownership, as I will argue in this chapter, consists in rights which come with authority over actions involving objects, or over what we and others have the right to do with these objects. Furthermore, as I will also argue, all actions involve objects: in the case of every action, there is an object – more properly, a subject – which acts, and also an object on which this subject acts. I conclude that we all have a right to ownership, specifically private ownership, and indeed that this right is the same as our right to sovereignty: to be sovereign over a sphere of actions is to be the owner of a space of objects. After still further argument, I also contend that we have the right

to *unilaterally* acquire private ownership over presently unowned objects, or in other words to appropriate them even if others do not consent to our doing so.

One point of all this is to positively clarify certain concepts and justify certain ideas central to my theory. Most crucially, my arguments in this chapter constitute my own defense of the principle of full self-ownership, which is one of the two propositions fundamental to left-libertarianism, the defense of which is one of the foremost aims of my project. Beyond this, my argument supports several of the most essential and controversial ideas associated with theories similar to my own, especially commitments to strong private property rights and rights of unilateral appropriation. These positive arguments, moreover, also serve to negatively rebut various criticisms of theories such as my own. Most importantly, they answer the criticism from a number of egalitarians that proponents of full self-ownership offer no defense of this commitment beyond appeals to particular intuitions. The answer is that such a defense is in fact available – namely, the one which I present in this chapter.

In the fifth chapter, I lay out two lines of argument for the principle of equal world-ownership. The first line of argument is addressed to other egalitarians, in that it begins from premises to which they might be receptive. I start by observing that in many cases, when you acquire a part of the world as your private property, this diminishes the part of the world which is available for me to appropriate, as I cannot make mine what is now yours. I then infer that since the right to appropriation and the right to sovereignty are the same, to diminish my powers of acquisition in this way is to do nothing less than take away from my foundational natural right to sovereignty. I argue that there must therefore be some limit on the extent to which you have the right to diminish my rights of appropriation through your own appropriations in this way; and since this right is a natural one, this limit must be identical and therefore equal for us all. All of this supports a principle of equality, which says that no one has a greater right than anyone else

to take away from others' rights of acquisition by exercising their own.

I then turn to my second line of argument, which is addressed to right-libertarians, again in that it rests on premises which may appeal to them. I begin by defining the concepts of *added* and *unadded value* – the former being the value that resources in the world have due to the features which we have given them, such as by laboring on them; and the latter being the value that resources have due to features we have not given them, such as the features they have in their natural, unaltered states. I then put forth what I call the *principle of proportionality*, according to which those who have added more to the value of resources have the right to claim more of this value for themselves through acquisition – in other words, those who have made greater contributions as a result have greater entitlements, at least in these specific senses of the terms.

I go on to contend that these principles of equality and of proportionality, in addition to certain other premises, both support a principle of equal world-ownership. Specifically, they lead to the conclusion that all of us have the right to claim through acquisition as much of the value of the world's resources as we ourselves have added to them, along with an equal portion of the value which no one has added.

CHAPTER 1:

BACKGROUND AND HISTORY

In this chapter, I will go over the history of left-libertarianism, and more broadly of the wider tradition to which left-libertarianism belongs – namely, the natural rights tradition, and specifically the liberal and egalitarian strands of this tradition. I will begin with an account of the natural law and natural rights traditions in general, starting from their origins in the ancient and medieval eras, which receive their fullest expression if the works of Cicero and Aquinas, respectively. I will then give an overview of how specifically liberal natural rights theories emerge within this broader tradition in the seventeenth and eighteenth centuries, especially in the writings of Locke, Kant, and other authors from the same period. I will then trace out the rise of specifically egalitarian views within the natural rights tradition, beginning with eighteenth century figures such as Paine and continuing with nineteenth century figures like George, the first proponents of what we might call left-libertarianism proper. Finally, I will discuss the revival of left-libertarianism in recent decades, especially in the works of Steiner, Vallentyne, and Otsuka.

I give this historical overview with several purposes in mind. The primary reason is simply that this is worth doing for its own sake. Understanding the development of an important tradition in political philosophy is valuable, no matter what other ends this might happen to serve.

A secondary reason is that this history will help me present and support an answer to several basic questions you might have about left-libertarianism. While I have given a rough characterization of what left-libertarianism is, you might ask for a more complete account, in

more detailed and precise terms, of what defines left-libertarianism, and also what defines the wider tradition of natural rights liberal egalitarianism to which it belongs. Moreover, supposing you are familiar with some prominent examples of natural rights theories, such as the views of Hobbes and Locke, you might also have certain objections to the ideas you've found in them, and ask how I would respond to them.

I will be able to answer all of these questions by reference to the history I provide. This history will allow me, first, to give a more precise definition of left-libertarianism and of natural rights theory, namely by furnishing a wide range of examples of such theories from which I can abstract and generalize to frame such a definition. The history will also allow me to give an at least provisionally justified response to some of the most basic objections you might have regarding left-libertarianism and natural rights theory, namely by showing through examples that theories in the tradition do not necessarily presuppose the ideas to which you may object. Finally, this history will allow me to give an overview of my theory here at the outset, namely by providing examples of other theories to which I will be able to compare and from which I will be able to distinguish my own view.

Let me be more specific about some of the sorts of *prima facie* objections to left-libertarianism and natural rights theory I hope to rebut here. When we look at the best-known theories in the natural rights and natural law traditions, historical and contemporary, we will find a number of ideas that quite a few of us today would reject out of hand. Historically, the natural law theories of Cicero, Aquinas, Locke, and so on rested on metaphysical assumptions about the existence of God and the reality of natural teleology. And today, the authors who are most vocal about claiming a connection to the most-discussed natural rights theorists of the past are right-libertarians, who are best-known for their absolutist affirmation of private property rights and

rejection of even modest egalitarian social programs as unjust – a stance many would repudiate.

Many would challenge some or all of these ideas, and as a result many might reject natural rights theories, including my own form of left-libertarianism, on the assumption that it presupposes such notions. Thus, in this chapter, part of what I aim to accomplish by giving this history is to show that while these ideas are characteristic of certain important parts of the natural rights tradition, they are not representative of the whole.

Hence, I will show that there have long been many important natural rights theorists who have rejected the earlier metaphysical foundations of the tradition. Just so, I will also illustrate that there have long been many natural rights theorists, even within the liberal and libertarian strands of the tradition, who have rejected an inegalitarian commitment to absolute property rights. Later on, we will see that my own theory will follow these contributors to the tradition in all of these regards, avoiding any commitment to any one of these controversial presuppositions.

In short, I aim to prove that the natural rights tradition does not necessarily presuppose any of these controversial ideas, and thus any objection to my own theory resting on assumptions to the contrary will be unfounded.

1.1

Let me begin with an overview of the natural law and natural rights tradition to which left-libertarianism belongs. This tradition is distantly older than left-libertarianism, and subsumes a vast range of viewpoints on justice whose principles and implications often differ a great deal from left-libertarian ones. Nevertheless, there are certain ideas basic to the tradition which emerged only on, and which would be shared by all subsequent additions to the tradition –

including, eventually, left-libertarianism. As a result, considering these basic ideas as they originated and developed over the course of ancient and medieval history will help us understand left-libertarianism, even though the latter only comes into being at a much more recent time.

The natural law and rights traditions have always centered around the idea that there are moral standards with three features. First, they are *unconstructed*, or founded upon something more than convention – such as God, teleology, reason, and so on. Second, they are *universally applicable*, or pertain to all of us alike, no matter how unlike one another we may be otherwise. The third is that they're *universally discernible*, such that we can all grasp these standards using capacities we all share, such as our natural faculties of reason, or perhaps feeling or perception.

Viewpoints on ethics in which this idea has a central place have been present in Western philosophy, jurisprudence, literature, and so on from nearly the beginning. Ancient authors often invoke a contrast between the natural and the conventional, where roughly the former is what we have created, and the latter what we have not. These figures ascribe nature not only descriptive but also normative significance, as holding out standards of good and evil, right and wrong, virtue and vice, and so on. They then tend to impute these natural standards priority over conventions, such that we should favor the natural over the conventional when the two come into conflict. Such authors often engaged in debates focusing on the question of whether some social practice is natural, usually assuming that the practice must otherwise be unjust. These thoughts show up in one form or another in many ancient ethical philosophies, and also seem to have been common in Greek and Roman culture more broadly.

In Sophocles' *Antigone*, the play's protagonist defends her choice to bury her brother against her king's edict by appealing to a divine law above any human decree. In *On Truth*, the sophist Antiphon says that natural law enjoins the self-interested pursuit of pleasure in defiance

of human law, as other sophists do in Plato's dialogues. In Thucydides' Melian Dialogue, the Athenians explain their aggressive stance toward the Melians by asserting that natural law ordains the rule of the strong over the weak.[15]

These examples illustrate the surprising fact that natural law theory, which many later authors would use as a foundation for various conservative viewpoints, first arose at least in some instances as a provocative challenge to traditional morality. Early figures who appeal to natural laws often go on to reject our various positive laws and cultural mores, indeed sometimes even basic ethical standards, as nothing more than artificial, arbitrary, and stifling fetters on our individual wills and choices.

Although Plato and Aristotle reject the immoralist conclusions of the sophists, they still accept the sophists' premises about nature's essential ethical importance. Both authors agree that the human good consists in the exercise of the capacities which constitute our nature, yet both also argue that our nature consists in rationality. Their accounts of the virtues are similar, with both stressing that virtue involves exercising our natural rationality, especially by constraining our disorderly appetites.[16]

They thus spurn pursuing power and pleasure, as the sophists propose, as allowing one's desires to dominate one's reason, an unnatural and unhappy condition. In their political views, both authors see the social arrangements they approve as in conformity with nature, and the ones they disapprove as in contradiction to nature. Thus in Plato's ideal city all perform the tasks for which they are best suited by nature, while in Aristotle's ideal household the ones who rule are those naturally fit to do so.[17]

---

15 Sophocles, *Antigone*; Antiphon, *On Truth*; Thucydides, *Peloponnesian War*, ch. XVII; Plato, *Republic* I; *Gorgias*.

16 Plato, *Republic* I; Aristotle, *Ethics* I.

17 Plato, *Republic* IV; Aristotle, *Politics* I.

Plato and Aristotle make crucial contributions to the natural law tradition, yet they themselves do not give anything like a complete or precise account of such laws. Plato uses the term *natural law* only in presenting the views of a sophist opponent, and Aristotle speaks only rarely and briefly of a *common law* applying to all persons.[18] Later ancient figures, especially Greek Stoics such as Zeno and Chrysippus as well as Roman followers such as Cicero and Seneca, develop natural law ideas more fully.

Such theorists draw on Plato and Aristotle, as well as the Cynics, in arguing that conformity with nature is the most central criterion for happiness, virtue, and justice. They form these ideas into a broader account of natural laws as ethical principles applying to all humanity, associated with the divine and teleological order of the cosmos. A notion central to their accounts is that since we are all subject to the same natural law, we are all in a certain sense fellow citizens within a universal commonwealth.

Ancient natural law theory's most complete extant statement comes from Cicero's *On the Laws* and *On the Commonwealth.* Cicero begins from the notion that there exists a deity with a rational nature who governs the world in a providential way. This deity shows favor toward humanity, endowing us with the reasoning faculties which make up our common nature as well. Our reason itself constitutes a law for us, enjoining some acts and forbidding others; to follow this law is to follow our nature, and to deny this law is to deny our nature. This law is universal, since all beings with reason are subject to the law, and eternal, since this law has divine and cosmic origins. The natural law is thus wholly distinct from civil laws, which are human rather than divine, particular rather than universal, changeable rather than eternal, and so forth. Natural law gives a role to each being in nature, and the role given to humans is to support and protect one

[18] Plato, *Gorgias*, Aristotle, *Nicomachean Ethics,* bk. V, sec. 7; *Rhetoric,* bk. I, sec. X.

another, treating all others in some sense as their kin.[19]

Ideas of this sort attained such a prominent and enduring status in Roman thought that they would appear again centuries later in the very first sections of the *Institutes of Justinian*, an authoritative codification of ancient jurisprudence. Much like prior texts, the *Institutes* describe the laws of nature as standards which are "prescribed by natural reason for all men," and "common to the whole human race," and which contrast with the more familiar civil laws which are peculiar to each state. These natural laws are moreover "fixed and immutable," as well as "established by divine providence," and this further distinguishes them from civil laws, which are "subject to frequent change" depending upon the decisions of the legislating authorities.[20] The *Institutes* contain some of the earliest extant expressions of a number of other propositions and concepts, such as ones relating to natural liberty, original appropriation, and the consent of the governed, which have remained central to the natural law and natural rights traditions ever since.

In late antiquity and the Middle Ages, many authors would contribute to the project of integrating these originally pagan ideas with the increasingly widespread Christian worldview. Fortuitously, pagan natural law theories were similar to Christian doctrines in so surprisingly many respects that their integration would prove relatively straightforward. Pagan natural law theories had often supposed that natural laws came from a rational and providential divinity whose decrees enjoined us to live in accord with our nature; Christian doctrines affirmed that there is a God who created us and all other things, has assigned us a certain role in the world, and has decreed laws for us accordingly. These common concepts led late antique authors like Augustine and Isidore to see the traditions as in harmony with one another; some would even sup-

[19] Cicero, *On the Laws*, bk. I; *On the Commonwealth*, bk. III, 32-41.

[20] *Institutes*, bk. I, tit. II, 1, 5, 11. More precisely, the *Institutes* ascribe these features to the "law of nations," a term which many others in the tradition would use to refer to civil laws, but which the Institutes idiosyncratically use to refer to what other theorists would call the law of nature.

pose that Christian scripture contains a reference to natural law, namely in Paul's comment that the law is written on the hearts of people of all nations, who thus follow this law "by nature."[21]

Thus, the ideas of the natural law tradition were central to discussions of moral, legal, and political philosophy from the beginning of the Middle Ages. One of the earliest foundational texts in this area from the period, namely Gratian's *Decretum*, a work of canon law, was composed in no small part of quotations taken directly from natural law texts from late antiquity. Hence, in defining natural law, for example, the text reiterates Isidore's definition, which in turn reiterates the *Institutes*', according to which natural law is that which is "common to all nations," and which does not depend for its force on "any enactment." The text not only assumes that natural law theory is in harmony with Christianity, but even goes so far as to explicitly equate the two. "Natural law," Gratian writes, "is what is contained in the Law and the Gospel" – and especially Jesus' Great Commandment.[22] The medieval proponents of natural law theory had come to see the tradition as essentially Christian, either dismissing as irrelevant, or perhaps overlooking altogether, its pagan origins – an identification which would persist throughout much of its later history.

The fullest statement of medieval natural law theory comes in Aquinas' *Summa Theologica*, which elaborates on and systematizes the tradition's ideas perhaps more fully than any previous author in the tradition, at least in extant texts. Like his predecessors as far back as Cicero, Aquinas also starts from the notion that there exists a rational and providential God, albeit one now construed in Christian fashion as a unique and personal creator God. This God governs the universe in accordance with a certain law, which he promulgates by "imprinting" this law upon each thing. The law endows all beings with their own proper ends, in the teleological sense,

[21] Augustine, *Eighty-Three Questions*, q. 53; Isidore, *Etymologies*; Romans 2:15.
[22] Gratian, *Decretum*, distinction 1, pt. 1.

which God also imbues them with a natural inclination to pursue. Now, since we in particular are rational beings, God imprints this law upon us in the form of knowledge. We thus have a share of the Eternal Reason, and it is this share which constitutes the natural law. This is a universal and immutable law, which we all grasp at least in the fundamentals; and what this law commands is that we pursue good and avoid evil, where the former includes preserving ourselves, fulfilling bodily needs, and attaining higher goods such as knowledge and society.[23]

So far, in our historical overview, we have only been discussing the notion of natural *laws*; but we should now shift to discussing the idea of natural *rights* as well. Before we can do so, however, there will be several issues we need to address in advance. There has been a tremendous amount of debate over the last century over questions as to when and why natural rights theories first arose. These historical disagreements have, in turn, brought to the fore a number of conceptual disagreements about how to define natural laws and natural rights, and how understand the relation between the two. Any account of the development of natural rights theory must take some stand on these debates, and must give some explanation and defense of that stance. Thus we will will need to deal with these matters before resuming the historical narrative proper.

We can sort the parties to the debates over the history of natural rights theory into two broad sides, albeit with the admission that there are many disputes over more specific issues within both camps.

For those on the first side, natural rights theories are peculiar to the modern era; in one

[23] Aquinas, *Summa Theologica*, I-II, QQ 90-108.

author's words, they are as modern as the "internal combustion engine."[24] According to this side, while natural rights theories plainly draw upon older sources such as the natural law tradition, they themselves were absent in the ancient period, and at most nascent in the late medieval period. They went through infancy with Ockham and Gerson at the very earliest, came to adolescence with Hobbes and Locke, and rose to full maturity with Rousseau and Kant. Authors on the first side accordingly often suggest that natural rights theories inherently reflect peculiarly modern political and economic tendencies, such as liberalism and capitalism. They also often tend to suggest that there is a profound conceptual separation, and often even an outright conflict, between the notion of natural laws and that of natural rights, such that the emergence of natural rights theory represented some sort of fundamental deviation from the principles of the natural law tradition. We can find such views in authors such as Strauss, Villey, Macpherson, and MacIntyre. It is notable that these authors largely, although not entirely, view these developments negatively – as a sort of falling-away from the perennial wisdom of the previous natural rights tradition. For example, MacIntyre claims no culture prior to the late Middle Ages had so much as a word for rights, just before spurning rights as fictions on a par with "witches and unicorns."[25]

According to those on the second side, natural rights theories first emerged well before the modern era, and so need not be bound up with distinctively modern ideas. A few figures on this side, such as Vlastos, Miller, and Atkins, have gone so far as to argue that natural rights are present – albeit not necessarily in an especially central or overt way – in texts from ancient figures such as Plato, Aristotle, and Cicero. Others, including Finnis, Tierney, and Oakley, trace natural rights to medieval authors, finding the origins of such rights in canon law in the twelfth

[24] Minogue, "The History of the Idea of Human Rights."

[25] MacIntyre, *After Virtue*, p. 69; Strauss, *Natural Right and History*; Villey, *Historical Lessons of the Philosophy of Right*; MacPherson, *The Political Theory of Possessive Individualism.*

century or Aquinas in the thirteenth.[26] Accordingly, those with this second view often resist the notion that natural rights theories are somehow ascribable to modern arrangements like liberalism or capitalism, since on their view these theories arose long before such systems came into being. Moreover, authors on the second side often question the conceptual suppositions behind arguments from those on the first side about the relationship between natural law and natural rights. For example, they dispute the idea that an emphasis on natural rights is somehow fundamentally incompatible with an emphasis on natural laws, or more generally that the two notions necessarily presuppose conflicting moral, political, or metaphysical ideas.

My view is that, on balance, the evidence favors those on the second side over those on the first. To be sure, there is some truth to the first view: for many ancient and medieval authors, virtue and happiness tend to be the primary concepts in ethics, while rights by contrast are auxiliary at the very most. Certainly, to say that Aristotle and Aquinas lay no less stress on rights than Locke and Kant would be a towering misrepresentation. Nevertheless, the authors on the second side have gathered copious evidence showing many references to rights in pre-modern sources, and those on the first side seem to lack any clear response to this evidence. Indeed, in many cases the latter seem unaware that there is any such evidence, or give only weak replies to the counterexamples. To name one especially stark example, MacIntyre does not provide even a single citation to support his sweeping claim that rights were unknown throughout the pre-modern world, let alone address or even acknowledge any evidence to the contrary. Moreover, authors on the second side have also pointed out that the authors in the natural rights tradition have defended a vast range of positions, both on practical issues of how society should be arranged, and on theoretical issues of metaphysics and the like. This variety is overwhelmingly strong evidence that

[26] Tierney, *The Idea of Natural Rights*; Finnis, *Natural Law and Natural Rights*; Oakley, *The Watershed of Modern Politics*.

natural rights theory does not, in and of itself, presuppose any particular viewpoint on these matters.

The question of how natural rights are supposed to be different from natural laws is also disputed, but the most common way of drawing the distinction, amended and simplified in a few ways, is as follows. To speak of a *law* is in the first instance to say something about an action as such, such as that the act is morally forbidden, or morally obligatory, or else morally permissible, or what have you. A law thus has to do with what we might call the *object* of agency, namely the actions an agent performs. To speak of a *right* is instead first and foremost to say something about an agent – such as that she is morally permitted to do something, or that others are morally forbidden to do something to her, and so on. A right in other words has to do with the *subject* of agency, namely the agent who performs actions. As we have seen, a specifically *natural* law is one which is not of our creation, which is universally applicable, and which is universally recognizable; a specifically *natural* right is one which has these same three features.[27]

The question of how natural law and natural rights along with the associated traditions are related is yet again divisive, but my view is that we should see them as complementary and even interdependent. To see why, consider positive laws and positive rights as an illustration. In many cases, one of the two can imply the other: for example, if there is a positive law against arbitrary arrest, this may entail that you have a legal right to due process; if you have a legal right to free speech, this may entail that there is a law against government censorship. We can plausibly suppose that natural laws and natural rights are related in the same way: there is indeed a *difference* between the two, and one which may have some significance – but all the same, there is no *conflict* between them. This view of the relationship between natural law and natural rights fits well

[27] This strikes me as the best way of explaining the distinction between what many authors call objective and subjective right – a terminology which is likely to mislead philosophers, who are accustomed to associating these ideas with meta-ethical distinctions, which are orthogonal to this first-order normative distinction.

with the fact that for centuries after authors first began to lay emphasis on natural rights, many if not most of these same figures in nearly all cases still placed just as much emphasis on natural laws also – and sometimes even more. Even Locke, plainly one of the foremost figures in natural rights theory's history, turns out to make reference to natural laws far more often than to natural rights in the *Second Treatise*. Hence, natural law theory did not by any means cease when natural rights theory came into being; instead, the two have coexisted, and indeed in many cases coincided, ever since.

Thus, while the question of when and how natural rights theories arose is a complicated and controversial one, in my view the evidence supports the stance that they emerged in the high medieval period. On the most prominent version of this view, the true founders of the natural rights tradition were in fact the now-obscure authors of medieval canon law, along with the many others they influenced. The purpose of the canonists was specifically to codify the laws internal to the Church, but in doing so they touched on a vast range of topics in legal and political philosophy. These authors carried over many of the ideas from the earlier natural law tradition, and indeed they seem to have seen themselves as merely explicating ideas from earlier jurists, theologians, and philosophers, rather than as introducing novelties. However, while they may have done so without intending or realizing as much, they also ended up contributing something very new in their texts, namely an emphasis not only on natural *laws* but also on natural *rights*.[28] The canonists' writings would become standard points of reference for most of the major medieval authors on moral, legal, and political philosophy, including Aquinas and Ockham.

The influence of the canonists was such that by the end of the medieval era and start of the early modern in the sixteenth century, authors debating political and legal questions had come to standardly state their various answers in terms of natural rights. When the conciliarist

[28] Tierney, *The Idea of Natural Rights.*

Almain argues for the authority of general councils over popes, the premise from which he begins is that we all have a natural right to self-defense; but the papalist Cajetan responds that the pope derives natural authority from Christ. When the late scholastic Vitoria decries the treatment of Native Americans by Spain, he does so by insisting that the latter have the same natural rights as all other persons; Sepúlveda argues against this by referencing the Aristotelian notion of natural slavery. When the Calvinist du Bèze condemns the persecution of Protestants within France, the basis to which he appeals is that they have a natural right to be free from tyranny; the Leaguer Boucher similarly defends an attempt on an ex-Huguenot king's life.[29]

The sixteenth and early seventeenth centuries then saw the subtle beginnings of what would eventually prove to be a radical reinterpretation of some of the traditional ideas of natural law and natural rights theory. In particular, authors from this period began to question, albeit in comparatively restricted ways, the traditional notion that the basis for natural law and natural rights has to do with God's commands. The foremost early critics of this idea were Suárez and Grotius. Suárez' argument is that the moral rectitude or turpitude of an action is something intrinsic to the nature of the action itself, and thus is not contingent on anything beyond that nature, including the will of God. The natural law, moreover, is a power of rational creatures which allows them to direct their wills toward only those things which are in harmony with their nature – and thus in a sense is something in us, and not in God.[30] For Grotius, natural right is "the dictate of Right Reason," by whose light we recognize actions as moral or immoral, according to whether or not they suit our rational nature. Thus, natural right is based on our own natures as rational creatures, or in other words "derives from the intrinsic principles of a human being." Yet this

[29] Almain, *Tractatus de Auctoritate Ecclesiae*; Cajetan, *Apologia*; Vitoria, *De Indis*; du Bèze, *On the Right of Magistrates over their Subjects*; Boucher, *Apology for Jean Chastel*. For discussion, see Tierney's *The Idea of Natural Rights* and Edelstein's *On the Spirit of Rights.*

[30] Suarez, *Treatise on the Laws and on God the Lawgiver*, II, 5, 6.

means that, in a certain way, natural right is not directly dependent on the divine will – and Grotius even goes so far as to say that natural right would still stand even if "there is no God."[31] It bears stressing that both Suárez and Grotius both affirmed God's existence, and both even emphasized that God still has an essential role to play, of one sort or other, in relation to natural law and natural right. Nevertheless, they were among the first contributors to a shift that would eventually result in the severing of natural rights theory from its traditional theological foundations.

In the coming sections, I will focus almost entirely on the development of natural rights theory in its various forms, and will give less attention to the notion of natural law. To a degree, this reflects the historical development that over the seventeenth and eighteenth centuries, it became increasingly common to speak of natural rights in addition to – and, in a few cases, even to the exclusion of – natural rights. But this should not be taken to imply any idea to the effect that the notion of natural rights somehow superseded and replaced the notion of natural law; any suggestion along these lines would go against overwhelming historical evidence. Natural law and natural rights theories have of course both been defended consistently throughout the last several centuries; neither one has rendered the other extinct. And even more fundamentally, neither one has truly opposed or threatened the other at all, despite what some of the older intellectual histories of the traditions might suggest. Historically and contemporarily, most authors who have appealed to either one of the two concepts have also freely appeared to the other, often giving no indication that they saw any conflict between the two, and in some cases not even seeming to distinguish them at all; as I have mentioned, this is true even of some of the most prominent natural rights theorists in history. It is perhaps only in the last half century or so that there has come to be any noticeable tendency to associate the two terms with differing sorts of political philosophies. Today, those who describe themselves first and foremost as natural law theorists are most

[31] Grotius, *On the Rights of War and Peace*, prolegomena; I.I.X.I

likely to be Thomists, or something similar; those who associate themselves with the natural rights tradition are more likely to be libertarians or classical liberals of some sort. Yet this seems to be more of a difference in emphasis than in substance – it is not clear whether any significant number of those who affirm natural law would reject natural rights, or vice versa; and in at least some important instances it is plain that there is no such antipathy.

1.2

Let me now move on to discussing the history of the specifically *liberal* strand of the natural rights tradition, from which libertarianism would eventually emerge as a further sub-strand.

There are three central ideas about liberty which have appeared again and again in the natural law and natural rights traditions, starting long before the modern era. The first is that we are in some sense naturally free, rather than subject to rule by others; the second is that just rulership may still arise among us by certain legitimate means, and especially through collective agreement; and the third is that in light of these first two points, there are crucial limits on what rulers, including ones who have been thus legitimized, may justly do.

For most of the history of these traditions, the usual assumption was that while we are free *by nature*, this is largely consistent with our being deeply unfree *in society*, and compatible with institutions as authoritarian as slavery, absolutism, and so on. Starting a few centuries ago, however, theorists in these traditions began to argue that we retain fully or at least mostly our natural freedom even when inhabiting a social context; and *natural rights liberalism* is the tendency within the tradition to take such a view.[32]

Despite being precursors of natural law and natural rights theory in many ways, Plato and

[32] Edelstein, *On the Spirit of Rights*; Tierney, *The Idea of Natural rights*.

Aristotle are fundamentally hostile to any such notion of natural freedom. Both are overtly critical of principles of political liberty, which they associate with democracy, a system they both oppose, albeit in differing ways and to differing degrees; and both support social hierarchies which they take to reflect relations of natural superiority and inferiority.[33] On occasion, however, ideas similar to these three do make some appearance in their writings, albeit mostly in statements of others' views: Plato's sophists lay out an embryonic form of social contract theory, for example.[34]

Nevertheless, many other later Greek and Roman authors would by contrast uphold principles of liberty, which was after all an ideal central to their longstanding democratic and republican traditions. To name two prominent examples, Cicero, explaining and defending Roman republicanism in a natural law framework, says that "nothing is sweeter than liberty," which the best government must respect; and the *Institutes* say that "by natural law all men were born free," and even goes on to contend that slavery involves "against nature subjecting one man to the dominion of another."[35]

There were also elements in Roman law some would later interpret as expressing the notion that given our natural liberty, rulership can only arise by agreement. The *Institutes* include a maxim roughly to the effect that what touches all must be approved by all, which later authors would apply to constitutional matters, even though the original text only mentions the idea in a discussion on the almost entirely unrelated subject of legal guardianship.[36] Also in the *Institutes* is a suggestion that the basis for the powers of the emperor is that they were conferred upon him by the people, apparently by virtue of their agreement to this – a notion which would, after

[33] Plato, *Republic*, bk. V, bk. VIII; Aristotle, *Politics,* bk. I. See, however, Aristotle's more approving comments on democracy in *Politics,* bk. III.
[34] Plato, *Republic*, bk. II, *Crito*.
[35] Cicero, *On the Commonwealth*, bk. I, sec. 46-50, trans. Rudd (1998); *Institutes*, bk. I, tit. III, V, trans. Moyle (1911).
[36] *Institutes*, 5.59.5.

centuries of reinterpretations and extensions, eventually help to inspire the idea that legitimate government depends upon the consent of the governed.[37]

By late antiquity, expressions of the three fundamental ideas about freedom we have surveyed had become nearly standard for natural law theorists, including the Church Fathers. Augustine, for example, says that by the "order of nature" there should be no dominion of "man over man," and that "as God first created us, no one is the slave either of man or of sin." Slavery, then, must be "introduced by sin and not by nature."[38] Isidore likewise says that the law of nature's most central tenets include "the one liberty of all" alongside ones concerning marriage, property, and so on.[39]

As these very examples suggest, however, many ancients conjoined the view that by nature all are free with the view that in society many are unfree, and justly so. After deeming slavery contrary to natural law, the *Institutes* go on to affirm that masters have rightful authority over slaves, and say hardly anything to reconcile these views.[40] Similarly, despite having said that slavery is against nature, Augustine adds straight away that this does not mean there should be no slavery, which he says is a just punishment for sin, and which can be beneficial to the slave.[41]

An important point to acknowledge here is that, despite the similarities between these ancient ideas about freedom and the modern ideas they would later help inspire, the two are nevertheless fundamentally different. Ancient and modern authors both extol liberty, but they each do so with distinct notions of liberty in mind. The former have in mind the principles of

---

37 *Institutes*, bk. I, tit., II.6.

38 Augustine, *City of God*, bk. XIX, ch. 15, trans. Dods (1913).

39 Gratian, *Decretum*, distinction 1, pt. 1, c. 7.

40 For example, see *Institutes*, tit. VIII. The only reconciliation the Roman jurists suggest is that slavery although against the law of nature conforms to the law of nations. They are not even consistent about this distinction, however, and in any case it clashes with the assumption, traditional since Sophocles, that the law of nature takes priority over laws of nations.

41 Augustine, *City of God*, bk. XIX, ch. 15.

ancient republicanism, centering around notions of the dispersion as opposed to concentration of political power, of the rule of law as opposed to that of men, and of civic devotion as opposed to self-interested corruption. The latter have in mind principles of modern liberalism, which stress rights to spheres of personal freedom secured from state encroachment, equality of rights under the law opposed to hereditary distinctions of privilege and obligation, and – eventually, at least – the universalizing extension of such rights across differing groups of people. Modern liberals did indeed very consciously and deliberately take up many ideas from ancient republicanism, perhaps most notably those of popular sovereignty and the separation of powers, and in a number of cases they very much thought of themselves as recovering and reprising ancient ideas. In fact, however, modern frameworks often redefine in profound ways the concepts they share with ancient ones, and incorporate many new notions and concerns ancient authors did not anticipate.

Medieval natural law and natural rights theories inherited all the ideas from the ancient world about natural liberty and natural subjection at once – and thus inherited the internal tensions between them as well. Many authors from the Middle Ages reaffirm Isidore's principle asserting the one liberty of all; for example, the maxim has a central place in the *Decretum*, and Aquinas quotes it approvingly.[42] But like their ancient predecessors, the *Decretum*'s authors go on to add that enslavement can be just, and Aquinas that slavery is a rational and beneficial institution, a view he elsewhere defends by appeal to Aristotle's conception of natural slavery.[43]

The political debates of the Middle Ages often concerned questions about the extent of the powers of the papacy in relation to secular authorities, especially the Holy Roman Emperor, and other religious authorities, such as ecumenical councils. Many parties to these debates invoked these traditional principles about natural liberty and authority to defend their stances,

[42] Gratian, *Decretum*, distinction 1, c. 7, sec. 3; Aquinas, *Summa Theologica*, I-II, q. 94, a. 5.
[43] Aquinas, *Summa Theologica*, I-II, q. 94, a. 5; *Commentary on Aristotle's Politics*, 1.4.11.

often interpreting these ideas in novel ways, and now often stating them in terms of natural rights in addition to natural laws.

For instance, Ockham, one of the foremost critics of papal power, contends that as a foundational principle people enjoy a certain "natural liberty" by virtue of which no one may justly rule them "against their will." On the contrary, any given people has "the right to elect the one to be set over them." Moreover, even the rulers who have been elected in this way have the right to command only what serves the common good, and so may not use their rulership merely to serve their own private interests. These constraints, Ockham says, apply even to popes – contrary to the suggestions of those, such as Giles of Rome, who would ascribe the papacy virtually limitless powers over not only ecclesiastical but also temporal matters.[44] Other medieval opponents of papal power, such as Marsilius of Padua, express ideas broadly similar to those of Ockham.[45]

Just as ancient authors had bequeathed the tradition's three basic ideas about freedom to medieval theorists, so medieval figures in their turn would pass on these same notions to the authors of the sixteenth and seventeenth centuries. Thus Suarez states that "man is by his nature free and subject to no one;" thus, civil power must flow "from the people as a community," and cannot "otherwise be justly held."[46] Similarly, Grotius says that due to our "natural liberty," legitimate authority can only arise by means of a "covenant" between us. However, much like their medieval and ancient predecessors, early modern authors also held to a number of other commitments not clearly reconcilable with these principles of freedom. After speaking of natural liberty, Grotius then goes on to say that in principle almost any form of rulership can be just. Even absolute monarchy, he says, can be rightful, assuming that this is what is agreed upon as

[44] Ockham, *Dialogus* III.I.6; III.II.6.
[45] Marsilius of Padua, *Defensor Pacis*.
[46] Suarez, *Treatise on the Laws and God the Lawgiver*, III.I.1, III.IV.2.

part of the terms of society's political covenant.[47]

During this same time period, however, more and more authors began to appeal to the three principles of liberty we have discussed, not merely to rationalize the existence of rulership and hierarchy, but instead to forcefully criticize state authority. In particular, in the midst of the many conflicts across Europe during and after the Reformation, a number of authors criticized attempts by monarchs to constrain the religious beliefs and practices of their subjects; and these authors turned to the natural law and natural rights traditions, and especially the ideas about liberty in these traditions, to provide a foundation for their criticisms. For example, one anonymous text, written amidst France's repression of Huguenots, restates the traditional ideas that we are naturally free, and government can only justly arise through consent. It then goes on to say, unlike many prior authors, that we cannot consent to tyranny, on the grounds that we can only consent to that which benefits us – and tyranny, it argues, cannot be in our interest, since the arbitrary power of a tyrant imperils our very survival. Thus, despotic government is illegitimate, and we even have a right to resist it by force.[48] Another text, from the time of the Dutch Revolt, affirms that we all have a natural right to freedom of conscience, and concludes from this that states should not attempt to enforce religious beliefs or practices. Many other texts from the same period appeal to the notion of government by consent and the right to resist tyranny as a matter of self-defense.[49]

---

[47] Grotius, *Rights of War and Peace*, ch. IV, XV, I, n. I; *Preliminary Discourse*, XVI, ch. III, VIII, I.
[48] Anonymous, *Vindicae Contra Tyrannos*.
[49] Anonymous, *Discourse Concerning the True Understanding of the Pacification of Ghent*, translated and quoted in Gelderen, *The Political Thought of the Dutch Revolt*, p. 225.

Drawing on these various precursors, but also going further than they ever had, *natural rights liberalism* as such came into being during the mid-to-late seventeenth century, especially in the context of the English Civil War and the Glorious Revolution. Both conflicts began with what many viewed as domineering impositions by English kings in disregard of Parliament relating to matters including war, taxes, and religion; and the former conflict in particular would lead to years of turmoil and violence. Concerns relating to religion had perhaps an especially important role, as these wars were in many ways extensions of the broader hostilities across much of Europe which began with the Reformation.

These events gave rise to many debates, about not only the issues specific to the context of seventeenth-century England, but also more general questions about the rightful extent of authority and liberty in any society. The participants in these debates included, on the one hand, the supporters of Charles I and II, as well as of James II, who argued for for extensive powers for rulers and only limited freedoms for subjects. On the other hand, there were also the supporters, first of Parliament and then later of William, who defended their cause by advocating in effect for the opposite ratio of power to freedom.

Many figures on the former side of the debate directly referred to natural rights in defending their stance. These authors were some of the last figures in the natural rights tradition to maintain the position, which had been predominant throughout most of the prior tradition, that even the most extreme hierarchies of authority and obedience can in principle be legitimate, at least in society if not in nature. One prominent example here would be Locke's antagonist, Filmer, one of history's foremost defenders of the divine right of kings, who claims that monarchs are the heirs to the lordship over the world God gave to Adam, and thus have a "Natural Right" to rule their subjects just as fathers have to rule their children.[50] In a similar

[50] Filmer, *Patriarcha*.

spirit, Sherlock, another royalist figure from the time, argues that a king is nothing less than "God's minister and Vicegerent, and Subjects are expressly forbid to resist; and it is a vain thing to pretend a natural right against the express Law of God."[51]

By far the most sophisticated author on the royalist side however was Hobbes, whose infamously grim political philosophy, also expressed in terms of natural rights, was at least in part a reaction to the chaos and violence of this period of civil strife.[52] Hobbes' account is the most detailed modern statement of *illiberal* natural rights theory, affirming that we all have a natural right to freedom, yet also affirming that despite this natural liberty – and indeed, in a way, *because* of it – we can legitimately established absolutist governments, and ought to do so.

Hobbes' theory starts from the idea that we have a natural right to do whatever we judge we must do in order to preserve our lives. Now, since hypothetically *anything* at all might be instrumental to our survival, this means we have a natural right to *everything* there is, including even the very bodies of others. However, if indeed each one of us has such a right to all things, then we are bound to clash with one another – perhaps out of need, perhaps out of fear, perhaps out of pride. In the state of nature, where we all cling to our right to all things, there is thus a war of all against all, and life is as a consequence "nasty, brutish, and short."[53] To avoid these ills, and to have peace, we must give up our natural right to all things, and submit to the rule of a common authority to determine and enforce a resolution to our conflicts. This sovereign, to ensure peace, must have virtually unlimited power over nearly all matters, from the legal to the political to the ecclesiastical. The freedoms subjects are to retain are few: only in exceptional cases do they have any right to disobey a command of the sovereign, such as ones where the sovereign orders them to commit suicide – since the sovereign's authority over them, being

[51] Sherlock, *The Case of Resistance of Supreme Powers*.
[52] It was not entirely so, of course; he had similar ideas even before these conflicts began.
[53] Hobbes, *Leviathan*, pt. I, ch. XIII.

founded after all on the imperative of their self-preservation, cannot extend this far. The sovereign, in sum, is to be nothing less than a "Mortall God," with a power comparable to that of the Biblical monster after which Hobbes names his text.[54]

Again, however, there were many other authors during the time of the English Civil War and Glorious Revolution who opposed these sorts of absolutist views, and they too even more famously invoked natural rights. The radical Parliamentarian Overton, to name one example, declares that we are all free and equal by nature, and have natural ownership rights over ourselves, which we do not lose when we pass from the state of nature into civil society.[55] The Parliamentarians as a group, in one text, present their cause as the defense of rights which they call "native" or "common" – in other words, natural rights – which they take to include rights to freedom of religion and a certain sort of equality under the law.[56]

However, by far the most influential author on this side of the debate was Locke, who sought to "establish the throne" of William by defending the political order he associated with the new king.[57] Locke is the first author to articulate a fully systematic natural rights theory we can class as specifically *liberal* in character, even though he had various less systematic predecessors, and even though the term *liberalism* in fact only came into existence well after his time.[58] Locke affirms once again the principle that we are all naturally free, but he emphatically rejects the view that we entirely forfeit this liberty in society, saying instead that we retain most of our natural freedom even after entering the civil state.

Locke begins, as do so many earlier theorists, from the core premise that there exists a providential God who has decreed a natural law for us. This law says that we all have rights to

---

54 Ibid., ch. XVII.
55 Overton, *An Arrow against All Tyrants.*
56 New Model Army, *An Agreement of the People.*
57 Locke, *Two Treatises of Government*.
58 Rosenblatt, *The Lost History of Liberalism*.

our life, liberty, and possessions, which no one may infringe, except as redress for an injustice. Our rights under the law of nature include rights of ownership over our bodies and labor, as well as rights over the external resources we acquire by mixing our labor with them – so long as we follow certain rules in making these acquisitions, most prominently including the rule that we must leave enough and as good for others. In the state of nature, where there is no law but the law of nature, we are all free and equal, and no one of us has any asymmetrical authority over the rest. In this state, the right to punish violators of the law of nature belongs to everyone, rather than being the natural prerogative of only some and not others. However, this leads to conflicts about which punishments are fair, given that we are liable to be disproportionately harsh in punishing those who have wronged us, and to demand excessive leniency from others whom ourselves we have wronged. To avoid this, we agree to form civil societies, giving up our rights to punish to a common authority who adjudicates our disputes. This authority, however, must be limited rather than absolute, and must respect various personal liberties of individuals.[59]

Locke is also among the first to give a detailed account of what our natural rights to liberty involve beyond the absence of natural subjection to the rule of others. Specifically, he gives one of the earliest expressions of the notion that individuals' rights to liberty entitle them to spheres where they are free to realize their values – to "order their actions, and dispose of their possessions and persons, as they think fit."[60] This principle plausibly underlies his views about the other freedoms we should have, such as his view that we have a natural right to liberty in religious belief and practice – which we may interpret as a right to live according to our own religious values within our own spheres.[61] He argues that we cannot entirely give up our rights to freedom to our rulers, even in the event that we consent to this, since to do so would be in effect

[59]Locke, *Essays on the Law of Nature*, essay I; *Second Treatise of Government*; *Letters on Toleration*.
[60] Locke, *Second Treatise*, ch. 2.
[61] Locke, *Letter on Toleration.*

to give up our lives – or, in the case of our rights to religious freedom, to give up the care of our souls – to someone else. But because our lives and souls ultimately belong to God, these things are not ours to give away in the first place.[62] Hence, he asserts, magistrates have no jurisdiction over such "domestic affairs."[63]

Another one of Locke's most significant contributions to the natural rights tradition is the distinctive way in which he sees our rights to liberty as related to our rights to property. In particular, Locke's surprising contention is that our rights to liberty are *identical* to rights of private property. In his view, *all* rights are property rights: he contends that "[w]here there is no property, there is no injustice," and that to have a right is just to have the "free use of a thing."[64] Even our rights over our "lives" and "liberties," no less than those over our "estates," are property rights; famously, or infamously, he views our very bodies and our labor themselves as our property.[65] Our rights as owners include rights to dispose of our property as we choose, "without asking leave" of others, and against others' meddling with our property, or taking the fruits we gain from laboring upon them.[66] Ownership thus gives us a space where we may use things as we choose, and others may not stop us from doing so; and this constitutes a sphere where we may act and live according to our own values rather than those of others. Natural rights theorists before Locke had long been especially interested in property, and a few minor figures had advanced the ideas that all rights are property rights, and even that our rights over ourselves are rights of ownership. But Locke would be the first theorist of lasting importance to defend these notions about private property, which have been influential for many subsequent natural rights liberals, both on the right and on the left.

---

62 Locke, *Second Treatise*, ch. IV; *Letter on Toleration.*
63 Locke, *Letters on Toleration.*
64 Locke, *Essay Concerning Human Understanding*, pt. II, ch. III, sec. 18; *Essays on the Law of Nature*, essay I.
65 Locke, *Second Treatise*, ch. V, sec. 27; ch. IX, sec. 123.
66 Ibid.

We should be sure to note, however, that while Locke and others from his time are certainly far more liberal than figures like Hobbes, they are also far less liberal than many later theorists in the tradition would be. To name a few illustrations of this point: although Locke rejects absolute monarchy, he still accepts constitutional monarchy; although he rejects hierarchies in natural rights, he accepts hereditary aristocratic distinctions; although he rejects encroachments on the religious liberty of many Christians, he has no objection to discrimination against atheists; and although he rejects most slavery in the abstract, he is uncritical of the institution in practice. The later natural rights liberalism that would emerge during the Atlantic Revolutions would, especially in its more radical forms, go much farther in all of these regards than Locke would ever have countenanced.

Another seventeenth century liberal natural rights theorist to discuss is Spinoza. On Spinoza's view, we have the natural right to do anything at all that we have the power to do; we thus have a natural right to preserve ourselves and our powers when we can do so, by any means available to us. In the state of nature, we are liable to clash with one another; yet we are far more powerful when we unite; and thus uniting in this way is in accordance with natural right. We must agree to form a commonwealth for our mutual protection against violence, and within this commonwealth each one of us must abide by the will of the whole, which must direct each to live by the dictate of reason and promote the welfare of all. Even so, some matters are not subject to the collective will of this commonwealth, such as religious faith, if only because the state cannot control them by means of laws. Absolute monarchy is flawed, since such a system produces not peace but instead mere slavery; and democracy is the form of government that is most consonant with our natural liberty and equality.[67]

A final point to note is that several later seventeenth-century figures, especially Hobbes

[67] Spinoza, *Tractatus Politicus*, *Tractatus Theologico-Politicus.*

and Spinoza, made important contributions to the process, which Súarez and Grotius had initiated, of separating natural rights theory from its traditional foundations in theology and teleology. To be sure, Hobbes and Spinoza were both believers in God, and both appealed to God and religious ideas in their political philosophies at some points. Nevertheless, they diverge from the earlier tradition in profound ways. Both authors have highly idiosyncratic conceptions of God, with Hobbes apparently understanding God to be corporeal as part of his broader materialist ontology, and Spinoza famously identifying God with nature in his pantheist metaphysical system.[68] Both authors articulate the basis and content of the central principles of their political philosophies – in at least some statements thereof – with an emphasis on voluntary agreements between individuals, and with little to no reference to the will or commands of God.[69] finally, both authors are dismissive of teleology: Hobbes rejects any category of final causes irreducible to efficient causes, while Spinoza contends that "final causes are mere human figments."[70] Hobbes and Spinoza thus represent an even further departure from the religious and metaphysical ideas on which most previous natural law and natural rights theorists had based their accounts. Despite all of this, both authors affirm natural rights at the most basic level in their political philosophies. Moreover, they give no indication that they see any conflict between this affirmation, on the one hand, and on the other their rejection of many of the religious and metaphysical concepts which had been associated with natural rights in earlier theories.

---

[68] Hobbes, *Leviathan*, pt. I, ch. XXXIV; Spinoza, *Ethics*.

[69] Hobbes, *Leviathan*, pts. I and II; Spinoza, *Tractatus Politicus*. Hobbes and Spinoza have much more to say about god in other statements of their political philosophies, as Hobbes does in *Leviathan* pt. III, and Spinoza in *Tractatus Theologico-Politicus*.

[70] Hobbes, *De Corpore*; Spinoza, *Ethics*, pt. I, appendix.

The mid-eighteenth century saw the culmination of the Enlightenment, a time noted for extensive critical reflection on systems of thought and norms, often without much deference to tradition, aiming toward progress in both theory and practice. The authors from the period who engaged in such reflection in regards to moral, legal, and political matters in large part did so within the framework of natural rights theory; indeed, it is difficult to point to more than a handful of major figures from the time who did *not* make use of such a framework.[71]

Philosophers from the era, like Voltaire and Diderot, invoked natural rights in objecting to a wide range of social arrangements and attitudes prevailing at the time. Jurists such as Blackstone and Beccaria also appealed to natural rights during the period with a view to rationally reordering both the theory as well as the practice of law. Early economists such as Quesnay and Turgot also made use of the notion in formulating both descriptive and normative principles regarding property and commerce.

Moreover, these authors drew specifically on *liberal* natural rights ideas they inherited from seventeenth-century figures such as Locke. Hence, in much the same way as Locke had, they called on the tradition's three central ideas about liberty, which they now understood as requiring freedom in society as well as in nature, and they used these notions to more and more emphatically criticize existing conventions. Two stances in particular which became virtually standard were the rejection of absolute monarchy and of religious intolerance.

One prominent example of an author with such views would be Voltaire. He rejects arbitrary despotism and the rule of priests as violations of natural law, and instead supports institutions like those of England after William, especially constitutional monarchy and religious toleration. What is special about this English model for Voltaire is that such a system (as he exaggeratedly represents it) respects our "natural rights," including the right to "total freedom in matters

[71] Hume is one of the few clear examples, along with Bentham somewhat after this time.

affecting one's person and possessions," the right "to follow peacefully the religion one wishes," and so on.[72]

Another example would be Diderot, who defines natural rights as rules on which all persons in all societies agree, or as the objects of a "general will" distinct from private and biased "particular wills." He affirms that by natural right we are all free; that no one has any natural authority to rule over others; and that all legitimate authority must come from the "consent" of the people. This authority, moreover, is to be limited, as there are certain rights which the ruled cannot give and their rulers cannot take, such as their rights to liberty in their religious convictions.[73]

However, by far the most systematic of the French *philosophes* was Rousseau, who set forth a political philosophy which conjoins ideas from natural rights liberalism with other notions from the ancient and early modern republican traditions.

The basis for Rousseau's theory is again the notion that by nature we are free, such that no one may rule us without our consent. However, in the state of nature, we face dangers we cannot surmount alone; and hence we must unite with one another through a social contract. Now, we cannot agree to contracts unless they give us some equivalent to what we give up. Thus we cannot accept a contract which places us in the condition of slavery, or the similar condition of subjection to an absolute monarch, which offer us no benefit that can compensate for the attendant loss of our freedom and security. Instead, the only social contract under which we gain as much as we lose would be one in which we cede all of our rights over our persons and our goods to the community as a whole. By doing so, we would commit to doing what the general will of this community as a whole demands; and what it demands from us is that which serves

---

[72] Voltaire, "Government," in *Questions on the Encyclopedia*, trans. Williams, in *Voltaire: Political Writings* (1994).

[73] Diderot, "Natural Right," "Political Authority," and "Intolerance," trans. Mason and Wokler, in *Diderot: Political Writings* (1992).

the common good, as distinct from the private interests of any one person or faction. Under this system, the people are sovereign, and while they may grant special powers to govern to some specific individuals if they choose, they can also curtail or revoke these powers at will. Moreover, within this system we are all free, in that we are subject only to laws that are of our own making, in that no individual is dependent on any other particular individual, and in that we develop a sort of rational self-mastery that makes up for the loss of our natural freedom.[74]

We should note, however, that there were many figures at the forefront of the Enlightenment who were decidedly equivocal in their allegiance to liberal principles, which they construed loosely enough to fit with illiberal commitments in some areas. Rousseau, the foremost contributor to natural rights theory during the period, exemplifies this sort of surprising conjunction of both liberal and illiberal tendencies. For example, he says ringingly that man is born free yet everywhere in chains – but adds that this can be legitimate, and that he can explain why. Similarly, he says that liberty and equality are the ends of any system of legislation – but also says we must give up all our rights to society as a whole as our sovereign, including our rights over our very persons. He says that we should have freedom in certain personal matters, including ones of private religious worship – but he endorses the institutions of a civic state religion and of censorship. Hence, despite his standard place in the canon of liberalism, it is debatable exactly how liberal or illiberal Rousseau ultimately is.[75]

In the later eighteenth century, as the Atlantic Revolutions began, natural rights liberalism came to exert far more influence on history than the tradition ever had before. Episodes of unrest soon followed by outright war broke out, first in what would become the United States, then in France, and later in Haiti as well as throughout much of Latin America. In the places where they

[74] Rousseau, *Social Contract.*
[75] Ibid.

occurred, these revolutions in many cases either badly damaged or outright destroyed such institutions as monarchy, aristocracy, and colonial rule by European powers; in many cases, although far too few, they also initiated or completed the downfall of slavery.

The supporters of these revolutions almost uniformly conceived of and explained their purposes and principles by invoking ideas from liberal natural rights theories. Famously, documents like Jefferson's *Declaration of Independence* and Lafayette's *Declaration of the Rights of Man* all stress our natural rights to liberty and equality as foundational principles. Other ideas from the tradition, such as the emphasis on popular sovereignty and private property, also suffuse the era's political discourse and legal language.

Thus Jefferson's reference to "unalienable rights" in the United States' *Declaration* is plausibly an allusion to the argument, in Locke and others, that we do not forfeit our natural rights to liberty within society, contrary to what Hobbes and others say. So, too, Lafayette likely borrows from Rousseau among other theorists when he appeals in France's *Declaration* to the "general will." Louverture, who by some accounts took inspiration from Enlightenment abolitionists such as Raynal, similarly affirms in one document that Africans are the "equals... by natural right" of Europeans.

At the same time, the Atlantic Revolutions not only reflected but also drastically affected the liberal natural rights tradition. One way in which they did so was by prompting authors to become more precise about what the tradition's ideas mean. Revolutionary leaders, upon taking power, were forced to convert abstract natural rights principles into concrete constitutional provisions and legislative statutes; and to do so, they had to sort out more exact notions of precisely what our natural rights are, and precisely what institutions society must have to uphold them.

Hence, the era's declarations and constitutions proclaim that natural right requires free-

dom of speech, religion, and the press; private property and due process; equality before the law, and thus the abolition of feudal and hereditary distinctions; and also popular sovereignty, often in the form of democratic rights to vote, hold office, and so on. These ideas were not always present in liberal natural rights theories before this period, but almost every such view since then has treated most of them as basic and central.

Natural rights liberals also became much more forward-looking in their politics during and after the Atlantic Revolutions than they standardly had been beforehand. Many prior theorists had objected to established political institutions and practices, but most of them, though not all, had favored reforming rather than dissolving these structures. For example, as we noted of Locke, many earlier authors had rejected absolute monarchy, but not constitutional monarchy; and many rejected discrimination against some religious groups, but not against others.

Again, however, in many places, the revolutions resulted in the outright deposition of monarchs, the abolition of the privileges of nobles and obligations of peasants, the disestablishment of state churches, the emancipation of religious minorities, and in some cases even the liberation of slaves. These changes went far beyond what many Enlightenment theorists had envisioned, and indeed beyond what most revolutionary leaders had at first intended or expected – yet almost every natural rights liberal since has taken such things for granted.

The late eighteenth century saw important developments come to completion not only in natural rights liberalism's concrete political proposals, but also in the tradition's abstract and theoretical foundations. In previous centuries, authors like Suarez and Grotius had begun to question, and authors like Hobbes and Spinoza had come to reject outright, the notion that our natural rights arise from God and teleology. As the nineteenth century approached, critical views along these lines became far more common.

The best examples here would be those of authors such as d'Holbach and Maréchal, who rejected theism and accepted mechanist and materialist views in metaphysics, but still unqualifiedly affirmed natural rights in their writings on political philosophy.[76] To be certain, most authors still held traditional views about the basis of natural rights – see, for instance, Jefferson's appeal to "the Laws of Nature and of Nature's God" in his *Declaration*. However, exceptions to this rule became something more than sporadic during this period.

This was the area in which the foremost figure in the natural rights tradition from the late eighteenth century, namely Kant, would make his greatest contributions. While Kant was by no means radical for the time in his views on politics or on religion compared to many of his contemporaries in France, he still separates his version of natural rights liberalism as thoroughly as any other author had from the tradition's conventional foundations, and gives a more robust explanation than any other theorist had for why such a separation is both possible and necessary.

Kant's political philosophy begins from the principle that we have the right to do anything which can coexist with the freedom of all others in accordance with a universal law. Hence, we have one innate or natural right, namely a right to freedom, in the form of independence from constraint by the choices of others; and in this sense we are all our own masters. We also have rights to acquire private property for ourselves; however, we cannot make such acquisitions *unilaterally*, and instead we can do so only *omnilaterally*, in accordance with the general will of all. Since such a collective will can be present only in a civil society, we thus have a right and in fact even a duty to create such a society, or in other words to establish a state and institute laws. These states are to have constitutions which uphold our liberty, permitting us all to seek our own happiness as we ourselves view it, and forbidding others to force us to pursue happiness as they view it instead. These states must also uphold our equality as persons who all have rights against

[76] D'Holbach, *System of Nature*; Maréchal, *Fragments of a Poem on God, Manifesto of the Equals*.

one another, as well as our independence as fellow members of the public from whose will all law proceeds.[77]

As the foregoing overview suggests, Kant does not make any particular appeal to God or natural teleology in presenting and defending his principles of natural right. To be sure, unlike others, Kant does not reject such things: he strongly affirms God, teleology, and Christianity, although he understands all three in distinctive ways. However, he still denies them any foundational role in his theory of justice. His reasons for this presumably have to do with the idea, which is central to his broader moral philosophy, that the demands of morality cannot arise from any source external to us, such as God or nature, which he contends would make adherence to morality *heteronomous*. Instead, he contends that moral demands must have an internal source, namely in our own wills, or our own practical reason; and as a result, obedience to moral strictures is *autonomous*. Thus, in his views on both morality in general and on natural right in particular, Kant does not base his claims on the traditional theological and teleological suppositions we find in Locke and others.

What is still more distinctive about Kant is that he not only eschews the traditional foundations for natural rights theories, but also presents new foundations in line with the more naturalizing and secularizing tendencies of the Enlightenment. In keeping with his idea that the moral law is given by our wills or by our practical reason rather than by any outside authority, Kant says that the principles of justice are also ones which arise from our own wills, and in particular from the united wills of all of us at once. According to Kant, laws are just when and only when they could be part of the terms of a social contract on which all the members of a society would agree, at least supposing that they were to reflect on the matter in the absence of certain distorting influences. This means that the principles of justice are in a sense based on our wills, in the

[77] Kant, *The Metaphysics of Morals*, *Theory and Practice.*

form of a certain hypothetical agreement between us. Thus, just as in morality we are self-legislating rational members of the realm of ends, in politics we are independent "co-legislators" as fellow citizens of a commonwealth whose laws are based on a "common and public will" which subsumes all of our private wills.[78]

In the nineteenth century, natural rights liberalism persisted, and built in crucial ways on late eighteenth century ideas; yet the period also saw natural rights theory decline under widespread criticism from new rivals within political philosophy.

A certain tendency towards universalism had always been latent within natural rights theory. According to one of the most common characterizations in the tradition, natural rights are ones which all of us have; and thus they cannot be rights which belong to those in some groups but not others. Natural rights liberals had long drawn on this tendency in the tradition, arguing for their views by invoking these universalist themes – as Locke had, for example, in asserting that natural rights are common to all, rather than unique to Adam's heirs, as Filmer had claimed. However, natural rights liberals had been reticent to take this universalism very far. Specifically, few theorists had ever accepted the notion that persons of all races and all sexes have the same natural rights as all others. Such people were often excluded from the category of the individuals who share in our universal rights, perhaps based on the assumption that they are somehow lacking in reason. Even so, when authors in the late eighteenth through the late nineteenth centuries began to present some of the first objections raised in history to social hierarchies based upon divisions of race and sex, many did so by invoking ideals of universality and equality that they ex-

[78] Kant, *Theory and Practice*, 8:294-8.

plicitly drew from natural rights theory.

One example of a figure from the period who criticizes slavery and other racial injustices on these grounds would be Haynes. As Haynes notes, most authors in his day would grant that a man of European descent has by nature "a right to his liberty." He then points out that natural rights are by definition "placed in all nations," rather than "confined to any nation under heaven." What follows is that "an African, has as good a right to his liberty" as a European, and thus slavery is "intolerable" for both.[79] Many other authors of the era would draw similar conclusions from similar premises, including black authors like Hall and Cugoano, along with whites like Brissot and Condorcet, who call for restoring to the victims of enslavement "the sacred rights given to them by nature."[80]

Political actors realized these ideas at the time to a certain limited degree, as revolutionaries ended slavery and various other forms of racial discrimination under the law in some settings, such as Haiti, France, much of Latin America, and parts of the northern United States. In explaining and defending these actions, these figures often cited natural rights principles: Haitian leaders argued to their adversaries that "we are your equals... by natural right;" Vermont's constitution banned slavery as contrary to our "natural, inherent" rights.[81] Nevertheless, to be sure, in many instances the Atlantic Revolutions left slavery and racial discrimination in place, or even defended them; and many authors from the era who endorsed a natural rights framework, such as Jefferson, supported these practices.

In the nineteenth century, the campaigns against slavery and other racial injustices continued, and their supporters continued to appeal to natural rights principles. Douglass constantly

---

79 Haynes, "Liberty Further Extended."

80 Hall, "Petition to the Massachusetts Legislature;" Cugoano, *Thoughts and Sentiments on the Evil of Slavery*; Condorcet and Brissot, "On Slavery," in *Condorcet: Political Writings*, eds. Lukes, Urbinati.

81 Chiefs of the Revolt, "Letter to Colonial Authorities," translated and quoted in Fatton, *The Guise of Exceptionalism*, p. 30-31; Vermont General Convention, *Vermont Constitution 1777*.

does as much in his work, insisting a slave has "a natural right to his freedom," on the grounds that the slave is "the rightful owner of his own body." This is a reference to the Lockean notion of self-ownership, which Douglass explicitly describes elsewhere as his most essential conviction.[82] Other abolitionists, for example Garrison, affirmed natural rights principles in general, and even self-ownership in particular.[83] This period saw the ultimate abolition of slavery across much of the Western world, though racial discrimination, whether *de jure* or *de facto*, by no means vanished.

In regards to sex, Wollstonecraft is an example of an author from the time who appeals to natural rights principles in criticizing inequalities between men and women. Wollstonecraft cites the common premise that reason is the basis for natural rights, and notes that what follows is that women must have the same natural rights as men – unless the former somehow "want reason." However, she then invokes the widespread idea that reason is what defines human nature, giving humans their "pre-eminence over the brute creation" – which means that reason must be in the nature of women as well as men. Hence, Wollstonecraft argues that to exclude women from "participation in the natural rights of mankind" is "inconsistent" in theory as well as "unjust" in practice.[84]

Various other late eighteenth-century figures made similar arguments against inequalities based on sex, including women like de Gouges and men like Condorcet. De Gouges' famous *Declaration of the Rights of Woman and the Female Citizen* largely repeats the words of Lafayette's *Declaration of the Rights of Man*, but changes them to refer to women rather than to men alone, asserting the "natural, inalienable, and sacred rights of women," and that "woman is born free and remains equal to man." Condorcet would also take a firm a stand in support of the

[82] Douglass, *What to the Slave is the Fourth of July?*; *A Friendly Word to Maryland.*
[83] Garrison, *Declaration of Sentiments*.
[84] Wollstonecraft, *Vindication of the Rights of Woman*.

rights of women: "The rights of men stem exclusively from the fact that they are sentient beings," with capacities for rational and moral thought; and as "women have the same qualities, they necessarily also have the same rights."[85]

A number of the early feminists of the nineteenth century would follow authors like these in expressing and supporting their aims in the terms of natural rights theory. In the *Declaration of Sentiments*, Stanton and her co-authors would adopt the same approach as de Gouges, taking the text of Jefferson's *Declaration*, and changing the language so as to affirm, for example, that "all men and women are created equal."[86] Grimké would argue that "human beings have rights, because they are moral beings," and that women and men "have the same moral nature;" by consequence, "they have essentially the same rights," without regard to any bodily differences between them.[87]

These contributions in the late eighteenth and the nineteenth centuries caused lasting changes in natural rights liberalism; nearly all later contributions to the tradition would either explicitly affirm or implicitly assume equality of rights across races and sexes.

However, the nineteenth century was also a time where the natural rights tradition entered into a long decline in intellectual prominence. Many critics, ranging from utilitarians, to idealists, to conservatives, all challenged the tradition, often for being too individualistic.

According to some of the earliest and most prominent forms of utilitarianism, we are required to do what promotes the greatest happiness for the greatest number, even when this will not further, or indeed will even hinder, the happiness of some individuals. This notion has seemed to many, both among utilitarians and among their opponents, to be at odds with the natural rights liberal principle that each individual has a right to a sphere of personal liberty

[85] Condorcet, "On the Emancipation of Women," in *Condorcet: Political Writings*, eds. Lukes and Urbinati.
[86] Stanton, *Seneca Falls Declaration.*
[87] Grimké, *Letters to Catherine E. Beecher.*

where she may freely pursue her happiness alone, and where others may not compel her to advance the happiness of anyone else. This seeming discrepancy would prompt a number of utilitarians to take issue with natural rights theory, while also inspiring others to mount efforts to show that the two can be reconciled on certain points despite the appearance of conflict.[88]

Thus, from the eighteenth and early nineteenth centuries onward, many utilitarians and natural rights theorists, though not all, have seen their views as opposed. Bentham is famous for deriding talk of natural rights as mere "nonsense upon stilts," but Godwin's criticisms more clearly bring out the basic conflict between the two perspectives. For natural rights liberals, in many areas we should be free to do what we ourselves deem to be best; by contrast, for Godwin as well as for those utilitarians with views similar to his, we are instead always bound to do what is best for all.[89]

Later nineteenth century utilitarians, such as Mill, would become somewhat less scathing toward natural rights theories, but in many cases were still no more receptive to their ideas.[90] Mill's form of utilitarianism includes a number of nuances absent from his predecessors' theories, and several of these refinements make his theory more affirmative towards the idea of rights. Nevertheless, Mill still makes a point of rejecting appeals to "abstract right" in his political philosophy, apparently with natural rights theory in mind, and dismisses all talk of a social contract. Although Mill accepts the same basic rights to freedom as natural rights liberals had, he does so on the very different grounds that respecting them conduces to the general happiness.[91]

Around the same time period, German and British idealists, and those they influenced, would draw similar conclusions about natural rights theory from dissimilar premises. A

---

[88] In particular, this applies to a basic form of act-utilitarianism. Of course, there are other forms of utilitarian which differ in these regards, and may differ in ways which are more compatible with natural rights liberalism.

[89] Godwin, *Enquiry Concerning Political Justice*; Bentham, *Anarchical Fallacies*.

[90] Spencer is an interesting exception, as a utilitarian who speaks of natural rights, albeit with some hesitation.

[91] Mill, *On Liberty*; *Utilitarianism.*

distinctive tendency among idealists many areas of philosophy is to contend that concepts which others see as distinct and opposed are in fact fundamentally interconnected and unified. In keeping with this general tendency, in the field of political philosophy in particular, idealists thus often argued that the supposed opposites of individual rights and the common good are actually interdependent. Many idealists saw this position, however, as contrary to the idea, which they ascribed correctly to natural rights theory, that individuals have certain rights even in the state of nature, and thus prior to and apart from society.

Hence, the early German idealists, such as Fichte and Hegel, were ambivalent at best toward natural rights, at times seeming to affirm them, but in the end rejecting them, at least on certain construals of what such rights involve. For example, Fichte presents his project as a defense of natural rights, but ultimately he says that such rights are "a mere fiction," since "the human being has actual rights only in community with others."[92] While Hegel, for his part, draws on natural rights theory in a number of ways, he also says that in a state of nature "there are no such things as right and wrong," and so is emphatic that "the term 'natural right'... ought to be abandoned."[93]

Later figures, such as the British idealists Green and Bosanquet, were even more overtly dismissive of natural rights theory, although occasionally with qualifications. For example, Green says that a right is by definition simply "a power claimed and recognised as contributory to a common good" in a society of others who also recognize this same good.[94] Accordingly, he rejects the notion of rights in a state of nature as a mere "delusion;" and Bosanquet similarly associates the concept with "fallacies" and "illusions."[95]

---

92 Fichte, *Foundations of Natural Right*, pt. 1, div. 3, ch. 1.
93 Hegel, *Lectures on Natural Right and Political Science*, introduction, sec. 2.
94 Green, *Principles of Political Obligation*, sec. 99.
95 Green, ibid., sec. 31; Bosanquet, *The Philosophical Theory of the State*, ch. I, sec. 3; ch. VIII, sec. 6.

At the same time, we ought to clearly acknowledge here that even though utilitarians and idealists rejected *natural rights liberalism*, most of course still affirmed *liberalism* as such, as for example Bentham and Mill unquestionably did. They still accepted the same general commitments to personal liberty and representative government as natural rights liberals; they may have differed on some particulars, but no more so than figures within either tradition differed from one another. At the most basic level, they for the most part diverged only in how they conceived of the ultimate foundations of these principles, and their relationships of these principles other values.

Still, nineteenth century critics of natural rights theory also included many conservatives who rejected liberalism entirely, and who held instead that the most fundamental political imperative is to preserve adherence to tradition and religion in society. From this point of view, many saw the ideas of natural rights theory as resting upon an overly permissive and unrestrained individualism, which they viewed as unacceptably destructive of goods such as social order, cultural cohesion, and religious rectitude.

For example, Bonald rejects the view, which he ascribes to natural rights theorists such as Rousseau, that we are naturally independent, and can enter and exit social units such as states and families at will, just as we can enter or exit certain sorts of contracts. On the contrary, Bonald says, we are essentially dependent on social bonds and roles, which both make us who we are as persons and even make us *what* we are as humans; dissolving these ties in the name of individual freedom leaves us lower than beasts, and leads to ruin for ourselves and others.[96]

Even popes from the time voiced such ideas. According to Leo XIII, under liberalism "every man is the law to himself," and "individual reason is the only rule of life." However, when men choose for themselves, they often go astray, choosing evil over good and error over

[96] Bonald, *On Divorce.*

truth. Thus, to avert "trouble and disturbance," the human will has need of "light and strength to direct its actions." Such direction is to be supplied by church and state acting in tandem, compelling adherence to God's law and suppressing heresies.[97]

In sum, liberal natural rights theory, which at the start of the nineteenth century had been perhaps the most pervasive and established political philosophy in the West, became by the end of the century a marginal and disparaged perspective on politics. The view struck supporters of progress as simplistic and outmoded, yet it still seemed outrageous and pernicious to conservatives. In both cases, oddly, natural rights liberalism elicited these reactions for much the same reason, namely that it came across to most of these critics as overly individualistic.

Natural rights liberalism in particular, and natural rights theory in general, might have seemed for the first half of the twentieth century to have become extinct. To be sure, political discourse continued, as liberalism, communism, fascism, anarchism, and other perspectives all found many exponents and defenders at the time. Philosophers still reflected on these sorts of ideas about politics at a first-order level, as did the late British Idealist Bradley and the idealist-inspired pragmatist Dewey. More famously, other philosophers continued to examine the status of moral judgments at the higher-order level of meta-ethics, as did figures like Moore and Ayer. Nevertheless, the natural rights tradition, after having stood for centuries as one of the most common frameworks within political philosophy, ceased for quite some time to have any real role in the discussion. Most philosophers in the area seldom or never discussed natural rights theories at all; the few who did dismissed them for the same reasons as nineteenth-century au-

[97] Leo XIII, *Libertas*; see also Pius' XI *Quanta Cura*.

thors had.

However, events occurred during the mid-twentieth century which suggested that there might soon be a reversal in the natural rights tradition's declining fortunes. The most significant of these events would be the publication of the United Nations' *Universal Declaration of Human Rights*, an expression of the principles of the victorious Allies and their new international order after the end of the Second World War. The *Declaration* follows the structure and language of the declarations and constitutions of the time of the Atlantic Revolutions, but departs from this model in certain conspicuous ways, such as by speaking of *human rights* rather than of *natural rights*, and also affirming economic entitlements alongside liberal and democratic rights. Human rights have played a central role in politics since the time of the *Declaration*, both at the level of political practice in the domestic and the international spheres, and also at the level of theory in the fields of philosophy, politics, and jurisprudence.

The relation between human rights and natural rights is close, but also vague. Authors who accept human rights ascribe them many of the most conspicuous features of natural rights, such as those of being universally attributable, and of arising from the nature of beings like us. However, these authors seldom ascribe human rights some of the other conspicuous features of natural rights, such as that of being present even within the state of nature, or that of being universally recognizable. Hence, there have been many theorists who suppose that human rights and natural rights are one and the same, but also many who insist they are two importantly different notions. Nevertheless, whether or not human and natural rights are identical, they still have many features in common. The fact that so many were open to human rights as a concept was therefore a sign that some might also be open to a reemergence of the natural rights tradition as well.

As we might expect, then, since the middle of the twentieth century or so, natural rights

have come to regain a presence alongside human rights in political discourse and theory; however, the way in which this has happened has been surprising in certain respects. In particular, while theorists with many different political viewpoints seem to affirm *human* rights at more or less equal rates, the theorists who invoke *natural* rights in the last half-century have far more often than not been right-wing in orientation.

Specifically, the contemporary figures who have been most emphatic about associating themselves with the natural rights tradition are largely right-libertarians. These are authors who uphold natural rights liberal principles, but stress the rights of personal liberty and private ownership – and also affirm an interpretation of these principles on which they imply that egalitarian redistribution is almost always unjust. Right-libertarianism first reappeared in the writings of authors from outside of academic philosophy, including Paterson, Rand, and Rothbard.[98] Later, academic philosophers would develop the viewpoint further, including figures such as Nozick, Mack, and van der Vossen.[99]

Hence, even though the natural rights tradition has historically comprised a broad family of views which differ from one another in many and often drastic ways, the representatives of the tradition in the contemporary literature hail for the most part from only a single branch of this family, and moreover one which is in many ways unrepresentative of the tradition as a whole. As we will discuss later, this fact may lead to certain crucial misconceptions of the principles of the natural rights tradition.

1.3

[98] Paterson, *The God of the Machine*; Rand, *Atlas Shrugged*; Rothbard, *For a New Liberty.*

[99] Nozick, *Anarchy, State, and Utopia*; Mack, *Libertarianism*; van der Vossen, "As Good As 'Enough and As Good.'"

Let me now move on to discussing the history of the *egalitarian* branch of the natural rights tradition, within which left-libertarianism would eventually emerge.

There are three ideas about ownership which have come up over and over within the natural law and natural rights traditions from the ancient period onward. The first is that we naturally have common ownership over the world in some sense; the second is that we can nevertheless acquire private ownership of parts of the world in legitimate ways, such as by means of first possession; and the third is that nevertheless there are limits on private ownership requiring that we share what we own in some cases.

Authors in these traditions have construed these three ideas in different ways, some egalitarian and others inegalitarian – though for much of history those on the former side seem not to have drawn strongly redistributive conclusions from their views. Several centuries ago, however, some theorists within the natural rights tradition began to appeal anew to even more robustly egalitarian construals of these three ideas, and to take these ideas so construed to support significant economic reallocation.

The first of these three ideas about property, namely that the world initially belonged to all of us in common, has origins which predate ancient natural law theories. Extant sources suggest that the ultimate inspiration for this idea seems to have come not from works of philosophy or jurisprudence, but instead Greek mythological texts. Hesiod's *Works and Days* includes a mythic account of the Ages of Man, the first being a Golden Age where humanity enjoyed plenty and comfort without having to labor.

To Hesiod's idea that our ancestors at first did not have to deal with scarcity, many later ancient authors would add that they did not have private property, either. Plato suggests as much in the *Laws*, saying that the ideal community is the one we had in the Golden Age, and also that

in the ideal community there is no private property.[100] In their accounts of life during this mythic era, Virgil adds that none divided the land with "boundary-lines," and Ovid that all resources were "as common as the light."[101]

These ideas were so established in Greek and Roman culture that many ancient natural law authors seem to have taken them for granted in theorizing about property. Chrysippus compares things in the world to seats in a theater, which are at first in a sense common to all theatergoers, until individuals then claim them by sitting down.[102] Cicero grants that there is no such thing as "private ownership established by nature," and the *Institutes* say that many resources are "by natural law common to all."[103]

However, while many ancients agreed with the first idea, namely that the world starts out as common property in some way, many also agreed with the second idea, namely that we can nevertheless justly acquire parts of the world as private property. There were some critics, such as Plato, who argues that in the ideal city there must be no private property, at least among the guardians, on the grounds that the institution gives rise to selfishness and conflict.[104] Nevertheless, at the level of theory most Greek and Roman philosophers and jurists affirmed private property, and at the level of practice the institution was ubiquitous in ancient Greece and Rome.

Thus Aristotle famously responds to Plato's communism by contending that property should be for the most part private, though he adds that we should share with others as with friends.[105] Cicero, for his part, contends that originally there was no "private ownership established by nature." Still, by means such as occupancy, "things which had been common

[100] Plato, *Laws*, 713c-714a, 739a-e; see also 677a-680b.
[101] Virgil, *Georgics*, bk. I, trans. Greenough; Ovid, *Metamorphoses*, bk. I, trans. Dryden, Garth, et al.
[102] Cicero, *On Moral Ends*, ch. 5, bk. III.
[103] Cicero, *On Duties*, bk. I, sec. 7, 20-22; *Institutes*, bk. II, tit. I.
[104] Plato, *Republic, Laws.*
[105] Aristotle, *Politics*, bk. II.

property became private property." To be sure, we ought to allow others use our goods in a spirit of generous sharing; yet this does not require any "equalization of wealth."[106]

A certain shift began as Christianity became the faith of Rome, and as authors started the process of integrating Christian doctrines with pagan natural law theories. Christian scripture itself includes several arguably critical comments on property and wealth, often condemning riches as morally corrupting, extolling voluntary poverty as spiritually virtuous, and enjoining believers to care for the poor.[107] These remarks fall far short of affirmations of equality as such, but they have long pushed at least some Christians in that direction.

Within a few centuries, the remarks to this effect from the Bible, perhaps along with some influence from authors like Plato, would inspire several of Christianity's Church Fathers to express surprisingly harsh criticisms of private property, and to assert surprisingly strong obligations toward the propertyless, as Pierson has insightfully related in *Just Property*. Oftentimes, they voiced these views by appealing to the natural law tradition's idea that at first we all own the world in common, which they saw as having much more significant implications than most of the notion's earlier proponents evidently had.

Some of the starkest statements of this sort of viewpoint come from Ambrose. The divine will, he argues, is that "the earth should be a common possession for all." Our human sins, however, and especially our "greed," have "made it a right for a few." When a rich man gives to the poor man, this is not an act of benevolence, but instead a restitution for an unjust dispossession; the former is in effect returning what he has stolen from the latter, and in this sense is simply "giving back something that is owed."[108]

Likewise, John Chrysostom writes that "God in the beginning did not make one man rich,

---

[106] Cicero, *On Duties*, bk. I, sec. 7, 20-22; *On the Commonwealth*, 49; *On Moral Ends*, ch. 5, bk. III.
[107] See, for example, Matthew 19:23-26; Matthew 25:34-36; Acts 2:45; and 1 Timothy 3:3.
[108] Ambrose, *On the Duties of the Clergy*, bk. I, ch. XXVIII, trans. Ramsey; *On Naboth*, 12.53, trans. Ramsey.

and another poor." Instead, God made the whole of the world our "common property," and thus he "left the earth free to all alike." Therefore, he supposes, whenever there is any inequality in wealth today, "the root and origin of it must have been injustice." Gregory the Great would similarly restate the notion that when we give alms to the poor we are in fact giving them what is theirs, in an act of justice rather than mercy.[109]

Nevertheless, we have to note that the most common viewpoint among Christian authors from antiquity onward has been that unequal private property is wholly licit so long as the rich proprietor is sufficiently charitable to the poor and propertyless. Augustine, for example, takes such a view: he grants that the world was once common property, but still says that private property is now just; and he grants that the rich should give to the poor, but still says that past a certain point this is only supererogatory rather than obligatory.[110]

In the Middle Ages, when the canonists and the others whom they influenced formed the earliest natural rights theories, they reaffirmed these ideas about property. The Decretum repeats Isidore's claim that natural law ordains "the common possession of all things," but also allows "acquisition of things... taken from the... earth."[111] Notably, however, medieval jurists would not only inherit but intensify the Church Fathers' view that private owners have a duty to share their goods as a matter of justice.

The canonist Huguccio argues that since the world naturally belongs to us all, the resources we privately acquire ought to "be shared with the poor in time of need." He then goes even further still by saying that "we should keep only what is necessary" for ourselves as our private property, and then "distribute what is left to the needy." Huguccio sums up his views by

---

[109] Chrysostom, "Commentary on 1 Timothy," quoted in Pierson, *Just Property*, p. 64; Gregory, "The Book of Pastoral Rule," quoted in Pierson, *Just Property*, p. 68-69.
[110] Pierson, *Just Property*, p. 71-74.
[111] Gratian, *Decretum*, distinction 1, pt. 1, c. 7.

saying that by natural right all things are common, and therefore ought to be shared in common when urgent circumstances arise.[112]

Such ideas would later become virtually standard among medieval theorists. One author would write that when the poor take from the rich what they need to live, this does not constitute a theft on their part; another says that when the poor take from the rich in such cases, they are in fact only using what is theirs by natural right.[113] Eventually, a variation on thoughts like these would appear in the work of Aquinas, who says that all of our "superabundance is due, by natural law, to... the poor."[114]

We ought to note that these notions, at least if taken at face value, are profoundly radical. To see this, consider the staggering economic redistribution that would have to take place in our societies for *everyone* to have all they need and for *no one* to have more than this. Such a stance arguably goes beyond what even many modern egalitarians have proposed. The fact that anyone at all in the Middle Ages took up such a view is already surprising; the fact that many such authors came to take this stance virtually for granted is astonishing.

Strikingly, though, medievals seem to not to have seen this idea as provocative; few seem to have discussed, let alone affirmed, what these principles would entail in practice. Those who set out this principle did not, except perhaps in a few exceptional cases, advocate or indeed even contemplate the redistribution of *all* the comparatively vast superabundance of the church or the nobility to the many poor of the Middle Ages. Quite possibly they, like Augustine, considered the transfer of means from rich to poor to be supererogatory rather than obligatory, a matter of charity rather than justice; but this is difficult to reconcile with the fact that they regularly contended that the poor have *natural rights* to such transfers, which strongly suggests

[112] Huguccio, *Summa*, quoted and translated in Tierney, *The Idea of Natural Rights*, ch. II.
[113] Hostiensis, *Lectura*, quoted and translated in Tierney, *The Idea of Natural Rights*, ch. II.
[114] Aquinas, *Summa Theologica*, II-II, q. 66, trans. Fathers of the Dominican Province.

that they are morally required, rather than simply admirable but optional.

Several other concepts relating to property which would have a great deal of influence on the later tradition also made their first appearance in the medieval period. They included the notion that we all have ownership over ourselves and our bodies, along with the idea that in a certain sense all the rights we have are ownership rights. However, these ideas were rare at the time, and they came up for the most part only in debates utterly remote from the ones to which they would later become central, for example in discussions of whether a condemned criminal has the right to escape execution to preserve his own life.[115]

By the start of the early modern period, almost any natural rights theory which had much to say about property at all included some variation upon our three ideas about ownership: that at first we all own the world in common; that we still can acquire private property; but also that there is a certain requirement that we share what we acquire with others. Authors construed these ideas in varied ways, but often still affirmed interpretations with the potential to yield more striking implications than they seemed to realize.

For example, Grotius says that God initially gave the Earth to all humankind; that private property arose through consent; and that we have a right to use the private property of others when we need their goods to survive and the owner does not.[116] Grotius appears not to have seen this view as having especially strong consequences; but we can see how one might argue that such a stance could have vast redistributive implications in a world rife with extreme economic inequality and insufficiency.

---

[115] Tierney, *The Idea of Natural Rights*, ch. 3.
[116] Grotius, *The Rights of War and Peace*, bk. II, ch. II-III.

In the seventeenth century, just as the English Civil War and Glorious Revolution gave rise to formative discussions about liberty within the natural rights tradition, so they gave rise to such discussions about property from a natural rights perspective. Authors framed their views here by appeal to the three traditional ideas on the subject, but also by appeal to to the newer but increasingly ubiquitous notion that we are all *equal* by natural right, from which they drew very different economic inferences.

One important catalyst for these discussions was the argument from royalists that monarchs are in fact the proper owners of everything within their dominions, even including the things which are the supposed private property of their subjects – likely meant in part as a defense of the controversial taxes Charles I had imposed. Perhaps the most prominent expression of this argument again comes from Filmer, who holds that kings have inherited ownership rights over the earth from Adam, such that the whole of the earth belongs to a mere few by virtue of their birth.[117]

Such arguments prompted two sorts of egalitarian replies at the time from the royalists' opponents. One was the *minimally egalitarian* reply of authors like Locke, who denied that the world belongs solely to any aristocracy of monarchs or nobles, but still accepted private property rights with weak sharing requirements. Another was the far more *substantively egalitarian* reply of authors like Winstanley, who rejected all private property in resources, aristocratic or otherwise, and defended strong requirement to share.

Locke's political philosophy rests on the thought that at a certain basic level we are all naturally equal: the state of nature is a state of "equality" as well as "freedom."[118] Of course,

[117] Filmer, *Patriarcha.*
[118] Locke, *Second Treatise*, ch. II.

what Locke has in mind here is above all else a certain sort of political rather than economic equality. Against views like Filmer's on which some have exclusive natural rights to rule the rest, Locke says we all have the same natural rights, and that these rights forbid others to assume political power over us by certain means or in certain forms he deems unjust.

Similarly, however, Locke holds that we are also equal in our rights to property, at very least in the formal sense that he denies Filmer's idea that these rights are the perquisite of any special few. For Locke, by contrast, we all have the same natural rights in regards to property: specifically, we all own ourselves, we all initially own the earth in common, and we all can subsequently come to privately own parts of the earth. Moreover, on Locke's theory, these rights forbid others to assert ownership over parts of the world by certain means or in certain forms which he views as especially inordinate or injurious to others.[119]

Locke thus lays down at least some restrictions on rights of ownership and acquisition. These constitute his own variants on the traditional idea that private proprietors must share what they own to at least some extent, typically understood as connected in one way or another to the other traditional idea that the world at first belongs to all in common. Locke's two most important restrictions are, first, the one many call the *charity proviso*, along secondly with the more famous rule which most authors simply refer to as the *Lockean proviso*.

Locke states the charity proviso in direct response to Filmer's claim that God made Adam the owner of the entire earth. Locke argues in reply that no one can own the whole world, since this would make all others dependent on him for their survival, as he would have the right to deny everyone else the food and other things which they need to live. On the contrary, Locke says, no one has the right to acquire so much as to allow him to withhold from others “at his

[119] Ibid., ch. V.

pleasure" the goods they need to preserve their lives.[120]

Locke later states his eponymous proviso when considering the question of how someone could ever justly acquire private property without the consent of all others, supposing everyone at first owns the world in common, as he says in reply to Filmer. Locke answers that acquisitions are rightful, and are not "any prejudice to any other man," on the condition that acquirers make sure to leave "enough, and as good" for others; so long as the acquirers do not excessively monopolize resources beyond this limit, the consent of the rest is not necessary.[121]

Again, Locke's views about property are *minimally* egalitarian, but they are still very far from being *substantively* egalitarian. Locke evidently does not see his provisos as requiring that we bring about any robust sort of economic equality or sufficiency. Infamously, he argues that even the meager Old Poor Law of England is too generous: he seems to have understood his theory as entailing merely that we must provide a minimum of subsistence for those who are utterly unable to provide for themselves.[122] Nevertheless, it is significant that even as Locke affirmed private property rights, he even so took it for granted that there must be at least some minimal restrictions on ownership requiring the sharing of resources under at least some circumstances.

Only a few of the most radical theorists from Locke's period would take a more substantively egalitarian view of distributive justice. The foremost example here is Winstanley, who like Locke also firmly denies that the earth could possibly be the exclusive property of any nobility. However, he then goes much further still: because we all are "equals in the Creation," we have an "equal right" to the earth as the "common Store-house of... all Mankinde," in some sense which entails that "inclosing any part" of the land as one's "Particular propriety" is unjust.[123]

---

[120] Locke, *First Treatise*, ch. IV, sec. 41.
[121] Locke, *Second Treatise*, ch. V, sec. 27.
[122] Locke, "An Essay on the Poor Law."
[123] Winstanley, *The True Levellers' Standard Advanced.*

This divide between Locke and Winstanley was an early instance of a contrast which would go on to become central in political discourse in the following centuries. The natural rights tradition affirms that the world at least originally belongs to everyone; that there are at least some restrictions on the extent to which some may rightfully monopolize the world's resources; and also proposes that we are in some sense equal in rights. Different authors have interpreted these three ideas in very different ways, and their interpretations have vastly divergent implications in regards to distributive justice. Some authors, from Locke onward, have affirmed inegalitarian interpretations, on which the world is common property only in the sense that its unclaimed resources are available for anyone to acquire as private property; on which the restrictions on ownership only rule out the most extreme forms of monopolization, such as appropriation of the entire world, and are compatible with most inequalities short of these; and on which we are equal primarily in a civil and political sense. Other authors, starting with figures like Winstanley, have argued for egalitarian interpretations, on which the world is common property in some sense which requires its resources to be shared in some equal way; on which private property rights – if indeed we can acquire them in the first place – are conditional on the fulfillment of such a sharing requirement; and on which we are thus equal not only in a political but also in an economic sense by natural right.

These sorts of issues came into view again at the height of the Enlightenment and at the time of the Atlantic Revolutions. To repeat, eighteenth century political authors were often natural rights liberals in the vein of Locke and others from the previous century. Hence, these figures

tended to accept the tradition's three central ideas on property, including the legitimacy of private ownership. Even so, there were some theorists from the time who were critical of material inequalities, and in some cases even critical of private property itself.

We can divide the egalitarians from this time into *moderate* and *radical* figures, both of whom again standardly stated their theories within a natural rights framework. Moderates, like Paine, accepted most rights of private ownership, but also defended sharing requirements much stronger than theorists such as Locke had considered. Radicals such as Babeuf, by contrast, had an opposition to private property and an affinity for sharing requirements so strong as to constitute a form of communism.

One moderate author is Rousseau, who famously questions how the appropriation of the earth, whose fruits "belong equally to us all," could ever be anything other than sheer theft. His ultimate answer is that private property can be legitimate if and only if validated by the general will, rather than by any merely private will. He concludes from this that there should be certain restrictions on property for the sake of the common good, including ones serving to preclude at least the most extreme economic inequalities.[124]

Other important moderate authors from the period include the Physiocrats, such as Quesnay and Turgot, along with the many other figures whom they inspired. The Physiocrats, although now obscure, were some of the first contributors to the modern field of economics, and intriguingly, they stated their economic ideas in the terms of natural rights theory. They were centrally committed to natural rights to private property and free exchange, yet they also affirmed redistribution of a distinctive sort from the rich to the poor. [125]

To wit, the Physiocrats argued that we should tax the income owners derive from agricul-

[124] Rousseau, *Discourse on the Origin of Inequality*; *Social Contract.*
[125] Edelstein, *On the Spirit of Rights*, pt. I, ch. III.

tural land beyond the portion they need to pay for labor and other costs. The case they tended to make for this view is that, since this portion of income does not go toward labor or upkeep, we can tax these returns without causing any decrease in production. The Physiocrats held that this tax on landowners alone should fund all state spending, which they argued should include support for the poor who are unable to work.[126]

While these points may seem like nothing more than dry thoughts on tax policy, they were a precursor to ideas which would soon become widespread among many natural rights liberal theorists well beyond the circles of the Physiocrats themselves. What these early economists had given was in fact an initial and inchoate expression of a new way of construing the traditional natural rights principles that we all at first own the world in common and that owners have certain duties to share with others.

Again, historically, most had interpreted these principles as implying that those who are in dire need have a right to use goods of others who are not in similar straits; for example, a man who is on the verge of starving may take bread from a man who has plenty. While, as we have noted, even this idea may have significant redistributive consequences in a world of extreme material insufficiency, most proponents appear to have assumed that this principle largely requires us to share only in exceptional cases of emergency, and not under ordinary circumstances.

By contrast, the new idea forming during this time was that our initial common ownership of the earth means that justice instead requires ongoing redistribution from those who own land to all the rest of us, by such means as state taxation and provision. Moreover, what is to be redistributed are specifically the benefits from land ownership which in a sense come from the uncultivated earth itself and not from our cultivation, and thus count as what many authors would soon come to call free gifts of nature. Some authors advocated along these lines for the allocation

[126] Quesnay, *Essay Physique*, p. 372; Quesnay and Mirabeau, *Elemens de la Philosophie Rurale*, p. 226.

of property in land as such; others argued for the reallocation of a portion of the income which proprietors receive from their land.

Many theorists associated with the later Enlightenment and the Atlantic Revolutions would soon voice views like these, including many who were far from radical. Even Jefferson would insist that, since "the earth is given as a common stock to man," we should make sure that "as few as possible shall be without a little portion of land."[127] And Condorcet – certainly more egalitarian, but also certainly no radical leveler – argued that there should be taxes on land to pay for universal social insurance and capital grants.[128]

Around this time, there was also a tendency for some Enlightenment theorists, albeit far fewer than the moderate authors we have just discussed, to state views regarding distributive justice which call for a much more extreme response to economic inequalities. These radical authors, such as Meslier, Mably, and Morelly, drew on ideas about property from natural rights theories, as well as notions from the civic republican tradition, in arguing against private property outright, or for very stringent sharing requirements.

Mably, for example, says "equality is necessary for men," as "Nature gave it as a law for our first fathers," since at the outset "we found ourselves in perfect equality." Nature has not "established a particular patrimony for each individual," and on the contrary "the goods which she has spread upon the earth, were... given in common." Thus Nature "arranged to lead us toward the community of goods" to allow us to avoid "the abyss into which the creation of private property would hurl us."[129]

According to Morelly, in a society whose laws conform to the "code of nature," there will be no "division of goods," or no private property, which he sees as a pernicious "usurpation of

[127] Jefferson, "Letter to Madison, October 28, 1785."
[128] Condorcet, *Sketch*, IX, X.
[129] Mably, *Oeuvres*, p. 52-53, 70-71, translated in Pierson, *Just Property*, p. 54.

the resources that should belong in common to all humanity." Each person should own only "the things for which the person has immediate use," and should also be "sustained by, supported by, and occupied by the public expense," in exchange for "his particular contribution to the activities of the community."[130]

Radical arguments like these, however, had little effect on the ideas or the actions of most of the leading figures of the Enlightenment and Atlantic Revolutions, who again were more or less in line with Locke in their views on equality and property. Many accepted ideals of formal, civil equality, eschewed distinctions based on birth between aristocrats and commoners, and even affirmed basic support for the poor – but most were hostile to stronger calls for equality, especially in distributive matters.

One clear example here would be Kant. He affirms equality as a political ideal, argues that the state ought to provide support the poor funded by taxes on the rich, and even contends that all citizens should have the opportunity to obtain property. Even so, he stresses that he affirms a strictly civil equality compatible with even the greatest economic inequities, and says states should support only those utterly unable to provide for themselves, lest poverty become "a means of acquisition for the lazy."[131]

As the Atlantic Revolutions went on, however, events served to bring renewed focus to the subject of economic distribution and material equality and sufficiency. Revolutionary actions had equalizing effects in many places, abolishing economic privileges for nobles and obligations

[130] Morelly, *Code of Nature*, translated by Sanders in *Socialist Thought: A Documentary History* (1992), eds. Fried and Sanders.
[131] Kant, *Theory and Practice*, 8:291-2; *Metaphysics of Morals*, 6:326.

on peasants, and reallocating church and aristocratic property. Many revolutionary governments also made further economic interventions to meet the needs of their often desperate populations and retain their political support, often by limiting prices for food and other goods.

Amidst these steps toward more egalitarian and sufficientarian redistribution, continuing material desperation for many, and hostility to hierarchies of many sorts, certain figures began to propose and pursue much more drastic distributive changes. The most prominent figures of this sort would be Babeuf and his fellow conspirators, modern history's first communist insurgents, who sought to overthrow the state and establish new arrangements of radical economic equality in revolutionary France.

In their writings, Babeuf's conspirators demand "real equality," as distinct from "equality under the law," which allows "distinctions between rich and poor" to persist. In fact, they contend, "Nature gave every man an equal right to the full enjoyment of his goods," and as a result all "exclusive expropriation" is a violation of natural right. By contrast, in a just society, there must be "community of property," and we all must "put up with an equal amount of work, and draw from it an equal amount of goods."[132]

The example of Babeuf's conspiracy prompted a critical reply from Paine, whose view is one of the first complete statements of a natural rights theory which is both fully liberal and fully egalitarian. Paine agreed with most Enlightenment authors that we have strong rights to private property and to the fruits of our labor, and thus that the sort of indiscriminate leveling Babeuf envisioned would be an injustice. However, Paine also agreed with Babeuf that there was far too much inequality and insufficiency in society, and that this should be addressed through redistribution.

Paine sought to work out a form of natural rights theory which could include both of

[132] Anonymous, *Analysis of the Doctrine of Babeuf*; Maréchal, *The Manifesto of the Equals.*

these two notions at the same time. What he proposed was a system in many ways like the one the Physiocrats favored, namely one in which we can own land and other such resources as private property, but in which we must share the uncultivated value of the land we own with others. Paine, however, argued for a version of this system which was much more egalitarian than the one the Physiocrats had set forth.

Paine starts from the principle that at first "the earth, in its natural uncultivated state, was... the common property of the human race," such that we all initially had equal rights to the land. However, he continues, as time went on, there arose private property in land, and proprietors have since made many "improvements" to the soil, which has in turn added vastly to the earth's value. Private owners, at least in the present, have rights to their property, and in particular to the "additional value" they have given the land through cultivation, which should not be subject to redistribution. Nevertheless, private property deprives others besides the owner of "the value of the natural earth" – as distinct from "the value of the improvement" – which again is our "common right" and "natural inheritance." Thus proprietors owe a "groundrent" to others in the amount of this unadded value as "compensation" for this dispossession; from the proceeds, we should distribute a capital grant to every person, and also pay for a variety of social programs.[133]

In the centuries since, Paine's form of natural rights egalitarianism would become by far the most common in the tradition, while views like those of Babeuf and the radicals who came before him would become more or less extinct. Nearly all later significant contributors have favored a system of private property subject to egalitarian sharing requirements, as Paine proposed, while only a few have even humored a system under which property is to be under collective ownership in any stronger sense, as Babeuf envisioned.

[133] Paine, *Agrarian Justice.*

In the nineteenth century, the Industrial Revolution and the rise of capitalism brought with them social problems which would shape much of subsequent history. Societies where most laborers had been rural peasants engaged in agriculture swiftly became ones where many were urban workers employed in industrial production. These urban laborers worked arduous jobs and endured extremely low standards of living, while nearly all the vast wealth they helped create in the process went to the ascendant bourgeoisie.

These social problems soon became the focus for a great deal of political conflict at the levels of both practice and theory, as figures of many political orientations presented, defended, and rebutted an assortment of responses to this predicament. These responses ranged from many early socialists' radical insistence on economic equality and rejection of private ownership, to the absolute commitment of early stalwarts of *laissez-faire* to unrestricted rights of private property and market exchange. Other responses fell between these two extremes, affirming some balance or other between equality and property.

We have already noted that the natural rights tradition became fairly marginal to political discourse in the nineteenth century, and as a result the parties to these debates over distributive equality were in large part authors from outside the tradition. However, there were several authors from the time who still used natural rights principles to justify their views on these subjects. These figures varied from *left-liberals* who favored a degree of economic equality, to *right-liberals* hostile to all such notions. The former have been described by recent authors as the first left-libertarians, although the term would have been unfamiliar to them.[134]

Like Paine, left-liberals from the time, such as the younger Spencer and George, largely

[134] Steiner and Vallentyne, *The Origins of Left-Libertarianism: An Anthology of Historical Writings*.

accepted rights to private property and market exchange, but argued that they are also subject to certain limits which allow for significant egalitarian redistribution. Also like Paine, they contended that what justice demands we redistribute in particular is the value which our resources have due to nature rather than due to ourselves – the worth they have on their own, apart from anything we've done to cultivate them.

The foundation of Spencer's philosophy is what he calls the "law of equal freedom," on which we each have a right to as much liberty as we can have compatibly with everyone else's having a right to the same liberty. While this idea is common among liberal authors in one form or another, Spencer interprets the principle in an uncommon way, namely as implying that we cannot have unrestricted private ownership rights over land. According to his argument, if private appropriation were legitimate, then some of us might come to own the whole of the world. Everyone else in the world would then have no right to what they need to live, and indeed no right to so much as a place to stand, unless they were to meet whatever terms the proprietors of the earth set for access to their resources. Spencer holds that the propertied and the propertyless do not possess equal freedom in such a case, as they rightfully should. Thus he reasons that land, rather than belonging to individuals as their exclusive property, must instead be under the collective ownership of society as a whole. He then goes on to clarify that what he means by this is that individuals can have most of the rights over a parcel of land that we associate with private ownership, and can thus have rights to "the extra value [their] labor has imparted" to this parcel, these individuals must share with society the rest of the land's value.[135]

For his part, George begins from the Lockean premise that we own ourselves and our labor, and that we can come to own the things in the world we produce through our labor. He then

[135] Spencer, *Social Statics.* Note that it is ambiguous whether Spencer is truly a natural rights theorist, given his utilitarianism and his sparing use of the term.

goes beyond Locke, however, in positing that we cannot come to own anything in the external world *except* what we thus produce. As he infers, this means that no one can own the things which exist "irrespective of human exertion," which means in turn that natural resources, which he refers to collectively as *land*, cannot be subject to anyone's exclusive possession. George concludes from this that land must be "common property." As he elaborates, however, what he means by this is that we can have most of the familiar rights of private property over land, as well as over the value of the "improvements" we make to the land – yet we are required to equally share what he calls the rent of land, or the independent value of "the land itself" apart from our improvements.[136]

By contrast, right-liberals during the period, such as Bastiat as well as Spencer himself later in life, also affirmed rights of private ownership and market exchange, but also took these rights to be so strong as to rule out all egalitarian redistribution. They thus affirmed that justice permits us to keep for ourselves all the value of the resources which we own, and that there is no portion of this value, whether value we have added or value no one has added, which we are required to share with others.

Bastiat holds that we all have natural rights to defend our persons and property, whether on or own or else as a group – namely, by forming states to enforce our rights. However, justice demands that states thus formed do no more than protect our natural rights over our persons, liberty and property, and forbids them ever to infringe such rights. Any state intervention in the economy, whether as substantial as a communist expropriation of the means of production or as minor as the imposition of a tariff, is thus an injustice, and the egalitarian redistribution of wealth by the state which many favor is no more than "legal plunder."[137]

[136] George, *Progress and Property.*
[137] Bastiat, *The Law*.

Spencer too would later in life take an opposite position on economic equality, arguing that even meager systems for relieving poverty such as England's Poor Law take as much from the rich and give as much to the poor as is just, and perhaps more. Spencer's comments on the matter would become more and more redolent of the social Darwinism of which many accuse him – for example, his remark that under egalitarian arrangements "the many inferior... profit at the expense of the few superior."[138]

Again, however, the nineteenth century was above all else a time where natural rights theories, egalitarian or otherwise, went into decline amidst a number of criticisms not only from outside liberalism but even from within. And again, the most common theme of these criticisms was that natural rights principles are overly individualistic. The figures who raised this challenge included many who argued specifically that such theories are too *economically* individualistic, which is to say insufficiently egalitarian.

Some of these figures were communists, the foremost of them being of course Karl Marx, who rejects natural rights liberalism, not only for its affirmation of private property, but also as part of his rejection of moral theories in general. Marx notes that such theories often present themselves as founded on "rational, universally valid principles," and even on "eternal law" – just as natural rights theories do. However, all such theories are in fact the result of particular and contingent economic conditions, serving to rationalize the interests of the "ruling class" of a specific place and time. Thus Marx argues that while natural rights principles purport to ascribe equal rights to all, in fact they further the interests of only some, namely the bourgeoisie under

[138] Spencer, *The Principles of Ethics*, pt. IV, ch. XII; appendix B.

capitalism. Natural rights ideas reflect a notion of each person as "an isolated monad, withdrawn into himself," and affirm his sovereign right to dispose of his private property in any way he chooses, and thus to do so in ways that advance his own interests, but ignore or harm the interests of others. Hence Marx rejects natural rights liberalism as no more than "ideological nonsense," an expression not of any moral truth but instead of selfish, egoistic individualism.[139]

Even some left-liberals, such as the pragmatist progressive Dewey, held views of natural rights theory which were in some ways surprisingly similar to Marx's. Dewey grants that natural rights liberals once made crucial contributions to progress in history, namely in giving an articulation and justification of the sort of opposition to "political absolutism" which eventually found effective expression in the Atlantic Revolutions. However, he goes on to say, natural rights liberals were ironically "absolutists" themselves regarding their normative principles, which they regarded as applying "at all times under all social circumstances;" figures like Locke, he comments disapprovingly, had "no idea of historic relativity." And due to their absolute commitment to the "sanctity of private property" and to "*laissez-faire*" economic institutions, their ideas have in later history become a regressive rather than a progressive force. Today, the "earlier doctrine of 'natural rights'" functions merely to provide an "intellectual justification for the status quo," affirming the "rugged individualism" of unrestricted capitalism and accordingly rejecting all "new social policies."[140]

Thus, in the nineteenth and early twentieth centuries, as so many authors spurned natural rights liberal views as overly individualistic in character, many made the argument that such views are unduly individualistic, and insufficiently egalitarian, in regards to economics specifically. Seldom showing any awareness of the many views within the tradition which had affirmed

[139] Marx, *The German Ideology*, *On the Jewish Question, Critique of the Gotha Program*, in Tucker, *The Marx-Engels Reader*, p. 173-4, p. 43-46, p. 531. For discussion, see Cohen's *Self-Ownership, Freedom, and Equality.*
[140] Dewey, *Liberalism and Social Action*, p. 32-35.

strong principles of economic equality, critics eschewed natural rights theories as bound up with inegalitarian commitments to unrestricted private property rights.

1.4

Let me now move on to describing the more recent history of natural rights theory, which begins in the latter half of the twentieth century. During this time, right-libertarianism takes more definite shape in response to liberal egalitarianism, and left-libertarianism emerges in its full form in response to both viewpoints.

Famously, first-order moral and political theorizing returned in Anglophone political philosophy after the mid-twentieth century, after decades of having been overshadowed by meta-ethical debates between parties who tended to be skeptical of such theorizing for various reasons. One conspicuous historical development that had occurred during this intermission was a dramatic increase in the scale of economic redistribution and regulation by states with a view to addressing material inequality and insufficiency. Measures ranging from taxation for the funding of welfare state programs to state nationalization of productive resources had become widespread in both communist and liberal democratic states on a scale beyond anything realized in earlier eras. Predictably, then, when political philosophy resumed anew, one debate among others which quickly came to the fore was a dispute over whether these sorts of redistributive measures were just. For the most part, despite occasional interventions from socialists and others, this would become a disagreement carried on between left-liberals and right-liberals, who both argued that their stances were supported by, while their opponents' views were contrary to, certain core ideas of the liberal tradition. Two of the earliest contributors to these debates, and easily the most in-

fluential, were Rawls and Nozick, respectively representing the liberal egalitarian and right-libertarian viewpoints.

On Rawls' theory, the principles of justice are the rules on which parties would agree in a certain hypothetical situation to which he refers as the *original position*. These parties are free, equal, and concerned to rationally further their own interests, but also do not know what social status, natural assets, or views of the good they have. Rawls argues that such parties would agree first of all on a principle according to which we have rights to extensive personal liberties to form, revise, and pursue our views of the good. Second, they would agree on a principle asserting among other things that economic inequalities are just only when they are to the greatest benefit of the least advantaged. The system he says might best fit the latter principle is *property-owning democracy*, which upholds rights of private ownership but takes various measures to disperse physical and human capital widely. Rawls holds that this basic structure of personal liberty and economic equality is one on which we can all in reason agree even as we disagree about the good and other matters.[141]

By contrast, Nozick's core thought is that as separate persons with lives of our own, we all have rights which constitute inviolable side-constraints on what others may do to us. Among these rights is one against others' treating us as mere means and not as ends, specifically by using aggressive force against in such a way as to sacrifice our good for the good of others. According to many interpreters, Nozick implicitly affirms rights of self-ownership, including rights to dispose of our bodies, labor, and the fruits thereof as we choose. Explicitly, he also affirms that we have rights to appropriate resources, so long as we do not worsen the situation of others in doing so; these holdings may then pass to others by means of voluntary transfer or else as part of the rectification of an injustice. Distributions are just when and only when they result from some

[141] Rawls, *A Theory of Justice*; *Justice as Fairness: A Restatement.*

sequence of just acquisitions, transfers, and rectifications, even when their outcomes are inegalitarian; coercively reallocating holdings to fulfill any particular distributive pattern is unjust.[142]

The central conflict between Rawls and Nozick is thus over whether justice requires or forbids egalitarian redistribution, especially that of the fruits of our labor. Rawls holds that as a result of the "natural lottery" some persons have innate advantages over others, such as for example "natural talents and abilities," and that without intervention those with greater endowments end up with greater economic rewards. He then argues however that since "no one deserves" to have such natural advantages, any inequalities to which they may give rise are "arbitrary from a moral point of view." In line with his view that inequalities are just only if they benefit the least advantaged, Rawls says that justice demands treating natural endowments as "a common asset," sharing their benefits with all to "improve the situation of those who have lost out."[143] Many later liberal egalitarians, and especially luck egalitarian authors like Dworkin, would follow Rawls in holding that inequalities not resulting from choice are unjust.

In contrast, Nozick rejects such ideas, based on his view that we own ourselves, along with what we obtain through original acquisitions which do not worsen the situation of others, as well as through voluntary transfers. As he notes, these ownership rights can and often will lead to inequalities, especially when some receive more than others by voluntary transfers, possibly due to their greater natural endowments. However, he says these inequalities are just: they are simply the result of our exercising our "liberty" to dispose of our holdings as we choose, and reallocation would unjustly interfere with this freedom.[144] He even goes so far as to say that egalitarian redistribution specifically of labor income is "on a par with forced labor," in effect making some

[142] Nozick, *Anarchy, State, and Utopia.*
[143] Rawls, *A Theory of Justice*, ch. 2, sec. 12; 17.
[144] Nozick, *Anarchy, State, and Utopia*, p. 160.

work to meet the needs of others.[145] Indeed, he then goes even further still by saying that such redistribution gives some "(partial) property rights in *other* people" by giving the former control of the latter.[146] Many right-libertarians since Nozick, such as Mack, have set out broadly similar objections to theories affirming economic equality based on broadly similar premises.

Liberal egalitarians and right-libertarians both take inspiration in important ways from the natural rights tradition, with each side making use of different ideas from this tradition, and interpreting those ideas in different ways. Liberal egalitarians emphasize the ideal of equality, understood in line with earlier left-liberals as involving economic as well as political equality, and the notion of a social contract, now construed in ways supportive of this sort of distributive equality. On the other hand, right-libertarians emphasize the ideals of personal liberty and private property, joining earlier right-liberals in viewing these two as fundamentally interconnected, and in rejecting most qualifications and restrictions on property rights. Both sides at first stress these affinities, with Rawls and Nozick both situating themselves as heirs of such natural rights theorists as Locke and Kant, and with both figures in fact overtly appealing to natural rights at important points within their arguments. Rawls, at any rate in his early work, says that his theory accounts for the idea that we have inviolable natural rights, and even says that his view "has the characteristic marks of a natural rights theory."[147] Nozick speaks of natural rights as well, and frequently stresses the Lockean pedigree of his views.

Interestingly, however, over time, it seems to have become less common for left-liberals to emphasize their connections to the natural rights tradition, while right-libertarians have continued to do so as much as ever. Rawls himself illustrates the shift: despite explicitly associating his own view with natural rights theory at points in his earlier writings, in later work he seems to

[145] Ibid., p. 169.
[146] Ibid., p. 172.
[147] Rawls, *A Theory of Justice*, p. 42; 442-3n30.

presuppose without explanation that his theory of justice falls outside the domain of natural rights theory.[148] Right-libertarians, however, for the most part have not developed any similar reluctance to associate their views with those of canonical natural rights liberals, and on the contrary are usually eager to tout their relationship with these earlier figures. The reasons for the apparent drift of liberal egalitarians away from natural rights theory are unclear.[149]

One possibility is simply the greater salience for us of some historical natural rights liberals in comparison to others. We frequently study and discuss figures such as Locke and Kant who are on the inegalitarian end of the tradition, but virtually never even mention more egalitarian (although admittedly far less philosophically sophisticated) figures such as Paine and Condorcet. Another possibility is that we have inherited perceptions of natural rights theory partly shaped (albeit in ways few of us would consciously realize) by the criticisms of nineteenth and early twentieth-century opponents, which are occasionally repeated by more recent detractors. The most frequent complaint among such critics for a century or more was that natural rights theories are inherently individualistic, which both socialist and left-liberal objectors often conjoined with a charge to the effect that they are hostile to equality. Still another possibility is that impressions of natural rights theory in the last half-century have been influenced by the authors outside of academic philosophy who appeal to natural rights, such as Paterson, Rand, and Rothbard. These authors are all right-libertarians, and they have affirmed some of the most infamously and uncompromisingly inegalitarian viewpoints on distributive justice entertained in modern history. Whatever the explanation, the situation now seems to be that when right-liberals lay claim to the natural rights tradition as supportive of their own views on distributive justice, even their oppo-

[148] Rawls, *Justice as Fairness: A Restatement*, p. 9. Rawls presupposes here, without further comment, that justice as fairness is not a "natural rights doctrine."

[149] The reason why I believe the later Rawls is right that justice as fairness is not a natural rights theory is that he does not share the traditional focuses of the tradition, not only on natural rights, but also on how our further rights arise from our natural ones. See my discussion of what defines natural rights theories later in this chapter for further explanation.

nents tend to take them at their word, and dispute them only on other points. Natural rights theory, in short, has been largely abandoned to the right.

However, there has recently been at least one notable exception to this trend, namely in the *left-libertarian* theories of authors like Steiner, Vallentyne, and Otsuka. As right-libertarians and liberal egalitarians have continued debating redistribution, some figures have found themselves drawn to certain ideas from both sides at once. On the one hand, they are drawn to many right-libertarian views on personal liberty, such as that we must be free to do as we will with ourselves and the fruits of our labor. On the other, they are drawn to certain liberal egalitarian views on economic equality, especially that material disparities arising from luck and not from choice are unjust. Thus left-libertarians have proposed theories which affirm views of both sorts at the same time, in spite of the widespread notion that there is a fundamental conflict between the two. They have done so by forming new versions of natural rights liberal egalitarianism, ones which keep many things from past versions but which change many others.[150]

Such left-libertarian theorists affirm, in the first place, the principle of full self-ownership. They take this principle to mean that we have over our bodies and minds all the rights which owners can have over what they own, such as rights to use ourselves as we wish, rights to exclude others from using us against our wishes, rights to the income from our labor, and so on. Second, left-libertarian theorists also assert the principle of equal world-ownership. They interpret this as a principle to the effect that we may privately acquire resources only when we

[150] Steiner, *An Essay on Rights*; Vallentyne, "Left-Libertarianism: A Primer;" Otsuka, *Libertarianism without Inequality*.

share them in an egalitarian way; specifically, they tend to hold that we must share enough to exclude inequalities in opportunity for welfare due to mere luck. This is what, in their view, allows them to reconcile libertarianism and egalitarianism. Along with libertarians, they affirm that we own in full ourselves and what we make, and need not share either one with others; and yet, along with egalitarians, they affirm that we must share equally resources external to ourselves which we have not made.[151]

Next, I want to discuss how left-libertarians have so far supported their views in the contemporary literature, focusing in particular on Vallentyne and Otsuka.[152] As part of the same discussion, I want to explain the responses their approaches have received from critics, both to their left and to their right. To begin with, I want to reflect on the ways in which these authors have gone about arguing in favor of equal world-ownership, and then on the reaction they have elicited from other libertarians.

The tendency among left-libertarians has been to argue for the principle of equal world-ownership by appealing to premises which are themselves egalitarian, without then providing any further arguments for equality as an ideal. Vallentyne, for instance, is clear that in attempting to motivate left-libertarianism his only aim is to show that the view is "promising" as a "form of liberal egalitarianism."[153] In other words, as he elaborates, he presupposes a commitment to equality among other values, and only undertakes to establish that left-libertarianism is well-suited to "capturing"[154] these commitments, which he does not then attempt to vindicate in turn. Vallentyne does, to be sure, offer reasons to accept his principle of equal world-ownership over the alternatives, but they are reasons which assume that there ought to be some robust material

[151] Vallentyne, Steiner, and Otsuka, "Why Left-Libertarianism is Not Incoherent, Indeterminate, or Irrelevant."
[152] For brevity's sake, I omit discussion of Steiner here, whose complex theory would require a lengthy separate treatment. In the end, however, even though Steiner's approach appears to be different from the one Vallentyne and Otsuka follow, my conclusions about them apply just as well to him.
[153] Vallentyne (2009), "Left-Libertarianism as a Promising Form of Liberal Egalitarianism," p. 56.
[154] Ibid.

equality across individuals, a notion for which he does not offer any more fundamental reasons. His argument for rejecting the right-libertarian positions on fair share constraints is that such stances permit whoever happens to use a resource first to "reap all the benefit that the resources provides."[155] He is clear that what he objects to here is that such positions allow some to enjoy greater benefits than others due to nothing more than the mere "luck"[156] involved in finding a resource first. This criticism, however, evidently rests on an assumption of something like luck egalitarianism, which Vallentyne says outright he will not attempt to justify.[157] A consequence here, as he recognizes, is that those who are not partial to equality from the outset "will find little promising in the libertarian theory" that he articulates.[158]

Otsuka follows a similar approach. He criticizes Nozick's minimal fair share constraint on initial acquisition, contending that such a criterion would allow someone to acquire all the land there is so long as he pays everyone else a pittance given which they are no worse off than they would be living "the meagre hand-to-mouth existence of hunters and gatherers." As an alternative to Nozick's position, Otsuka puts forth what he calls the egalitarian proviso, which again asserts that we may appropriate only so much as is consistent with everyone else's attaining the same level of welfare as we enjoy by claiming other worldly resources for themselves. We might reasonably ask, however, why we should reject a proviso which permits the hunter-gatherer scenario, and why we should accept a proviso which forbids anyone to obtain more than is compatible with equal opportunity for others. Otsuka's answer here is that he regards as unfair any proviso which would let some gain more resources than others "as the result of factors beyond the control of individuals." He goes on to say that an adequate proviso must offset "disparities in the

[155] Ibid., p. 65.
[156] Ibid.
[157] Ibid., p. 67.
[158] Ibid., p. 57.

absolute levels of welfare of individuals caused by differences in their mental and physical constitution that are traceable to luck."[159] As is the case with Vallentyne, then, Otsuka's position derives from a commitment to luck egalitarianism in some form; and like Vallentyne, Otsuka presents no more fundamental justification for this commitment. As a result, Otsuka's argument here is also one that can persuade only those who are already receptive to equality.

Right-libertarians have firmly objected to such cases for equal world-ownership. Since they do not accept egalitarian principles, an argument which rests on the ideal of equality as an ultimate premise comes across to them as no argument at all. Accordingly, right-libertarian critics suggest at times that those who affirm equal world-ownership have never articulated any grounds for their position whatsoever. Narveson says that "no support has been provided" for such a view, which is thus "not just dubious but utterly arbitrary."[160] Feser remarks that proponents of equal world-ownership offer nothing more by way of defense than the observation that the principle could possibly be true, which is plainly not enough to show that such is actually the case. Hence, in his judgment, they leave the principle wholly "unjustified."[161] In more charitable moments, detractors grant that there are arguments for equal world-ownership, but dismiss them all as inadequate. Often the only example they discuss is the theological case which appears in the writings of many of the view's historical proponents, according to which the world is God's bequest to humanity as a whole, for all of us to share on equal terms.[162] Unsurprisingly, left-libertarianism's contemporary opponents reject such religious justifications. Presumably, they do so in no small part because God's existence and actions in relation to humanity are both difficult to

[159] Otsuka (2003), *Libertarianism without Inequality*, pt. 1, ch. 1, sec. 3.
[160] Narveson (1999), p. 212-213.
[161] Feser (2005), p. 59-60.
[162] This argument is prominent in Paine, Spencer, and George, among others. The central idea here is, in Spencer's words, that the "world is God's bequest to mankind" (1851, p. 77). Moreover, as George elaborates, since "we are all here by the equal permission of the Creator," we thus "are all here with an equal title to the enjoyment of his bounty" (1879, p. 338).

prove, to say the least. Narveson adds that the theological argument is unacceptable because to institute a certain distribution of property on religious grounds would be to "base laws for all on the religion of some," which would violate the ideal of neutrality fundamental to liberalism.[163] After dismissing the appeal to any supposed bequest on God's part, critics often conclude that equal world-ownership simply has no foundations. According to Gerald Gaus and Loren Lomasky, absent such a "deus ex machina," there exists "no basis for positing a moral order of delicately equalized claim rights" over nature.[164] "Having jettisoned theological stories," Narveson says, the question of why we would all be equally entitled to natural resources "becomes unanswerable,"[165] and continuing to insist that we do amounts to "sheer assertion."[166]

While these criticisms are ultimately false, as I hope to demonstrate in what follows, left-libertarians should admit that they are understandable as responses to the defenses of the view currently on offer. Although the arguments from Vallentyne and Otsuka may be effective for certain philosophical purposes, there is at least one function they cannot perform. To justify a claim to others, we have to show that the claim is inferable as a conclusion from premises they accept. The existing defenses of equal world-ownership, however, begin from premises which are themselves overtly egalitarian. They might suffice, then, to justify left-libertarianism to other liberal egalitarians, and more broadly to people with some prior commitment to equality. All the same, they will not be enough to justify the idea that natural resources belong equally to us all to someone who is not already in favor of egalitarian principles from the start. Now, Vallentyne is clear that he is not trying to persuade any such figures, and Otsuka might well say the same. Surely, though, we have reason to search out a way to justify left-libertarianism to interlocutors who are

[163] Narveson (1999), p. 213.
[164] Gaus and Lomasky (1990), p. 489.
[165] Narveson (1999), p. 220.
[166] Narveson (2010), p. 109.

not prepared to concede all the broader values underlying the view at the outset. When someone who is not an egalitarian asks left-libertarians why they believe what they do in regards to world-ownership, the latter should have something to say in reply which does not presuppose the very notion that is ultimately at issue in such an exchange. Insofar as the right-libertarians to whom I have referred are criticizing contemporary left-libertarians for lacking such an answer, their criticisms are in fact apt to at least some degree.

Next, let's examine how contemporary left-libertarians have defended their other central principle, namely that of full self-ownership. As before, we will then consider how certain objectors, who in this instance will be other egalitarians rather than other libertarians, have reacted to their arguments, and assess the extent to which these challenges are well-founded.

Most often, left-libertarians support self-ownership by emphasizing that the principle entails and explains certain powerful intuitions surrounding how we may and may not treat one another. For instance, Vallentyne says that self-ownership captures the idea that agents, as beings who are "capable of autonomous choices,"[167] possess normative protections against others' interfering with their lives and decisions. Otsuka similarly presents self-ownership as yielding attractive "anti-paternalistic and anti-moralistic" consequences, as well as reflecting the separateness of persons and the impermissibility of using them as mere means.[168] Steiner likewise claims that what is attractive about self-ownership is that the idea not only justifies the most central liberal rights to expression, association, due process, and so on, but also clarifies where their boundaries lie and why.[169] Their common suggestion, in short, is that when we start out with fundamental judgments like these, and then search for a general standard which best articulates and integrates them, we will end up with full self-ownership as the principle which best fulfills the task.

[167] Vallentyne (2012), p. 8.
[168] Otsuka (2003), introduction.
[169] Steiner (2008), p. 351.

In short, the reasons which left-libertarians invoke when defending self-ownership thus usually have to do with concepts like the autonomy and separateness of persons. What is significant here is that such reasons have little connection to those they invoke when defending equal world-ownership, namely ones having to do with luck and equality. In other words, left-libertarians make no attempt to derive their principles of equality of opportunity from their principles of autonomy, or to derive the latter from the former, or to derive both from any common foundation. This means, in brief, that they defend the two principles comprising their view by appeal to considerations which are mutually unrelated. Vallentyne, Steiner, and Otsuka explicitly grant that this is accurate as a description of the way in which they justify their view. In a joint article, they summarize their approach as follows. They posit that agents, as "self-directing beings," have a special moral status. They then contend that full self-ownership is "the most appropriate reflection" of the status of agents, on the grounds that "it explains... the intuitive wrongness of various forms of non-consensual interference with bodily integrity." They furthermore "independently maintain" that equal world-ownership is the most plausible stance in regards to worldly resources, presumably on the luck egalitarian grounds they tend to invoke when dealing with the subject. They thus do not claim to have any single argument from which they can derive both of their two principles at once. Still, they maintain that "there is little reason to require" that they produce any such argument.[170] Left-libertarianism, then, is on their conception dyadic in nature all the way down to the foundations: not only does the view consist of two distinct and unconnected principles, but the principles in question also derive from two distinct and unconnected sets of reasons.

There have been several authors, often fellow egalitarians, who have raised criticisms of left-libertarianism taking aim at this divergence between the position's fundamental claims. The

[170] Vallentyne, Steiner, and Otsuka (2003), p. 209.

critics in question, including Richard Arneson, Barbara Fried, and Mathias Risse, have objected that left-libertarianism's two halves are not jointly coherent. The charge here is that, while full self-ownership and equal world-ownership may not contradict one another, the strongest reasons for affirming the one still contradict the strongest reasons for affirming the other. "[T]he best rationale for individual self-ownership," says Arneson, "is opposed to the best rationale for egalitarian world-ownership."[171] He explains what he means with an analogy. There would be a similar incoherence, he says, in claiming that a wife has a duty not to cheat on her husband, yet also claiming that a husband has no such duty to his wife: the soundest arguments for the first claim would end up conflicting with the soundest arguments for the second. By contrast, Fried contends that left-libertarianism exhibits incoherence at a different point. Since the view's proponents are often luck-egalitarians, they tend to hold that those who are untalented due to bad luck should get more in redistributive transfers from the state. Since they are also proponents of full self-ownership, however, they also hold that the state should not take more for purposes of redistribution from those who are talented due to good luck. Fried sees no principled basis for assuming such distinct and indeed antithetical approaches to the "tax and transfer sides of fiscal policy."[172]

Risse explains in more detail and at greater length than the others precisely why he takes left-libertarianism to be incoherent in the relevant sense. The reasons which most effectively support equal world-ownership, he says, will be ones based on an ideal of solidarity which "ties individuals' lives together and shares out fortunes and misfortunes."[173] By contrast, the reasons which most effectively support full self-ownership will be ones founded upon individualistic val-

[171] Arneson (2010), "Self-Ownership and World-Ownership: Against Left-Libertarianism," p. 4.
[172] Fried (2003), "Left-Libertarianism: A Review Essay," p. 36.
[173] Risse (2004), "Does Left-Libertarianism Have Coherent Foundations?" p. 350.

ues according to which our "lives are not tied together at all."[174] These two perspectives, however, are plainly "anathema"[175] to one another. Left-libertarians therefore face a dilemma: they can attempt to justify their two principles, which will lead them into inconsistency; or they can refuse to make any such attempt, which will leave their theory without foundations. In the latter case, they will have "nothing to say"[176] to those who disagree with them about world-ownership, or for that matter self-ownership.

Again, while I will try to show that these objections fail, we must concede that they make sense as reactions to the defenses of left-libertarianism in the literature. The objectors do indeed have reason to suspect a tension between the grounds for full self-ownership and those for equal world-ownership, not least because such a tension arguably exists already between these grounds as presented thus far. To repeat, left-libertarians defend their principles regarding world-ownership by reference to the broader notion that we should equalize advantages and disadvantages resulting from luck. Any defense of full self-ownership, however, must entail that benefits deriving from personal abilities and qualities are not subject to such equalization, even when ascribable to luck. Straight away, the question arises as to how these two ideas can possibly be compatible. Left-libertarians have answered by qualifying the former so as to apply only to external resources. The further question then arises, however, as to why we should accept such a qualification: if we must share everything else equally, why not the fruits of our own efforts and talents as well?

The reply from left-libertarians, as I say, has been to say that this distinction in regards to redistribution is appropriate given the distinction in status between autonomous agents and inanimate objects. Evidently, though, this intuition about what is appropriate is one that others simply

[174] Ibid., p. 351.
[175] Ibid.
[176] Ibid., p. 342.

do not share, including many who fully agree with the idea that agents have a unique normative standing. Vallentyne, Otsuka, and Steiner might reasonably claim that nothing more can or need be done here: any disagreement about the justification for any theory must reach a point at which there are no more basic assumptions to which either side can appeal to decide the matter. Without questioning this point, however, we can still insist that finding premises by reference to which we might justify left-libertarianism to the view's opponents would be valuable if possible. After all, to borrow Risse's phrase again, we want to have something to say, if we can, to those who ask us why we favor full self-ownership over the alternatives, and moreover something which does not merely assume values our interlocutors would question. Hence, in short, we also have reason to search out a justification to which egalitarian interlocutors might be receptive for full self-ownership, and moreover a justification which coheres with that for equal world-ownership.

1.5

Now that we have gone over the history of left-libertarianism and its predecessors at length, we are in a position to give some response to some of the initial doubts you might have about theories of this sort. Again, left-libertarianism is part of the natural rights tradition; but there are certain ideas which many authors in the natural rights tradition conspicuously share, and indeed even treat as central and foundational, but which you may well find unjustified or implausible. You might understandably assume that these ideas are ones which the natural rights tradition as a whole presupposes in some inextricable way, and thus reject natural rights theories in general on these grounds. Here I aim to address some of these criticisms in advance, namely

by showing that while some natural rights theories do indeed assume these ideas, others do not – and hence these objections do not justify rejecting the entire tradition.

I will make this argument by pointing out that the historical evidence we've surveyed shows that there have been important natural rights theorists who have denied each one of these controversial ideas. I will make the presumption, based on the principle of interpretive charity, that these authors' views are at minimum logically consistent, such that by denying these views they are at very least not outright contradicting themselves. This will entail that the ideas in question are not inextricable presuppositions of natural rights theory, since if they were, then these theorists would indeed be contradicting themselves by rejecting the relevant ideas. Now, granted, it is of course possible for authors to contradict themselves, and thus my presumption is a defeasible one, and this line of argument offers only *prima facie* support for my conclusions; but this level of support will suffice for my purposes here.

To name one concern, you might have reservations about natural law and natural rights theories for the reason that they seem to presuppose certain descriptive views, especially ones in the domains of religion and metaphysics. Most central here would be ideas about God and teleology, and especially the notions that a rational and providential God exists, and that we human beings have an inherent natural function. Just about all ancient and medieval natural law and natural rights theorists affirmed these ideas in one form or another, and saw them as the foundation for their accounts. Cicero rests his entire theory on the premise that "the entire universe is overruled by the power of God," and Aquinas asserts much the same thing, albeit

with a different God in mind. Many early modern natural rights theorists, including liberal ones, accepted basically the same theistic and teleological foundations for natural law and natural rights. Locke for example defines the natural law as the "decree of the divine will," and Jefferson, while appealing to the "Laws of Nature," appeals also to "Nature's God."

But in spite of the prevalence of these ideas historically, and indeed despite the fact that many people today would affirm them, they are notions of which others are highly skeptical. From the fact that so many natural rights theorists give such a central place to these ideas in their theories, you might understandably assume that natural rights theory rests upon them. And from this, you might then infer that natural rights theory is false or at very least unjustified.

However, the history we've reviewed also shows that these ideas have not been accepted as the foundations of our natural rights by all the authors in the tradition. First, there have been authors who, while accepting the theological and teleological ideas themselves, have nevertheless insisted that natural rights are independent of one or both. These would include authors like Súarez and Grotius, who doubt that natural right derives from God's will alone, and say instead that it derives from the intrinsic natures of actions, or of our natures as rational, social animals. Second, moreover, there have also been natural rights theorists who reject the ideas themselves, and thereby also reject them as a putative source of natural rights. Among them would be pantheists like Spinoza and atheists like d'Holbach, who categorically reject beliefs in providential deities and in final causes, but who still affirm the principles of the natural rights tradition. Thus, although reading Locke may give the sense that natural rights are bound up with talk of God and natural functions, an appreciation of the diversity of the broader tradition shows that this impression is unfounded.

You might object, as some have, that while these sorts of authors did indeed speak of nat-

ural rights, and did not take them to have religious foundations, nevertheless they failed to present any sort of alternative foundations on which these ideas might rest. They did not give any new, more secular answer to the question of what the basis for our natural rights is; instead, they simply ignored this question, or perhaps even evaded it outright, knowing that they could not answer without committing themselves to views they rejected. Hence their example does not show us that natural rights theory can stand independently of its traditional religious basis; it shows us instead that authors have tried to separate the two, but it does not preclude the possibility that this separation leaves them with inconsistent and unjustified theories.[177]

I would agree with this criticism to a degree, but I would insist that on the whole it is unfounded. Granted, few mid-eighteenth-century figures made an effort to explain how natural rights theory could be sustained in the absence of its traditional religious underpinnings. However, the first steps toward this end had already been taken by seventeenth-century figures like Suarez, Grotius, and Pufendorf. And Kant, in my view, gives at least the beginnings of an alternative account in his ideas about how natural rights are the principles of justice on which all parties to a hypothetical social contract could agree. This idea does not, admittedly, receive satisfactory development in Kant's own works; but I submit that the contributions of authors in the more recent public justification tradition, such as Rawls and Gaus, have supplied conceptual resources which can allow us to more fully work out Kant's proposals. This is a matter to which I will return in my third chapter.

Let me also, however, suggest a broader explanation of how a separation between natural right and traditional religion is possible. My own view is that there are ideas which had long been present in the tradition, even before the modern era, which had always possessed the potential to open up such a separation. In particular, I have in mind the common idea that natural

[177] Waldron, *Nonsense upon Stilts*, introduction.

rights must be ones which all of us can come to recognize by the use of our reason – as opposed to being rights which only some of us can thus discern, such as those who belong to some specific social group. This idea of universal recognizability, as we've seen, has deep roots in the natural rights tradition, and had even long been seen as part of what defines natural rights. We can find variations of this idea as far back as medieval and even ancient natural law theory – indeed, it shows up in some of the earliest extant statements of natural law ideas in the ancient world.

Now, it had been acknowledged even before the eighteenth century that this idea has substantive implications in regards to the relationship between natural right and religion. Pufendorf in particular had made the point that natural rights theory cannot depend upon certain teachings of Christianity – since natural rights are supposed to be accessible to the natural reason of all, and the revealed doctrines of any particular religion are by definition not accessible in this way. This claim by Pufendorf was controversial among his contemporaries, but in fact it is in large part simply a reassertion of a principle which had always been present in some form in natural law and natural rights theory. The only thing that is truly new in this argument is a distinctive conception, and in particular a more restrictive one, of which specific religious ideas are knowable by means of the faculty natural reason by which we come to know our natural rights. Previous natural law and natural rights theorists had supposed that many of the fundamentals of Christianity are accessible to us in this way; yet Pufendorf now insisted that some of them are not. He argues in particular that we cannot know by natural reason of the reality of the afterlife – and hence he infers that natural law and natural right must be concerned wholly with this life, irrespective of any possible salvation or damnation that may follow.[178]

We can quickly see grasp that this tendency had the potential to be taken even farther than Pufendorf was willing to go. Many historical figures were quite confident that at least the

[178] Pufendorf, *The Whole Duty of Man.*

bare fundamentals of religions like their own were knowable by means of natural reason alone. When they explained what gave them this assurance, they tended to point to things like the teleological and cosmological arguments for the existence of God, which they considered so powerful that they would make plain to anyone who rationally considered them, regardless of their other beliefs, that there is indeed a God. Yet many of us today would protest that it is far less obvious than these past figures seem to have assumed that these arguments are effective, let alone effective in a way that can be appreciated by anyone who reflects on the matter using the natural reason we all share, regardless of her background. It thus seems quite arguable that any moral principles founded upon the assumption that there is such a deity, even a deity understood in minimal and ecumenical terms, would be ones which are not in fact accessible to the natural reason of all. Yet this would entail – based on the same traditional major premise to which Pufendorf appears, supplemented with a new minor premise – that theology cannot form any part of the principles of natural right. Insofar as natural right is supposed to be graspable by the natural reason of any person at all, it cannot depend on even the most modest religious assumptions, insofar as these are not evident after all to the natural reason of the person without theistic beliefs, and thus are not universally recognizable.

The point here is that the authors who separate natural rights theory from their traditional foundations should not be seen as perversely imposing their more secularistic tendencies on a family of moral theories which are in fact essentially religious. In fact, there were ideas which had almost always been present in the natural rights tradition which had in a sense a potential to be used to support precisely such a separation. The traditional idea that natural right must be accessible to the natural reason of all – combined with the more modern but eminently defensible idea that even the basics of any religious outlook are *not* in fact accessible to the natural reason

of all – entails that natural rights not only can but *must* be divorced from these religious underpinnings.

Let's now turn to a second group of possible objections. You might instead have reservations about natural law and natural rights theories for the reason that they seem to you to presuppose certain normative views which you may find objectionable, especially in regards to distributive justice. The most prominent natural rights liberals of the seventeenth and eighteenth centuries tend to strongly affirm private property rights and to reject egalitarian ideas – at least when they do not ignore such ideas altogether, as many do. For example, Locke is so staunchly inegalitarian that he views even the meager Old Poor Law as too generous, and Kant is clear that while he affirms civil equality he sees this as wholly compatible with almost unlimited economic inequality. Later right-liberals within the natural rights tradition in the nineteenth and twentieth centuries would take even stronger stances, affirming private ownership and free markets in virtually absolute terms in opposition to egalitarian redistribution and regulation. Bastiat, for instance, rejects all such programs as nothing more than "legal plunder," while Nozick says that such reallocation is tantamount to forced labor, giving some people partial ownership over others. Many opponents of natural rights theory, from communists such as Marx to left-liberals such as Dewey, have treated these sorts of views as representative of the natural rights tradition – which they have thus rejected as an individualistic, inegalitarian creed. If you are partial to egalitarianism, you might quite understandably reject natural rights theory on these grounds.

However, once again, we have seen enough, in the history we have surveyed, to know

that this objection applies to some forms of natural rights theory, especially some of the more familiar ones, but does not apply to others. For in fact there have been many natural law and natural rights theories which have, on the contrary, affirmed that private property rights are subject to egalitarian or at least sufficientarian restrictions. We can find criticisms of unrestricted private ownership as far back as in the writings of the natural law theorists among the ancient Church Fathers, such as Ambrose, at the very latest. These ideas were echoed by medieval canonists, and even reformulated by figures like Huguccio into the rather strong dictum that when in dire need the poor have a right to the goods of the rich, and that the rich have no right to withhold anything more than what they themselves need. By the early modern era, versions these ideas, though seldom interpreted in such strong terms, had become a standard element of the natural rights tradition, and virtually every major natural rights theory all the way through the eighteenth century includes some variation on them. Even Locke, who is as stalwart a champion of private property as any other, includes his own version of this traditional idea in his theory in the form of his so-called Lockean proviso, along with his suggestion in the *First Treatise* that those in abject need have a right to goods sufficient to keep them from extreme want and subjection to others. Late eighteenth century authors, such as Paine, were the first to insist on more substantively egalitarian and redistributive interpretations of these ideas than Locke and others were willing to admit. There have been many authors to defend similar views ever since, including George in the nineteenth century and the left-libertarians in the twentieth and twenty-first. In sum, no opposition to distributive equality is inherent in the natural rights tradition, despite what both detractors and some defenders might suggest; on the contrary, many natural rights theories have been strongly egalitarian.

As with the previous set of objections, you might try to resume the criticism here by sug-

gesting that while perhaps some natural rights theorists have incorporated egalitarian elements into their views, this does not mean that principles of equality are truly and properly at home in the natural rights tradition. The views of figures such as Locke, you might say, are the representatives of natural rights theory in its pure and unadulterated state; egalitarians who attempt to appropriate the tradition for themselves are inserting an ideal of equality into theories where it ultimately does not belong, being inconsistent or at least incoherent with these theories' other commitments.

I would respond that the history we have provided strongly suggests that this too is a misconception. This objection would make sense if Locke had been the first natural rights theorist, or at least among the first; this would give us some reason to think that his views were definitive of the tradition as a whole, or at least its core. Yet the natural rights tradition is far older than Locke – and for that matter, it is older also than Hobbes and Grotius, perhaps his only two predecessors in the tradition well-known to the typical political philosopher today. What Locke gives us is another variant on a tradition which goes back far into the medieval period, and has roots even further back still in the ancient world.

And once we become acquainted with pre-Lockean natural rights theory, we will see that a commitment to similarly unqualified private property rights was no by means the norm in the tradition. Far more common, even as early as the Middle Ages, were views such as Huguccio's, which insisted on constraints requiring private owners to share their resources with others – constraints which are in some ways as strong, if not even more so, than the limits which many egalitarians today would defend. On the contrary, it is *Locke* who represents an unusual shift in natural rights thought with respect to property, insofar as he insists interpreting these requirements for private proprietors as being more minimal than many of his predecessors had suggested.

When left-libertarian theories first emerged at the end of the eighteenth century, they represented not a *perversion* of the natural rights tradition, but instead a *resumption* and reinterpretation of a theme which had ample precedent in the history of the tradition.

Moreover, as in the case of the last objection, there are ideas which had always been present within natural rights tradition – even apart from the ones I have already mentioned – which arguably always held out the potential of being interpreted along egalitarian lines. Here I have in mind the idea that the world is under the original ownership of us all – another natural rights principle which was standard even in earlier natural law theories. Now, to be certain, there are many plausible ways to interpret this idea, and many interpretations of it do not have any significant egalitarian implications. It is possible to interpret this idea – as many right-liberals have – as implying simply that the world is up for grabs, so to speak, available for the use and private appropriation of any first comer, so long as it has not already been appropriated. Yet it is also possible to interpret this idea as entailing much more strongly egalitarian conclusions, and many have done so. For it makes good sense to suppose – even though there are certainly cogent ways of contesting this supposition – that what at first belongs to everyone cannot later be exclusively appropriated by one person without regard to what this means for others. After all, against such a background, the private acquisition by one person of a resource means the dispossession of all others, who had just a moment beforehand been its joint proprietors. Even if we allow that this appropriation can be legitimate, it makes sense to argue that it can only be such under some specific conditions which somehow balance out the loss of whatever rights they formerly had as joint owners of the resource, and the benefits they might have derived from these rights. And it makes sense to venture that balancing this out specifically requires preserving some sort of distributive equality between the appropriator and the dispossessed.

Now, I do not believe, as some previous natural rights egalitarians have, that we can take for granted that an egalitarian interpretation of original common ownership is correct. Such an interpretation can only be justified by an extended argument sensitive to the many insightful arguments that have been made on behalf of opposing interpretations. What I believe this shows is instead simply that egalitarianism is not *alien*, not *foreign*, to the natural rights tradition. Instead, it can be made to fit quite readily with many ideas with a long history within this tradition, if conjoined with other premises that are – while still debatable rather than by any means self-evident – still plausible and defensible.

1.6

As a final task for this chapter, I now want to introduce my theory using the other accounts within this history as a point of reference. In particular, I want to talk about how my theory will be similar to the other prominent accounts I have discussed in this history, as well as how my theory will be dissimilar to others, and briefly explain why this is so in each case.

To begin with, my account will be similar to most accounts I have discussed here, and dissimilar to a few others we've seen, in having the defining characteristics of *a natural rights theory*. If we abstract away from the differences between the many accounts of this sort I have discussed here, I would argue that we will find that two specific characteristics are singly common and jointly unique to such theories.

The first and most obvious characteristic is that a natural rights theory must centrally assert that there are certain rights with three features we've referenced. First, these rights are *unconstructed*: they do not arise from our laws, customs, or other conventions, but instead have their basis in something beyond this, such as reason, nature, or God. Thus Locke says natural laws and rights are based on our nature, or our capacity to act "in conformity with reason."[179] Second, these rights are *universally attributable*: they are not ones some have and others lack, but instead ones we all have alike, no matter how unlike one another we are in other ways. Third, such rights are *universally recognizable*: they are not ones only some persons can grasp, but instead ones we can all see using the rational faculties we share by our nature. Hence, according to Kant's definition, natural rights are those which "can be cognized *a priori* by everyone's reason."[180]

A second characteristic of natural rights theories – perhaps less obvious, but no less important – is that they are also centrally concerned with something else in addition to rights of this sort. (After all, it is debatable at best whether this first characteristic alone would distinguish natural rights theories from all alternatives, such as Rawls' view.) Specifically, they do not focus merely on the natural rights with which begin, but also on *how* our further rights subsequently arise from these natural rights. For example, in many cases they focus on how rights of political authority can arise from a situation where there are no such rights, and instead everyone is naturally free – in other words, on how the transition from the state of nature to civil society takes place. Another important illustration is that in many other cases they focus on how rights of private property can arise within a situation where no one yet has such rights, and instead all things belong to everyone – which is to say, on how the private acquisition of resources under

[179] Locke, *Essays on the Law of Nature* I. Here I assume, that what Locke says about natural law also applies in the fundamentals to natural rights.
[180] Kant, *Metaphysics of Morals*, 6:296.

common ownership occurs. A very common tendency is for authors in the natural rights tradition to suggest that something about the way in which these rights arise places constraints on the content and extent of those rights. For example, they often say that political authority can only legitimately arise through a social contract, and frequently take this to mean that such authority must be conditional or restricted in certain ways.

My theory will have both of these characteristics. My theory's central principle will be that we all have a right to sovereignty, and a crucial point in my argument for this principle will be that this right is universally recognizable, as well as universally attributable and unconstructed. This means – as I will often say – that my theory rests on the affirmation of a *natural right* to sovereignty. In addition to this, much of the remainder of my theory will be focused on how certain further rights arise from the natural right to sovereignty, and in particular on how we gain private ownership rights over resources in this manner. I will give less attention to how rights of political authority emerge out of our natural rights; I see this as an important subject, of course, but nevertheless one for a separate project to pursue.

I ought to be clear, however, that while I will affirm a natural rights theory, I most certainly will not affirm *all* the ideas we might associate with such theories; there will be many which I will make a point of excluding from my own account. I will not rest my theory on the same religious and metaphysical foundations as authors such as Locke; I will assume nothing about God or teleology, whether affirmative or negative. I will make no empirical suppositions about human psychology, as figures like Hobbes do at crucial points in their arguments; I will neither assert or deny anything about our relative propensities toward selfishness or altruism, for example. Nor will I frame speculative anthropological or historical hypotheses about behavior in the state of nature, as Rousseau seems to at times; none of my claims will depend for their truth

or justification on the plausibility of any such hypotheses. These sorts of ideas, which as we've seen are quite common among natural rights theorists, are ones I would defend against some of the most simplistic criticisms to which they might seem vulnerable. Even so, I admit that there are other objections to them which are strong enough that it is best for a natural rights theory to avoid them altogether, and I do precisely this in formulating my view. Hence objections to these sorts of ideas, although they are certainly damaging to other accounts in the natural rights tradition, have no force as criticisms of my own version.

A further way in which my account will be similar to many of the theories I have mentioned here, and dissimilar to others, is that I will formulate a specifically *liberal* natural rights theory. In this, my view will be like that of authors like Locke and Kant, and unlike the theories of authors such as Hobbes and Filmer, who adopt a natural rights framework yet support absolutist government. I would argue once again that there are two defining characteristics of natural rights liberalism.

The first and most obvious of these two characteristics is simply that theories of this sort must posit that we all have natural rights to freedom. Specifically, we have a right to a sphere within which we may realize our own values, and where no one else may dictate to us what we are to do, or constrain us in our actions. (Different theories will of course interpret almost every part of this formula in different ways). Thus, for example, within this sphere we may live our lives in accordance with our own personal tastes, moral convictions, religious values, political commitments, and so on, whatever these might happen to be, and require that others who enter

respect these same values as well. The only condition is that we ourselves must not overreach our own spheres and infringe on the spheres of others – no matter how strongly we might disapprove of their potentially contrasting values, or how strongly we might prefer that they serve our own ends instead of theirs. Moreover, natural rights liberals very often, though by no means always, associate this right to freedom with rights of private property, and assert the two in tandem. Some authors in the tradition, such as Locke, even suggest that our rights to freedom, or even all our rights in general, simply are property rights. Others who are not willing to go quite so far, such as Kant, nevertheless assign private ownership a central place in their theories. The sphere of personal liberty to which we are all entitled by natural right is either identified with a space of private ownership, or at least taken to subsume such a space as one important part among others.

The second characteristic – again, less obvious, but no less necessary – is that theories of this sort must also posit that we retain our natural rights to freedom, either in full or at least for the most part, when we enter political society. After all, even Hobbes agrees that we are all free by natural right; hence this idea cannot by itself be sufficient to make a natural rights theory genuinely liberal.[181] The example of Hobbes also indicates what else besides this is necessary: namely, a further assertion that we do *not*, upon leaving the state of nature, surrender our natural freedom altogether to any external authority, as he proposes; instead, we keep this freedom, either wholly or mostly. When we look at many prominent natural rights liberals, we can quickly see that they stress precisely this point: Locke argues at length that we cannot consent to absolute monarchy, and Jefferson says in his famous phrase that our core natural rights are unalienable. In pressing this point, they were no doubt consciously opposing the view, not only of Hobbes but of nearly every author in the prior natural rights and natural law traditions, that within society we

[181] Hobbes, *Leviathan*, ch. XXI.

relinquish our natural freedom and submit to the dominion of others.

Again, my view will also be a specifically liberal natural rights theory. As I've mentioned, my account's central principle will be that we all have a natural right to sovereignty, which I will interpret precisely as a right to a sphere where we have the right to realize our own values in independence from others. Like Locke, I will posit a strong connection, indeed one of identity, between this right to a sphere of sovereignty where we may do as we choose on the one hand, and on the other the right to private ownership over objects with which we may do what we will. As a left-libertarian, I will in particular draw a connection between the right to sovereignty and the right to ownership of oneself – one's own body and mind, one's own labor and talents. I should note that my emphasis in my project will specifically be on questions of distributive justice, and in particular on private property and its limits – and not so much on questions of civil and political justice. Thus I will not give much attention to one of the traditional preoccupations of natural rights theory, namely the issue of how political authority rightfully arises, especially by means of the social contract, and what this implies about the nature and limits of rightful authority. I will simply assume that a position broadly similar to that of Locke, and dissimilar to that of Hobbes, is correct, such that we mostly or wholly retain rather than relinquish our natural rights in civil society. (This is not to say that I at all agree with the very curious way in which Locke argues for this position on religious grounds.)

Again, I want to clarify that while I will adopt these specific aspects of natural rights liberalism, there are other ideas common in the tradition which will not be part of my own theory. What may be most important to highlight here are certain ideas common among natural rights liberals regarding our rights to private property – ones having to do with both the foundations and the implications of these rights.

For instance, with respect to foundations, Locke along with many later natural rights liberals suppose that we start out with ownership over our own bodies and labor, and then acquire rights over resources in the world by mixing this labor with them in some sense. I agree with many critics that this line of reasoning does not make sense. In my view, there is some truth to the general idea that our rights to appropriate resources are connected in a way to the labor we perform to improve and exploit those resources. However, I would argue that the nature of and the basis for this connection have nothing to do with the much more specific and much less plausible Lockean notion that when we work on resources we somehow deposit our labor in them in any literal sense.

Turning to the implications of our property rights, many authors in the tradition have suggested that these rights are utterly incompatible with egalitarian redistribution and regulation on any significant scale, which they often claim violates our rights to liberty. Once again, I agree with critics that this is false. Certainly, many forms of egalitarian reallocation are illegitimate on my view: to name one clear example, I am no more receptive than any right-liberal would be toward arbitrary expropriation by a totalitarian communist regime. But other sorts of significantly egalitarian arrangements are indeed just according to the theory I will develop: I will argue that we have extensive rights to liberty and property, but these rights are subject to egalitarian restrictions – ones far less extreme than a statist communist would demand, but also far more significant than what a staunch right-liberal would allow.

Finally, my theory will be an *egalitarian* form of natural rights liberalism. In this respect,

it will be similar to that of historical figures such as Paine and George, and also of a piece with the views of contemporary left-libertarians. As before, I take there to be two characteristics which make a liberal natural rights theory an egalitarian one.

The first is that such a theory must affirm that private property rights are subject to restrictions which provide for a significant degree of distributive equality. Theorists differ on precisely what this means in more concrete terms, but the most common interpretation is that private property rights are to be upheld when and only when proprietors equally share with others a certain portion of the value of their resources. More specifically, on most views, they must so share the part of their resources' value which is in some sense *unadded* – that which they have independently of our labor or other contributions, and instead have in their natural, unimproved states. Moreover, this portion of their resources' value is to be *shared* specifically in the sense that proprietors are to be taxed in the amount of this value, and the proceeds are then to be equally redistributed to all, or otherwise spent in some egalitarian way. Apart from this redistributive restriction, private property rights are to be very strong, otherwise providing owners with wide scope to dispose of what belongs to them as they choose without interference from others. This sort of system is what is envisioned by most major figures in the tradition, such as Paine, George, and Steiner. It is worth noting, however, that other authors in the tradition have suggested other systems, such as ones under which all resources remain under joint ownership, or full ownership of resources is redistributed on an ongoing basis to preserve equality.

The second characteristic of egalitarian versions of natural rights liberalism is that they in some way associate these restrictions on private property rights with the perennial idea of the original common ownership of the world. As we've seen, this idea has been present in natural rights and natural law theories since even the ancient era, and different authors have understood

it in vastly different ways. What most authors have interpreted it to mean is that we may all acquire resources in the world which are not yet under anyone's private ownership – but that we cannot do so in ways which disadvantage others by some standard. Views then differ about what the standard for *disadvantaging* others should be in the relevant sense, and the standard we select here has sweeping implications for distributive justice. Some authors, such as Locke and Nozick, insist on a very weak standard, one which appropriators can satisfy without having to share the benefits of their resources with others to any significant degree, except perhaps in some extraordinary cases. Other figures, such as Paine and Steiner, insist on a much stronger standard, which appropriators under typical circumstances can only fulfill by means of sharing the benefits they derive from their resources on an egalitarian basis. A few authors have defended more radical interpretations of the original ownership of the world. Some extreme egalitarians have suggested that this means that no private appropriation is ever legitimate, and the world must forever remain common property. Some extreme inegalitarians have interpreted it to imply that any appropriation at all is legitimate, no matter how unequal, so long as it does not violate the existing private ownership rights of others.

The theory I defend here will possess both of the characteristics of egalitarian natural rights liberalism. My theory will affirm, and emphasize, that we have powers to unilaterally acquire resources as our private property, and that the rights we thus obtain over such resources are extensive. Yet it will also reject the position of authors such as Locke and Nozick, who hold that in all but the most exceptional cases proprietors may keep for themselves all the benefits they derive from resources, without any need to share. My view will instead also affirm, along with figures like Paine and Steiner, that there is at least one condition for our acquiring and retaining these private ownership rights, namely that we share with all others a certain portion of the value

of what we acquire. This portion is what I will call their *unadded value* – the worth which these resources have owing to features which we have not caused them to have, by our labor or by any other means, but which they instead naturally possess on their own. While the question of what specific sorts of arrangements would fulfill these general principles is a complex one, we may plausibly assume that they would be satisfied by a system which upholds private property, yet taxes proprietors on their resources' unadded value, and redistributes the resulting revenue in an egalitarian way. This will be the version of the left-libertarian principle of equal world-ownership that appears in my theory.

CHAPTER 2:

JUSTICE AND RIGHTS

In this chapter, I will begin laying out the theory I will present and defend in the chapters to come. In particular, I will start by answering the question of what the subject matter of my theory will be. My answer will be that my theory concerns justice and rights among fully rational beings.

To make this answer precise, I will give accounts of what justice is, and what rights are. In regards to justice, I will affirm the more or less conventional and straightforward view that justice consists in respect for rights. In regards to rights, I will set forth a less conventional and more nuanced view. I will begin by setting forth a theory of directed duties, which is to say duties *toward* some person or other being, or in other words duties *owed* to some such object. Here I will put forward what I will call the *open theory*, according to which duties are directed toward some object when something about this object is the ultimate reason for the duty. You owe a duty *to me*, in other words, when what explains why you have such a duty, in the last instance, is something of *mine* – my well-being, or else my will, and so on. I will defend this theory against the more established alternatives on offer, and especially the interest and will theories. I will then lay out my theory of rights, namely what I will refer to as the *vindication theory*. On this view, a subject's rights are those incidents which serve to vindicate her side in possible disputes over directed and enforceable duties. My rights in relation to you, that is to say, are incidents which could be used to show that I have not violated a directed and enforceable duty toward you, or that you have indeed violated such a duty toward me, by taking some action. Finally, I will stipulate that my theory will specifically be about fully rational beings – the rights

they have or lack in relation to one another, and thus the ways they can or cannot justly interact with one another.

These ideas are worth presenting and defending for several reasons. One is simply that it is important, when setting forth a philosophical theory, to clearly explain what the subject matter of that theory is, at least so far as this is possible at all. When we seek to formulate a theory of what justice is and what rights are, we should make sure we understand what it is we are even seeking in the first place, ideally at the outset of the search. Perhaps there are cases where this is impossible, and a theory's subject matter cannot even be defined until the theory has already been partly or fully articulated already; but it is better to avoid this if it can be helped at all.

Another reason I have in mind is to address in advance certain objections that might otherwise be raised against my theory. Although I will attempt in what follows to provide answers to a wide range of questions in moral and political philosophy, there are a number of other questions in the area on which I will not touch at all. For example, I will have nothing to say here about the nature of goodness or virtue, about the ethics of friendship or love, and so on. The fact that I make these omissions might seem damaging to my theory, for these are of course issues of immense importance in the areas of ethics and politics, and an account which does not address them might well seem seriously incomplete. It might even seem to indication a disdainful attitude towards these subjects, implying that they are too normatively or philosophically unimportant to be worthy of attention, or implying some unattractively dismissive viewpoint in regards to them. For example, the absence of an account of the rights of animals might be taken for a suggestion that the topic is insignificant, or even for a denial that animals have any rights at all.

Part of what I aim to do by delineating the subject matter of my theory in this chapter is

to explain precisely why I do not touch on these topics in my theory, and in particular to clarify that I do not omit them because I have any such disdainful stance toward them. To wit, I do not touch on these topics, not because I consider them unimportant, but simply because they fall outside of the subject matter my theory concerns, namely justice and rights among fully rational beings. Thus the nature of goodness and virtue in general are outside of the scope of my theory, since they go beyond the domain of justice and rights; the ethics of friendship and love is also beyond the scope of my theory, because the duties they involve are not enforceable; and so on. Moreover, I do not mean to suggest by omitting these topics that I take any sort of skeptical or reductive view towards them. Instead, I simply do not take any stand on them here, in one direction or the other; I do not explicitly or implicitly affirm or deny any answer to the questions associated with these areas.

2.1

Again, the subject of my theory is justice. I thus want to begin by explaining what I take the subject matter of justice to consist in.

Before I give my reply, let me first explain how I will do so and why. As a first step, I want to talk about what my aims are for my project as a whole, as well as what I'll need to do to meet those aims. My aim is to set out a theory of justice we can use to figure out what the just thing to do would be in the many predicaments we face in political life, at least once we have the empirical facts. To put together such a theory, the first thing we need to do is define justice, or in other words lay out the most basic and most central criterion there is for an action's being just or unjust. Let's use Plato as an illustration, not because I agree with him, but because he's an exam-

ple many will know: for his part, he defines justice as doing one's own work, and no one else's.[182] Any theory of justice must rest upon such a definition, whether Plato's or some other.

However, we'll also need to do much more than give such a definition. The reason why is that we'll often have a hard time figuring out which of the concrete actions open to us in a particular situation meet the abstract criterion for justice we've stated. To go back to the example, even if we assume with Plato that justice is doing one's own work, we still won't know what would be the just thing to do until we find out exactly what our own work is. As a result, we'll need to add to our theory some further suppositions – more definitions, other moral principles, and so on – that can help us figure out which actions meet our defining criterion. This is what Plato does when, among other things, he makes clear that one's own work is the task for which one is naturally best suited, or in other words is able to learn most quickly and easily.[183]

Here's how this relates to what I'm doing here and now. For the moment, when my project has hardly even started, the only thing I can give is a general *definition* of justice as a first and partial answer to our question. Much later on, when my project is just about over, I'll be able to give a specific *theory* of justice as my second and complete answer to this question. In other words, at the present stage, I'll be giving a rough sketch of justice, showing us little more than some broad outlines. At a future stage, I will draw a much clearer map, one which will show us justice in far more exact and vivid detail.[184] This map will then serve as the guide we're seeking – a set of principles from which we can deduce, once the empirical facts are in, what'd be just and what'd be unjust to do in the difficult situations with which reality confronts us.

Let's now consider how we'll define justice. To help ourselves decide, we should look and

---

182 *Republic*, 433a-b.

183 Ibid., 455b-c.

184 Another way to put the point would be to say, borrowing Rawls' terms (*A Theory of Justice*, p. 4, 9), that I'm going to lay out the *concept* of justice for now, and my *conception* of justice later on.

see how others have done so. What we'll find is that while philosophers have diverged widely in their specific theories of justice, they've often converged on much the same general definition. Mill, in the late modern period, says that justice is what a man "can claim from us as his moral right."[185] In the early modern era, Locke says that injustice is the "invasion or violation of [a] right."[186] For Aquinas in the medieval period, justice is a "perpetual and constant will to render to each one his right."[187] This definition is one Aquinas takes word for word from Ulpian, an ancient jurist.[188] Ulpian, in turn, borrows from the still earlier Aristotle, who similarly says that justice is that which "assigns to each man his due" – meaning, on one construal, his right.[189][190]

The fact that these authors agree in defining justice in this way, despite disagreeing on just about everything else, suggests there may well be something to the idea they share. Hence, the following definition of justice, which roughly captures the thought common to them all, seems as good a place for us to start as any:

(J) I may *justly* take an action when and only when the action does not violate anyone's rights.

Thus, as far as justice is concerned, we may do whatever we wish, no matter what our

[185] *Utilitarianism*, ch. V.
[186] *Essay*, bk. 4, ch. 3, sec. 18.
[187] *Summa Theologica*, II-II, q. 58, a. 1, trans. Fathers of the English Dominican Province (1920).
[188] *Institutes*, 1.1.10.
[189] *Rhetoric*, 1366b, trans. Ross (1923). See Miller (1995, p. 97n200) for the argument that for Aristotle, one's *due* – in Miller's translation, one's *own* – is that to which one has a right.
[190] In reply to my references to Aquinas, Ulpian, and Aristotle, you might protest that ancient and medieval authors do not affirm rights at all in their philosophies, perhaps with a few exceptions. Views along such lines have been widespread in philosophy and political and legal theory for some time; the most prominent defenders would include Strauss (1953), Villey (1975), and MacIntyre (1981). Later authors, however, have argued convincingly that many ancient and medieval figures do indeed affirm rights. Vlastos (1996, ch. 8) finds rights in Plato; Miller (1995, ch. 4) in Aristotle; Atkins (2013, ch. 4) in Cicero and Roman law; Finnis (1998, ch. V) in Aquinas; and Tierney (1997) throughout medieval philosophy and jurisprudence. The Strauss-Villey-MacIntyre thesis thus seems to be false.

wishes happen to be, until we reach at last the boundaries of others' rights. Once we arrive at these boundaries, however, we may never cross them, no matter how much we might wish to do so, and no matter why we might wish as much.

The reasons to accept this definition are not hard to see. For (J) to be false, there would have to be either actions which are unjust even though they do not violate rights, or else actions which violate rights but are nevertheless just. Neither alternative seems plausible, though. In regards to the first: how could I possibly commit an injustice without infringing on anyone's rights in the process? There would be something oddly contradictory about insisting that I've acted unjustly, but then conceding I haven't violated any rights at all. In regards to the second: how could I possibly encroach upon rights without committing an injustice against someone in doing so? There would likewise be a strange inconsistency in condemning me by saying I've violated rights, but then absolving me by granting my actions have been impeccably just.

Another reason in (J)'s favor is that the definition explains why justice would have the subject matter we associate with the concept. The issues that come to mind when we think about justice are in the first instance ones which pertain to topics like law, economics, and government. Accordingly, these are the issues on which political philosophers from Plato to Rawls have overwhelmingly focused in their theories of justice. (J) can readily account for this emphasis. Legal, economic, and governmental institutions can either uphold or else deny our rights on a uniquely vast scale, namely by granting to us or taking from us the civil freedoms, property titles, and political powers which are rightfully ours. Hence, justice concerns these topics because they're crucially related to rights, and rights are definitionally related to justice, as (J) says.

Let's consider some objections. First, you might protest that (J) clashes with other plausible ways of defining justice. One apparent clash has to do with the fact that (J) focuses on what makes an *action* just. However, there are definitions, such as Aquinas'[191] and Aristotle's,[192] which focus on what makes a *person* just. Moreover, there are definitions like Plato's[193] and Rawls',[194] which focus on what makes *institutions* just. You might agree with definitions like these, and thus hold that (J) has the wrong focus. Another apparent clash has to do with coercion. Another influential definition, namely Kant's, defines justice in terms of duties whose enforcement is morally permissible.[195] (J), however, makes no direct reference to enforcement. You might agree with Kant's definition, and thus insist that (J) is missing something crucial about justice.

In reply to the former criticism, I'd say that out of the three subjects of just actions, just persons, and just institutions, there is no right one or wrong one on which to focus. The reason why is that the three are so closely akin to each other that we can define the other two in terms of whichever one we choose to define first. For example, once we've defined just actions, we can define just persons as those disposed to act justly,[196] and just institutions as those we may justly enact.[197] There is no clash, then, between a definition of one of the three and definitions of the other two; instead, each such definition is compatible with and even obtainable from the others. Now, in reply to the latter criticism, I'd simply point out that rights are by nature enforceable. Hence there's no real clash between my definition and the alternative here either.

You may also object that (J) puts too much moral emphasis on rights. Something you

[191] *Summa Theologica*, II-II, q. 58, a. 1.
[192] *Nicomachean Ethics*, 1129a.
[193] *Republic*, 433b.
[194] *A Theory of Justice*, p. 6-7.
[195] *Metaphysics of Morals,* 6:383.
[196] This, in fact, is roughly what Aristotle says (*Nicomachean Ethics*, 1129a), and the same goes for Aquinas (*Summa Theologica* II-II, q. 58, a. 1).
[197] Nozick, for example, seems to follow an approach like this one (*Anarchy, State, and Utopia*, p. 6-7).

might plausibly assume is that just actions are moral, and unjust actions are not. On this assumption, (J) entails that what does *not* violate rights *is* moral, while what *does* violate rights *isn't* moral. This, you might say, seems false. Some actions are immoral even though they do not go against anyone's rights. For example, there are cases where a person acts immorally not by invading others' rights, but instead by refusing to do any good for them beyond the very least their rights demand. Moreover, some actions are moral even though they do indeed go against someone's rights. For example, there are cases where a person acts morally despite violating rights, namely because his action was the only way to avert some far worse outcome from arising.

I'd reply by denying the assumption behind this objection. To my mind, the relationship between morality in general and justice in particular is much more complex than the one this objection presupposes. My view is that what's moral, in the most ultimate sense, is what the balance of all relevant values supports when we weigh them together all at once. I hold that justice is one of the values we must weigh in this balance, and indeed the one which holds more weight than any other taken alone. However, I also hold that justice is not the only moral value that goes on these scales, nor the only one with enough weight to tip them. I'd point to beneficence, for example, as another relevant value, one demanding that we do what will bring about the best outcome. Justice, to adapt Aristotle's phrase, is part of morality, but not morality entire.[198]

Now, justice can conflict with other moral values, and in certain cases this conflict can be highly asymmetrical. I have in mind cases where the only actions open to us involve either trivial affronts to justice or else horrific affronts to other values. Imagine, to repurpose Hume's example, that you must choose between sharply scratching a man's finger, in violation of his rights and thus of justice, or allowing the world's destruction, in gross violation of beneficence.[199] In

[198] *Nicomachean Ethics*, 1130a, trans. Ross (1925).

[199] *A Treatise of Human Nature*, bk. II, pt. III, sec. III. I'm assuming you have a right against being scratched; let's suppose we're talking about a very rough scratch here.

such a case, I see no way to deny that scratching a finger and saving the world is morally necessary. In short, I admit that in the few cases where there are such vast asymmetries, just actions can be immoral, and unjust actions moral. I also insist, however, that in all other cases, where there are no such deep asymmetries, what's just and what's moral are one and the same.

You may object to this last reply. After all, many have said infringing on rights and justice can *never* be moral – or at least seem to have said so. You might imagine Rawls and Nozick would rebuke me for compromising on the "inviolability" of the rights of persons.[200] You might even suppose Lafayette himself would glare and say I've turned my back on the "inalienable and sacred rights of man."[201] The truth, however, is that even Nozick, for all the stress he lays on the idea that rights are side-constraints, later grants that we may breach them when we must do so to avoid moral catastrophe.[202] We might understand Nozick as conceding here that while rights are inviolable from the standpoint of justice, they are not *absolutely* so from the standpoint of morality more broadly. What I hold is nothing more and nothing less than this.

To say this is to invite two forceful questions: to wit, where is the line at which violating rights becomes moral, and why should we draw the line there rather than anywhere else? I can only reply, with some embarrassment, that I have no precise answer to the former question, and no answer to the latter at all. I would say there are almost no realistic scenarios, as opposed to philosopher's examples, which are over the line in question. Hence I am not taking any stance which would excuse, say, suspending individual rights in response to emergencies, at least on any scale virtually ever encountered in reality. I don't have much more to say here, but I have an excuse for being vague: my aim is to understand justice itself, rather than how justice in particu-

[200] *A Theory of Justice*, p. 3; *Anarchy, State, and Utopia*, p. 31.
[201] *Declaration of the Rights of Man*, preamble.
[202] *Anarchy, State, and Utopia*, p. 30; *Philosophical Explanations*, p. 495; *The Examined Life*, p. 212-214.

lar relates to morality in general; the latter is a worthy end, but not the one I'm pursuing.[203]

2.2

We've raised the question: "What is justice?" I've replied, with (J), that justice is about rights. The next question, then, is bound to be: "What are rights?" Defining rights, as well as the duties on which rights are based, is thus what I'll do now.

There has been a long debate in philosophy in jurisprudence about what rights are, one which goes back to Bentham and Kant, and has kept going up to the present.[204] Recently, parties to the debate have often stressed that to understand rights, we must understand the duties in terms of which rights are defined,[205] which I'll call *jural duties* for short.[206] Hence, alongside the debate over rights, there is now a parallel debate over jural duties, with many holding that to settle the former we must also settle the latter.

My aim here is to take a stand on both debates, presenting an account of jural duties as well as an account of rights, and defending both against the leading alternatives on offer. My account of jural duties is the *open theory*, on which jural duties to me are those enforceable duties of others the ultimate reason for which is something about me. My account of rights is the *vindication theory*, on which my rights are those sets of incidents to which my side could appeal to prevail in a dispute over duties.

I set forth these two theories at once because each one needs the other to be viable. In

[203] You might say that my theory of justice in particular is a form of *pure deontology*, but my view of morality in general is a form of *threshold deontology*. For various attempts to formulate and justify views of the latter sort, see for example Rosenthal (2018), Moore (1997), and Brennan (1995).

[204] In fact, the debate may be much older: Brian Tierney, in *The Idea of Natural Rights* (1997, ch. 2) finds an example of the third-party beneficiary objection to the interest theory in a twelfth-century text.

[205] Matthew Kramer and Hillel Steiner, "Theories of Rights" (2007, p. 298); Steiner, "Directed Duties and Inalienable Rights" (2013, p. 232); Kramer, "Some Doubts" (2013, p. 246n3).

[206] By *jural*, I mean *relating to rights*, not *relating to law*. Some jural duties are legal duties, but not all.

general, a theory of rights without a theory of jural duties is incomplete, since the former are defined by reference to the latter; and a theory of jural duties without a theory of rights is less interesting, since we care far more about the latter than the former. More specifically, as I'll show, the best way to secure the open theory against certain objections is to invoke the vindication theory, and the reverse is also true.

The debate over jural duties concerns how to define the *direction* of such duties. Jural duties are always directed toward some object: such duties must be duties to *me*, or else to *you*, or else to another person or being. What divides the theories is the question: "What makes a jural duty one owed to *me*?" Since the answer to this question is presumably that the duties in question confer some special standing upon *me* and not upon others, this answer will tell us what jural duties *do* for their objects.[207]

The open theory answers as follows. Suppose certain attributes of yours – such as your welfare, your will, or what have you – matter intrinsically from a moral standpoint. Suppose they matter enough, in fact, to give others enforceable duties, say to protect and promote these attributes. The open theory says that such a duty is what constitutes a jural duty directed toward you. As we'll see, this means that what jural duties *do* for their objects is set them apart as beings of a certain high moral status.

Similarly, the debate over rights largely pertains to how we should define the *location* of rights. Rights are always located in some subject: any right must be *my* right, or else *your* right, or else the right of another person or being. The theories in the area part ways on the question: "What makes a right *mine*?" Again, since the answer to this question presumably has to do with some special standing my rights confer upon *me* rather than others, the answer here will tell us what rights *do* for their subjects.

[207] I adapt this useful phrase from Leif Wenar's "The Nature of Rights" (2005).

The vindication theory answers as follows. Suppose a dispute arises between us. One side argues that the party on the other has breached a duty, and the other side argues that this stance is unfounded. Suppose there's a sound argument for your side's stance, one in which a fact about your incidents is a core premise. The vindication theory says a set of such incidents is what constitutes a *right* located in you. Hence, what rights *do* for their subjects, on this view, is vindicate their sides in disputes.

Here's how I'll proceed. In the first subsection, I will talk about structural points on which the theories of jural duties and rights agree. They will include the points that jural duties are enforceable, and that rights are sets of Hohfeldian incidents.

In the second subsection, I will turn to jural duties in particular, starting out by going over the leading theories in the area and the reasons for and against them. These are the *interest theory* and the *will theory*; the former faces problems relating to third-party beneficiaries, and the latter relating to less than fully rational beings. In the third subsection, I will present and defend the open theory, in part by showing how the view avoids these problems. In the fourth subsection, I'll address objections.

In the fifth, I'll move on to rights themselves, starting with a look at the leading views here and the reasons for and against them. These again include the *interest theory* and the *will theory*, now joined by the *several-functions theory*. The first two fail to capture the intuition that not all rights are claims; the third does this, but lacks the simplicity a theory of rights needs. In the sixth subsection, I'll present the *vindication theory* as surmounting these challenges. In the seventh, I'll answer criticisms.

The various theories on rights and the associated jural duties disagree on many substantive points, but agree on at least a few structural ones. I'll start by looking at these structural points, which I will include as part of my own theories as well.

Let me first note something. My aim here is only to present these structural points, rather than to explore in full detail what they mean and why we should grant them. This is because my overall purpose is to address what's at issue in the debates surrounding the leading theories of jural duties and of rights. In those debates, these points are uncontroversial. There are no doubt many interesting questions we can raise about these ideas, but I do not need to answer them all here, and I will not try.

The first structural point is that theories in this area should cover jural duties and rights of all sorts. There are many sorts of rights, such as moral ones, legal ones, and so on; accordingly, there must also be jural duties of all these sorts as well. Theories of such duties and rights tend to hold that there is something common and unique to jural duties across all sorts. This something is what most theories in the area aim to define, rather than anything present in some sorts and absent in others.[208]

The second structural point on which there is broad agreement between views is that jural duties must have certain features. In general, for me to have a duty to take some action is simply for refraining from the action in question to be at least *pro tanto* impermissible.[209] The duties associated with rights, however, are ones of a more specific sort, namely ones which are *directed*[210] as well as *enforceable*.[211] Let's define these two features in turn, and explain why we'd suppose

[208] Kramer, Simmonds, and Steiner, *A Debate over Rights* (1998, p. 1).
[209] The type of impermissibility varies with the type of duty. So, for example, legal duties involve legal impermissibility, moral duties involve moral permissibility, and so on.
[210] Kramer and Steiner (2007, p. 298).
[211] *A Debate over Rights* (1998, p. 9).

jural duties must have them.

A duty of mine is *directed* when the duty is one I have *toward* some person or other being. For example, my duty to fulfill a promise to you is directed, since I not only have a duty to do as promised, but a duty to *you* to do so; if I fail to do as much, I commit not only a wrong, but a wrong against you. By contrast, my duty to donate to charity is undirected, as there is no specific recipient to whom I owe my donation; refusing to give at all, while surely wrong, would not be a wrong *to* anyone in particular.

A duty of mine is *enforceable* when responding with appropriate force to my violating the duty is permissible. My duty to you to refrain from attacking you is enforceable: if I contravene this duty, then using force to restrain and redress my wrongdoing is permissible. However, my duty to a friend to visit when he's ill is unenforceable: if I stay home, then I may wrong him in doing so, but using any force in answer to my failure to show up, say by dragging me to his bedside, is impermissible.

As this implies, not all duties are jural ones, and so not all duties confer rights upon others.[212] This is because not all duties, enforceable or otherwise, are directed; and not all duties, directed or otherwise, are enforceable. To say this is not at all to diminish other duties, but only to distinguish them from matters of right. Any examples here will be debatable, but I would say duties to improve oneself are directed but unenforceable, and duties to avert moral catastrophe are enforceable but undirected.

The third structural point on which most agree is that rights are sets of what the contributors to the literature call *Hohfeldian incidents*.[213] These incidents are relations having to do with the jural duties we have or lack toward each other, and how we can or cannot change these jural

[212] Steiner, *An Essay on Rights* (1994, p. 61).
[213] *A Debate over Rights* (1998, p. 7).

duties. The incidents comprise four such relations in particular, namely the ones authors in the area standardly refer to as *privileges*, *claims*, *powers*, and *immunities*.[214] Let's define these four incidents and give some examples:

(I.i) I have a *privilege* to take an action when I have no jural duty to anyone to refrain from the action. In other words, what I have a privilege to do is what I would not jurally wrong others by doing. If I have no jural duty to stay out of a country, say because I have a travel visa, then I have a privilege to enter.

(I.ii) I have a *claim* upon you to take some action when you have a jural duty to me to take the action. This means that what I have a claim upon you not to do is what you would jurally wrong me by doing. If you're my doctor, say, then I may have a claim upon you that you treat me when I'm sick.

(I.iii) I have a *power* over you with respect to some incident when I can change whether you have this incident. A power is thus an ability to make you gain or lose an incident. If I'm your officer, then I may have a power to take away your privilege to go on leave by issuing you an order to remain on base.

(I.iv) I have an *immunity* from you with respect to some incident when you cannot change whether I have this incident. An immunity is thus an inability to make me gain or lose an incident. If the constitution forbids lawmakers to take away my claim to due

[214] Wesley Hohfeld systematically defines and classifies the incidents in "Some Fundamental Legal Conceptions" (1913). Kramer (*A Debate over Rights*, p. 7-59) and Wenar (2005) restate his framework with many valuable clarifications. I draw the definitions I use here from these authors.

process, then I have an immunity against this.

A fourth structural point, which follows from what I've said in (I.ii), is that jural duties are correlative to claim-rights. What this means is that I have a claim-right against you when and only when you have a jural duty toward me. A claim-right is thus the other side of a jural duty, in the way that your being my ancestor is the other side of my being your descendant. As a result, any theory of jural duties is also a theory of claim-rights, just as any theory of ancestry would be a theory of descendancy.

Let's turn from the structural points on which theories of duties converge to the substantive point on which they diverge. We'll first consider what the two major theories say on this issue, and what reasons there are to accept and reject each account.

I want to note two things here. First, my discussion here will be brief, since both the theories and the objections to them I will present are already well-known. I repeat them only to show there's a need for a new theory, and because I'll refer to them in explaining my own views. Second, I'll discuss only the two most prominent views in the area, and not the several alternatives in the literature.[215] This is regrettable, since those alternatives are insightful, but necessary, since I lack the space to examine them.

Again, the theories of the duties associated with rights diverge from each other in how they define direction. The central question is: "What makes a duty directed toward *me*, rather

[215] Some of the most notable are Judith Thomson's theory as stated in *The Realm of Rights* (1990), Gopal Sreenivasan's *hybrid theory* as stated in "Duties and Their Direction" (2010), and Wenar's *kind-desire theory* as stated in "The Nature of Claim-Rights" (2013).

than some other person or being, or no one and nothing at all?"

The first of the major views on this subject is the *interest theory* associated with authors like Bentham, Raz, and Kramer.[216] On this view, the duties directed toward me are all and only those which serve to benefit me, or in other words protect and promote my interests.[217] To be more exact, directed duties are those whose fulfillment generally increases the welfare of some being, namely their object, in a certain way. What's appealing about the interest theory is that the view captures a wide range of directed duties. For example, duties to others not to subject them to force and fraud protect them from things that decrease their welfare, while duties to others to help pay for their housing and healthcare provide them with things that increase their welfare.

One of the strongest and most common objections to the interest theory has to do with duties which have third-party beneficiaries.[218] Intuitively, there are many duties we can have which serve to benefit someone *other* than the person to whom we owe the duty. Suppose I promise you I'll deliver breakfast to your father. Since I've made my promise to you alone, the duty to fulfill this promise is intuitively one I likewise owe to you alone. What seems to follow from the interest theory, however, is that I owe this duty to your father as well, since he plainly benefits from my fulfilling the duty. Indeed, if your father plans to share the meal with your mother, then my duty seems directed toward her as well on this view, since she too stands to benefit here. To avoid these results, interest theorists need to find some way to distinguish between the various beneficiaries of duties, counting as their objects only those who benefit directly from these duties in some sense, and not those who do so only obliquely.

---

[216] Jeremy Bentham, "Pannomial Fragments," in *Works, vol. 3* (1843); Joseph Raz, *The Morality of Freedom* (1986, p. 165-192); Kramer, Simmonds, and Steiner (1998, p. 60-112). These texts focus on rights, but they entail similar accounts of jural duties.

[217] To quote Kramer and Steiner, for interest theorists, a duty's direction is "determined by the location of the generally beneficial effects that are intrinsic to the fulfillment of the duty" (2007, p. 298).

[218] Many opponents of the interest theory have made this objection. See H.L.A. Hart, *Essays on Bentham* (1982, p. 180-181), Steiner (1994, p. 61-64), and Sreenivasan (2005, p. 262).

Some interest theorists have said that duties toward you are not merely those which increase your welfare, but those whose *reason for being* is your welfare.[219] This idea has flaws, however. Suppose I have a duty whose reason for being is not your welfare, but instead something else about you, such as your will. On interest theory so altered, this entails that the duty *cannot* be directed toward you. Intuitively, however, the fact that the reason for the duty is my will at least does not *rule out* the duty's being so directed.[220] Other interest theorists have said roughly that duties toward you must be ones that *necessarily* benefit you.[221] The issue here is that the benefits to which a duty necessarily leads are, ironically enough, relative to specification. Consider the duty we've just discussed. We can truly specify the action this duty requires either as fulfilling a promise, or as fulfilling a promise to benefit a third party. Under the latter specification, the duty *necessarily* benefits the third party no less than the second.[222]

The second of the major views is the *will theory* associated with authors like Kant, Hart, and Steiner.[223] On this view, the duties directed toward me are all and only those which are under my control, or in other words are subject to my will.[224] More precisely, directed duties are are ones which some person, namely their object, has the power either to leave in place or else take away. What's appealing about the will theory is that the view also captures a wide range of directed duties. For example, my duty to you to repay a loan is one you can either insist that I discharge, or else cancel by forgiving my debt; my duty to you to stay off your property is one you

[219] Raz (1986, p. 166). Here I add the changes Rowan Cruft suggests in "Why is it Disrespectful to Violate Rights?" (2013, p. 205).

[220] Frances Kamm, *Intricate Ethics* (2007, p. 244-246).

[221] Kramer and Steiner (2007, p. 289-293). Here I'm simplifying Kramer's nuanced criterion, which involves more than a necessity requirement. Only the part about necessity is relevant here, however.

[222] Kramer accepts the idea that duties are indeed owed to third parties in such cases, but still balks at the idea that they're owed to fourth and further parties (*A Debate Over Rights*, p. 79-81). However, the same problem arises for fourth and further parties, since we can also specify the action as fulfilling a promise to benefit a third party who will then benefit a fourth, and so on.

[223] Kant, *The Metaphysics of Morals* (1797); Hart (1982, p. 83-88); Kramer, Simmonds, and Steiner (p. 233-302). The theories in these texts focus on rights, but they entail similar accounts of jural duties.

[224] To quote Kramer and Steiner: "Will Theorists maintain that the direction of any duty is determined by the location of the authorization to waive or seek enforcement of the duty" (2007, p. 298).

can either demand that I fulfill, or else withdraw by inviting me into your home; and so on.

One of the strongest and most common objections to the will theory has to do with duties to beings who lack full rationality.[225] Again, the will theory defines direction in terms of powers over duties, such as the power to waive another's duty not to throw you by signing a contract to take part in a grappling match. But such powers can only belong to beings with the rational faculties that are necessary to exercise them competently. For example, infants lack powers to do things like commit to contracts, since they do not have the mental abilities needed to adequately understand the terms, foresee the consequences, and so on. What this entails, though, is that we cannot have duties to infants according to the will theory, nor to animals, nor any other beings without these rational capacities. Intuitively, however, we do have duties to infants; and while we might debate whether we have duties to animals, intuitively we at least *hypothetically could* have duties to them, whether or not we *actually do*.

One response from will theorists has been that even though we have no duties to infants and animals, we still have moral obligations of other sorts toward them.[226] This reply does not work, however. There is still something profoundly counterintuitive about saying that we have *no duty* to infants to refrain from attacking them, for example, no matter how quick we are to add that doing so violates other moral principles.[227] Another response will theorists have made is that we do indeed have duties to infants and animals, with the qualification that their guardians are the ones with powers over these duties, rather than the infants themselves.[228] This reply does not succeed either. Again, the will theory says that duties are directed toward those who have powers over them. If the guardians and not the infants are the ones with these powers, then the duties are

[225] Many opponents of the will theory have made this objection. See Neil MacCormick, "Children's Rights" (1976); Kramer, *Rights, Wrongs, and Reponsibilities* (2001, p. 29-30); and Wenar (2005, p. 20).
[226] Hart, "Are There Any Natural Rights?" (1955, p. 181); Kramer, Simmonds, and Steiner (1998, p. 259-262).
[227] Kramer (2001, p. 30).
[228] Hart (1982, p. 184n86).

directed toward the guardians and not the infants.[229] This idea is thus still incompatible with the intuition that we have duties toward infants.

The objections to these theories are forceful, and there do not appear to be viable ways to deal with these problems. My conclusion is thus that while both of these theories are powerful, we cannot accept them, and must find some alternative.

After we've seen the issues with all these complex theories, there is another, much simpler idea that might occur to us. In what follows, I will present and defend this idea, which I will use in my own account of the duties associated with rights.

Recall the first response we considered from interest theorists to the problem of third-party beneficiaries, which is an idea from Raz, further refined by Cruft.[230] The response is to say that jural duties toward you are not merely duties from which you happen to benefit; instead, they are ones whose reason for being is to benefit you. This entails that jural duties are owed only to second parties and not to third ones, on the assumption that the former's interest and not the latter's is the reason for the duty.

As we've seen, there are problems with this idea. Imagine that the reason for some duty is not my interest, but instead another attribute of mine, such as perhaps my will or my nature as a rational agent. The response from interest theorists entails that this is *incompatible* with the duty's being directed toward me. When my interests are not the reason for a duty, I cannot be the duty's object, even assuming the reason in question is simply something else about me. As

[229] Wenar (2005, p. 20n26).
[230] Raz (1986, p. 166); Cruft (2013, p. 205).

Kamm notes, this seems false.[231]

What's implausible here, however, is the idea about interests, not the idea about reasons. We may wonder whether we might create a theory of jural duties which carries over the former idea while leaving behind the latter. This would no longer be a version of the interest theory – but that may be for the best, given the problems with this view we've seen. In what follows, I will pursue such an approach to directed duties, one similar but not identical to the course Kamm follows in regards to rights.[232]

My view is what I'll call the *open theory* of directed duties. On this view, the duties directed toward you are all and only those the ultimate reason for which is something about you. In some cases, the reason in question might be your interest or your welfare. In others, the reason might instead be your will or your choice. In still others, the ultimate reason might be something else about you, such as your social roles, your nature as a rational agent, or what have you. While the reason for your duty is different in each of these cases, what's the same in all of them is that the reason is an attribute of yours. The open theory thus says that all these duties are directed toward you.

Before I go any further, I should explain what I have in mind when I talk about an *ultimate* reason for a duty, as opposed to a *proximate* one. For any duty we pick, we can point to a reason why we have this duty, and often more than one. Sometimes, out of two reasons for the same duty, one will be dependent upon the other. This is the case when the former reason is there only because the latter reason is there. As a result, if the latter reason were absent, the former reason would be absent too. Let's say that a *proximate* reason for a duty is one which depends on

[231] Kamm (2007, p. 244-246).

[232] Kamm (2007, p. 247). To name some differences: Kamm's is a theory of rights, not jural duties – and her theory can't serve as an account of such duties, since she invokes them in defining rights. As an account of rights, moreover, her view shares the problem I will discuss in the fifth section, namely implying that all rights are claims.

another in this way; by contrast, a reason for a duty which does not depend on any other is an *ultimate* one.

Suppose you tell me I have a duty not to divert some stream to water my fields, and I ask you why. A first answer might be that diverting the water would leave none for the fields further downstream. A second answer might be that leaving none would dry up those fields, making their owners worse off. Now, the first answer depends on the second: I have reason not to dry up the fields only because I have reason not to make others worse off. However, the second answer depends on nothing further: I have reason to avoid making them worse off no matter what other reasons I have. The first answer thus gives a *proximate* and the second the *ultimate* reason for my duty.

While the open theory may seem too crude at first, there turn out to be strong grounds for accepting the view. One is that the view captures a wide range of intuitions about directed duties. Let's look at some examples. Consider a parent's duty to care for his child; a doctor's duty to treat her patient; a husband's duty to respect his wife's autonomy; and a passerby's duty not to intrude on someone's property. Intuitively, these duties are all directed, and their objects are the child, the patient, the wife, and the owner, respectively. The open theory fits well with these intuitions. The ultimate reason for each duty is something about the duty's object: the welfare of the child and of the patient, and the will of the wife and of the owner.[233] Hence the specified duties are indeed directed toward the specified objects on the open theory.

A second ground for the open theory is that the view captures the same intuitions as the other accounts. The interest theory covers intuitions about directed duties to provide goods and omit harms; since the object's welfare seems to be the ultimate reason for many of these duties,

[233] Here and elsewhere, you might object that I'm wrong about what the ultimate reason is for the duties I bring up in my examples. I would reply that you may well be right, and I may well be wrong; I don't want or need to take any firm stance on these issues.

the open theory also covers these intuitions. The will theory covers intuitions about directed duties to comply with others' authority; since the object's will seems to be the ultimate reason for many of these duties, the open theory covers them as well. The open theory thus in a way subsumes both the interest theory and the will theory, namely by granting that serving interests *and* granting control, as well as many other relations, can fix a duty's direction. In this area, there's nothing the interest and will theories can give us that the open theory can't.

A third ground for accepting the open theory is that the view captures the intuitions the other accounts fail to capture. Let's reflect again on the issues with the two accounts we've assessed, and examine how the open theory avoids these faults:

(III.i) The problem with the interest theory is that the view entails duties toward third-party beneficiaries, such as those who benefit when I fulfill a promise to someone else. This is not the case for the open theory. The reason why I have a duty to do what I've promised you is presumably something about *you*, rather than something about any third party. Thus the open theory agrees that in such cases we have duties to second but not to third parties.

(III.ii) The problem with the will theory is that the account has the consequence that we have no duties to less than fully rational beings, like infants and animals. The open theory has no such defect. We have duties to care for such beings, and plausibly the ultimate reason we have these duties is just that doing so protects and promotes their welfare. Thus the open theory also confirms the intuition that we can have duties to infants and animals.

In brief, supposing we have reason to accept theories of directed duties insofar as they capture intuitions and reason to reject them insofar as they fail to do so, then we have ample reason to accept the open theory and reject the alternatives.

So far, we've been discussing *directed duties* in general. Recall, however, that my aim is to define *jural duties* in particular, and that there is more to such duties than directedness alone. Let me give a final statement of my account of jural duties:

(D) I have a *jural duty* to you to take some action when and only when I have a duty to do as much, and the ultimate reason for this duty is something about you, and appropriately enforcing this duty is morally permissible.

I've said that an account of the direction of jural duties would tell us what duties *do* for their objects. I'll now explain what (D) implies here. To wit, according to (D), jural duties toward you define your *status* – in the moral case, your *moral status*.[234]

According to one common definition, beings with moral status are those who matter intrinsically from a moral standpoint.[235] In other words, they are beings who count for their own sakes, rather than merely for the sake of some further entity.

To see what this means, consider the profound distinction, in moral terms, between pavestones on the one hand and persons on the other. There are few moral constraints on what we may do to pavestones: we may step on them, crush them, and use them in nearly any way we please from a moral standpoint. Granted, there are some such constraints on what we may do to

[234] If the jural duties are instead legal ones, say, they instead define an analogous *legal status*, and so on.

[235] Agnieszka Jaworska, "Caring and Full Moral Standing" (2007, p. 460); Kamm (2007, p. 229); Rosalind Hursthouse, "Moral Status," in *The International Encyclopedia of Ethics*, ed. LaFolette (2013, p. 3-4).

them: we may not, for example, hurl them at others without cause, morally speaking. However, such constraints are there not for the sake of the stones, but for the sake of those we'd be using the stones to attack. By contrast, there are many constraints on what we may do to persons: we may by no means step on them, crush them, and otherwise do with them as we like. On the contrary, morality not only forbids us to do harm to persons for the most part, but also demands that we do good for them in many ways. Moreover, such constraints are there for the sake of the persons themselves, rather than any being beyond them.

Since the only constraints on what we may do to pavestones are *not* there for the stones' sake, pavestones lack moral status. Since the constraints on how we may treat persons *are* indeed there for the persons' sake, persons *do* have such status.

Now, for you to matter intrinsically from a moral standpoint is just for there to be duties whose ultimate reason for being is something about you. After all, supposing there are such duties, then you must matter, since otherwise you couldn't be the reason for any duty whatsoever, and intrinsically so, since otherwise you could be only the proximate reason for a duty. Supposing there are no such duties, however, then you must not matter intrinsically, since what this means is that you are not important enough to make any difference on your own to what others have a duty to do. We can refer back to our example of pavestones and persons to illustrate this point. Pavestones do not matter intrinsically; and accordingly, the ultimate reasons for the duties surrounding what we may do to them are unrelated to the stones themselves. Persons do, however, matter intrinsically; and in line with this, the ultimate reasons for our duties surrounding them lie in the persons themselves, rather than anything else.

What follows is that the beings with moral status are all and only those who are the objects of directed duties according to the open theory.[236] This means that duties toward you *consti-*

[236] This is no doubt why there is also a tendency to define having moral status as being the object of directed duties,

tute your moral status, in the way a shape's three sides constitute the figure's triangularity. This, then, is what directed duties do for you as their object on the open theory: from a moral perspective, they set you apart from the pavestones and place you alongside persons as a being whose importance is so great as to give rise to moral duties. What's more, since jural duties are enforceable, they mark you out as a being whose significance is such as to impose limits on others' conduct that we may *compel* them to respect, rather than merely depending upon their forbearance. If we can conceive moral status as implying a hierarchy in which all the world's various beings are sorted and ranked by how much they matter in themselves, then we can regard jural duties toward you as defining your place in the hierarchy's upper echelons.

We should now look at some objections. One criticism that may occur to you has to do with what we might call corrective duties. Suppose you're a thief who robs a bank, and I'm the officer entrusted with the duty to catch you. The reason for my duty seems to be something about you, namely your criminal actions. The open theory would thus seem to entail that this duty is in fact directed toward you. This seems entirely wrong, however; my duty to catch you is by no means a duty *to* you.

I'd respond by appealing again to the distinction between proximate and ultimate reasons. The proximate reason why I have this duty is indeed that you've broken the law. The ultimate reason for my duty, however, is not something about you, but something about those you've harmed. I do indeed have reason to catch you owing to your crimes, but this is so only because I

often with the suggestion that this is equivalent to the other definition – as the open theory confirms. See Mary Warren, *Moral Status* (1997, p. 3); Hursthouse (2013, p. 4); and Christopher Morris, "The Idea of Moral Standing," in *Animal Ethics*, eds. Beauchamp and Frey (2014, p. 9).

have reason to protect the welfare and uphold the deserts of your victims. The same holds for corrective duties more broadly.

Another criticism you might raise has to do with certain duties we owe to others due to their roles. For example, you might say that intuitively I have a duty to a judge to comply with her court orders. The reason for this duty, however, doesn't seem to have to do with anything about the judge herself. Instead, the reason seems to be that the public benefits from general compliance with the legal system. On the open theory, however, what follows is that I do not in fact have any duty to the judge at all.[237]

In response, I would stand by this implication. If in fact the benefit to the public is the reason for my duty, rather than anything about the judge, then I find nothing odd in saying that my duty is toward the public rather than toward the judge. Indeed, since the judge presumably exercises her authority on behalf of the public, what would be odd would be my having a duty to her over and above my duty to the public she represents. If I disobey, I wrong society collectively, rather than her individually.

You may also object that if I have no jural duties to the judge as such, then the judge has no rights as such over me. This, however, seems false. A judge has many rights to control how my trial goes; indeed, this is what *makes* her a judge. No such conclusion follows from what I've said, however. While the judge has no claim-rights as a judge on my view, not all rights are claim-rights, as my theory of rights will attest. She still has power-rights, for example, such as her right to determine my sentence.[238]

---

[237] This is similar to an objection to the interest theory, especially Raz's version (Wenar 2005, p. 21-22).

[238] To be clear, I still owe jural duties to her, and she still has claim-rights against me. However, these are simply the jural duties I'd still owe, and claim-rights she'd still have, even if she weren't a judge.

I will now turn from jural duties to rights themselves. As before, I want to start by going over what the theories on the subject have to say about the substantive point on which they disagree. As I do so, I'll look at the reasons for and against them.

Again, the theories of rights part ways mainly in how they define what I've called the *location* of rights. The question under dispute is: "What makes a right *my* right, rather than *your* right, or else one belonging to some other person or being?"

When we look at the strongest theories of rights, we'll see that in most cases each one matches up with one of the leading theories of jural duties. The reason why has to do with the tendency for theories of rights to focus above all else on one specific sort of right, namely claim-rights. Recall that by our definitions, claim-rights and jural duties are correlatives: for you to have a claim-right upon me is for me to have a jural duty toward you. This means that any theory of jural duties can double as a theory of claim-rights.

As we would expect, then, the foremost accounts of claim-rights are the *interest theory* and the *will theory*. The former says that my claim-rights are duties of others which serve my interests,[239] and the latter that they are duties of others over which I have control.[240] My own *open theory* entails that my claim-rights are duties of others whose ultimate reason for being is something about me. These views thus imply matching ideas about what claim-rights *do* for us: serve our interests, grant us control, and so on.

Each of these theories of claim-rights has the same strengths and weaknesses as the matching account of jural duties. The interest theory fits with rights to goods and against harms, while the will theory fits with rights to wield authority. However, the interest theory entails that

[239] Kramer and Steiner (2007, p. 298).
[240] Ibid.

duties from which I benefit as a third party can be my rights, and the will theory that less than fully rational beings cannot have rights. Thus we must reject these views as accounts of rights, no less than as accounts of jural duties.

There is another weakness these views face specifically as accounts of rights, however. Again, these theories, in their most recent forms, focus on rights constituted by one type of incident, namely claims. Recall, though, that there are three other types of incidents besides claims, namely privileges, powers, and immunities. Many incidents of these types can also intuitively constitute rights: privilege-rights, power-rights, and immunity-rights. Nevertheless, the theories we've been considering are accounts only of claim-rights, and not rights of any other type. As a result, there are many intuitions about rights that these theories cannot explain, and even contradict.

To see that not all rights are claim-rights, think about some examples. Consider your privileges to go for a hike on a public trail, or to attend a political rally, or to dress according to your tastes. Consider your powers to sell your car to a willing buyer, or to cast a vote in an election, or to enter into a business contract. Consider your immunities against the state's banning your faith, or confiscating your home, or barring you from running for office. In all of these cases, along with many others we might name, calling these incidents *rights* seems plausible, even natural.[241] What follows is that there are indeed such things as privilege-rights, power-rights, and immunity-rights.

As I say, most recent theories of rights cannot accommodate these intuitions. Following Hohfeld,[242] Kramer and Steiner deny them altogether, saying that only claims can be rights, and

[241] For brevity, when an incident-set has only one member, I will sometimes refer to the set and the incident interchangeably, as I do here, even though the two are strictly speaking distinct.
[242] Hohfeld (1913, p. 30).

that supposed rights constituted by incidents of other types are not in fact rights at all.[243] Strikingly, Kramer and Steiner admit that we have many intuitions to the contrary, observing that we make "indiscriminate use of the word 'right' to cover each of the Hohfeldian entitlements."[244] What these authors conclude, though, is not that the other incidents can count as rights, but rather that our intuitions to this effect are all false, and indeed "confused," "loose," and "muddled."[245]

However, there is one recent author, namely Wenar, who has offered an account of rights which avoids these difficulties. Wenar has one theory which concerns only claim-rights in particular,[246] but also has another which concerns rights in general. This is his *several-functions theory*, which says my rights are those sets of incidents I have which perform at least one of six functions. He refers to these six functions as *exemption*, *discretion*, *authorization*, *protection*, *provision*, and *performance*. For example, incidents serve as exemptions when they release you from a general duty, and as protections when they forbid others to subject you to harm or paternalism.[247]

Wenar emphasizes that his several-functions theory captures the intuition that all sorts of incidents can constitute rights. To name one illustration, privileges often function as exemptions: your privilege to use a thing you own permits you to do something others are forbidden to do, namely use the thing without permission from anyone else. To name another, immunities often function as protections: your immunity against losing your rights of political expression forbids the government to harm you in certain ways, such as by censoring you. As a result, Wenar's theory, unlike the others, entails and explains the notion that incidents besides claims can be rights.

While Wenar's several-functions theory avoids some of the problems that confront the

[243] Kramer and Steiner (2007, p. 295-299). As they note, some versions of the interest and will theories are in their terminology "expansive" (ibid.). In other words, some versions admit privilege-rights, power-rights, and immunity-rights alongside claim-rights. I also reject the expansive versions of these theories, such as Hart's (1982), for the reasons I've gone over earlier.
[244] Kramer and Steiner (2007, p. 296). Here they are again echoing Hohfeld (1913, p. 30).
[245] Kramer and Steiner (2007, p. 295-296).
[246] Wenar (2013).
[247] Wenar (2005).

other views, there is a different problem his account faces. To wit, his view lacks the *simplicity* a fully apt answer to our question would need to have.

To explain what this means and why this matters, we'll have to step back for a moment to reflect on what problem we're dealing with here, and what we need in a solution. Again, our central question is: "What are rights, and which rights are mine?"

When we raise a question like this one, we're asking at least two things at once. First, we're asking what we might call a *which-question*. This means we're looking for an answer that can tell us *which* particular relations are rights, and specifically my rights, and which ones are not. The answer needs to be broad and clear enough for us to tell as much in as many cases as possible, even ones that are unusual and uncertain in one way or another. No answer that fails to do as much would count as apt.

Second, however, we're also asking what we might call a *why-question*. Hypothetically, we could answer the which-question with an endless list naming every last right there happens to be, and noting each one's subject. Plainly, though, we need much more than such a list. We need an answer that also explains for us *why* all and only the items on the list are rights, and why each one belongs to the particular subjects noted. Again, any answer to the question that fails to do as much would be inapt.

To be more exact, we need not only an explanation, but one which fulfills the various standards an explanation must meet to count as a strong one. One of the most central of these standards is simplicity, as Wenar himself emphasizes.[248] An ideally simple explanation would take a manifold and disparate plurality of facts, and find some cohesive and unified principle underneath them all. Such an ideal is no doubt often out of reach, but an apt answer must come as close to the ideal as the subject admits.

[248] Wenar (2008, p. 251).

Despite the view's considerable strengths, we must reject Wenar's several-functions theory in the end as lacking the parsimony a theory of rights would ideally have. Wenar's account may work as a reply to the which-question: your rights might well be all and only those incident-sets which perform one of his six diverse functions. As a reply to the why-question, however, his account does not work: the view fails to explain in any cohesive way why these and only these incidents count as your rights.

To adapt the apian image Socrates uses with Meno, we might say Wenar's theory points out a swarm of rights, rather than one form uniting the whole hive.[249] Indeed, Wenar grants as much. He raises the question: "Why should rights be characterized by all of these six functions, and by only these six?"[250] He replies in effect that there is no answer. We can search all we want for a simple explanation as to why these and only these functions define rights, but all we'll ever find is "an irreducible complexity."[251]

Wenar argues that his theory's complexity is not a problem, because in fact we can't give any simpler account of rights, or at least one which doesn't face counterexamples. This is so, he says, because the concept has been shaped over the course of history by people with many different views on ethics in general and rights in particular. Ancient jurists, medieval scholars, and modern revolutionaries, among many others, have influenced how we view rights, and have done so in varying and conflicting ways. Thus we shouldn't expect there to be be any satisfyingly simple answer to the question of what rights are, because the concept itself is frustratingly complex.[252]

Wenar's argument here does not succeed, however. We can tell much the same story

[249] *Meno* 71d-72c.
[250] Wenar (2005, p. 32).
[251] Ibid.
[252] Ibid.

about most other concepts with an important place in philosophy: value, knowledge, mind, virtue, truth, perception, and so on. Many people have understood these concepts in many ways across history, and in our own intuitions we can often see all their clashing influences at once. We wouldn't be justified, however, in concluding from this premise alone that we cannot give a unitary theory of any one of these concepts. We can only conclude as much when know we've tried everything, and we know everything's failed; but as I aim to show next, there's something we've yet to try.

I will now present and defend my own theory of rights. As before, the inspiration from my theory will come from an idea found in some versions of one of the theories already on offer. However, my theory will end up diverging from all extant views.

An intriguing idea will theorists often raise is that rights have to do with conflict. We call upon our rights, Hart says, to "object to some interference by another person" as unjustified, or to give a "justification for interference with another."[253] Wellman says a right is an "advantage to which the right-holder can appeal in the event of some possible confrontation" with others.[254] For Steiner, rights pertain to "adversarial circumstances," in which they give people "reasons to back off from interference when they have no other reason" to do so.[255] The rough idea is that the role of my rights is to justify my getting my way rather than you getting yours when there's a conflict between us.

Curiously, however, will theorists tend to *define* rights not in terms of conflict, but in-

[253] Hart (1955, p. 183).
[254] Carl Wellman, *A Theory of Rights* (1985, p. 91-92).
[255] Steiner (1998, p. 236-239).

stead strictly in terms of powers over duties. Hart talks about interference in his reflections on rights, yet his definition proper refers only to "control" over others' duties, and does not bring up interference as such.[256] Wellman's definition invokes "confrontation," but lays more emphasis on "dominion" over duties, so much so that he sometimes restates his definition without mentioning confrontation at all.[257] Steiner speaks of conflict when stating some "preliminary intuitions" about rights, but he defines rights solely by reference to "powers pertaining to a duty," and not conflict.[258]

We should note, though, that the idea that rights relate to conflict, and the idea that rights relate to powers over duties, are separable. To see that this is so, imagine we have a conflict over who should get the proceeds from a book I've written and you've printed. Now, suppose I am in fact the one with a right to these proceeds, since we've made a prior agreement that I should have them. Intuitively, this right justifies my getting my way rather than you getting yours in our conflict. Note, however, that this does not depend on whether I have the power to waive this right; even if I somehow cannot, my right still gives a reason why I should win out in our dispute.[259]

My aim in what follows is set forth an account of rights, one that draws on the idea from will theorists that rights are about conflict, but leaves out their further idea that rights are about powers over duties.[260] Will theorists have come upon something powerful in their notion that rights have to do with conflict, indeed more powerful than they seem to realize. This notion is fit for much more than a place at the margins of a theory which puts at the center the notion that

---

[256] Hart (1982, p. 183).
[257] Wellman, *Real Rights* (1995, p. 8); *Moral Dimensions of Human Rights* (2011, p. 19).
[258] Steiner (1998, p. 235; p. 247).
[259] Will theorists might object by saying that according to their view there is no such thing as an unwaivable right. The point stands, however, that the idea that rights favor my side in disputes does not entail that rights grant me control over duties; rights can do the one without doing the other.
[260] I should also note that I will interpret their idea that rights are about conflict in ways they wouldn't; for example, I will not lay any special emphasis on freedom and interference. I am not claiming faithfulness to their ideas, but crediting them for inspiring a view which diverges from their own.

rights have to do with powers over duties. Indeed, the former notion turns out to be fitter than the latter, whose issues with the rights of infants and animals we've discussed, to serve as the core of a theory.

Thus I want now to give my own answer to the question of what rights are, namely what I'll call the *vindication theory*. On this view, your rights are all and only those incident-sets to which your side could appeal to prevail in a dispute over duties.

There are three things I'll need to explain before I go any further. The first is what I mean by a *dispute* over duties. The second is what I mean by *prevailing* in such a dispute. The third is what I mean by *appealing* to an incident-set to thus prevail.

Suppose there is an interaction between two parties that gives rise to a disagreement involving two sides. On each side, there is one of the two parties to the interaction, along with an advocate for this party. The advocate on one side contends that the party on the other has breached a jural duty; I'll call this the *accusing* side. The advocate on the other side contends that these contentions are unfounded; I'll call this the *accused* side. This sort of scenario is what I mean by a *dispute over duties*.

Imagine the sides then try to support their contentions. The accusing advocate aims to give a sound argument, meaning one whose premises are all true and whose conclusion is validly deducible, that the accused party has breached a jural duty. The accused advocate aims to give a sound argument that the case from the other side is unsound, meaning either that some premise is false or the deduction to the conclusion is invalid. By the side that *prevails*, I mean the one whose argument is sound.

Consider what the premises in each side's argument would be. First, they'd include descriptive facts, such as ones about what happened in the parties' interactions. Second, they'd also

include normative facts, such as ones about the incidents the parties have in relation to others. Now, suppose one side uses a fact about their party's incidents as a core premise in a sound argument for their conclusion.[261] When this is so, the set of these incidents is one to which this side *can appeal* to prevail in the dispute.

To see what these abstract ideas mean, let's look at a concrete example. Imagine that I cut down a tree next to your house, and you sue me in response. This leads to a civil trial in which I am the defendant and you are the plaintiff. Your lawyer contends that I've committed a civil wrong, and my lawyer contends that your side's case is unfounded. This scenario is a *dispute* over legal duties, in which you and I play the role of the two *parties*, and our lawyers play the role of the *advocates* on each side.

Our lawyers then make their arguments. Your lawyer argues for the conclusion that I breached a duty from the premises that I cut down the tree and that I had a duty not to do so. My lawyer argues for the conclusion that your side's case is unsound from the premise that in fact I was under no such duty. The side that *prevails* here is the one whose argument is sound. If the jury and judge are not so biased or inept as to misapply the law, they will reach a verdict and make a judgment in this side's favor.

Your lawyer then settles the matter by bringing out a map of property lines which shows that the tree was indeed on your land. Hence the tree was your property, which in turn means you had among other incidents a claim against my cutting down the tree. Since I cut down the tree despite this claim on your part, what follows is that I did in fact breach a legal duty. The fact that you have these incidents is thus a core premise in a sound argument your lawyer has made for your side's conclusion.

Thus your claims over your property have turned out to be ones to which your side could

[261] A core premise is one without which the argument's conclusion wouldn't be validly deducible.

appeal to prevail in a dispute. What this entails, according to the vindication theory, is that the set comprising these claims constitutes a *right* you hold.

The vindication theory says that the role this set plays in this particular scenario is the role that defines rights in general. This is my theory's answer to the question of what your rights *do* for you: they serve to vindicate you in conflicts like this one.

I want to stress a few things here, starting with the point that this is a theory not only of legal rights, but also rights of any other sort, such as moral ones. You might think otherwise, because only in a legal context do we often see advocates and appeals and so on, formally termed as such, in the real world. However, there's no reason why we couldn't have disputes over duties of other sorts at least in principle, and there's no reason why we couldn't appeal to incidents of these sorts to prevail in such disputes.[262]

Moreover, and relatedly, there is no need for the disputes here to be actual; they may just as well be merely possible. A set of incidents to which you actually *do* appeal to prevail in a dispute which actually *does* happen counts as a right on my theory. However, a set of incidents to which you possibly *might* appeal to prevail in a dispute which possibly *might* happen also counts. When I tell you that I have a right, what I'm saying is that if you *were* to challenge me, the truth *would* prove to be on my side.

Finally, I want to stress that the side that prevails in a dispute, on my definition, is the side that has the sound argument, not the side that *wins* in any other sense. To be sure, there are arguments that can lead a judge and jury to make a certain decision by appealing to their biases, exploiting their ignorance, and so on. However, my view doesn't count this as *prevailing*, and so

[262] When you and I have a conversation where you say I've done something immoral and I say I haven't, we're often having a dispute over moral duties with arguments on both sides. To be sure, this might be a dispute where you're acting as your own advocate and I'm acting as my own as well, and where there's no moral adjudicator to settle the issue. Still, the situation is much the same.

doesn't imply that the incident-sets which such arguments cite are rights. Soundness is the standard, rather than mere suasion.

Here, then, is my final statement of my account of rights:

(R) I have a *right* concerning some action when and only when I have a set of incidents to which my side could appeal to prevail in a dispute over jural duties concerning the action.

Let's now consider what basis there is for affirming this theory. While discussing the other theories of rights, we've come up with two criteria that a theory needs to meet for us to have reason to accept the view over the alternatives. The first criterion is that the account must capture the intuition that incidents of all types can constitute rights, as Wenar's view does, and as the other views do not. When we take a close look at the vindication theory, we'll see that the account meets this criterion.

To show this, we'll go over four cases, one for each type of incident. In all these cases, there is some interaction between you and I, and this leads to a dispute about whether one of us has breached a duty. In every case, the arguments from your side reference some incident of yours, and as we'll see, the appeal to this incident vindicates your side's contention in each case. To avoid some complications, let's assume that the premises in the arguments your side gives in these scenarios are all true.

(VI.i) Suppose I object that you've breached a duty by camping in a certain forest. Your side points out in reply that you have a *privilege* to use the area as you choose, since the

forest is in a public park whose rules allow for camping. If you have such a privilege, moreover, then contention that you've breached a duty by camping there is false, and so my side's argument is unsound.

(VI.ii) Suppose I fail to pay you some money, and you protest that I've breached a duty by doing so. Your side responds by noting that you have a *claim* upon me to this payment, since a judge has ordered me to pay the sum as part of a prior settlement. Since you have such a claim, and since I have not paid you any money, what follows is that I have indeed breached a duty.

(VI.iii) Suppose I fail to supply your shop with bread, and you allege that I've thereby breached a duty. Your side observes that you have a *power* to give me such a duty, since we've made an agreement to this effect. Moreover, you have exercised this power by requesting that I provide you with bread – but I haven't in fact done as requested. Thus I have indeed breached a duty.

(VI.iv) Suppose you express some religious belief, and I declare that you've breached a duty to refrain from doing as much. My side argues that I have a power to give you this duty, and that I've exercised this power. In fact, however, you have a constitutional *immunity* to my giving you any such duty. Your side remarks upon this, and infers that my side's argument is unsound.

Your side's arguments in all these cases *are* sound, since by stipulation the premises are

true, and plainly the conclusions validly follow. Your side's arguments, moreover, each include as a core premise the fact that you have a certain incident – a privilege, claim, power, or immunity. Hence these are all incidents to which your side can appeal to prevail in a dispute, and as a result they count as *rights* on the vindication theory. Thus the vindication theory meets the first criterion a view needs to meet.

The second criterion we've brought up in going over other theories is that an account of rights should be simple, as the other views are, but as Wenar's view is not. An account should not only answer the question of which relations are my rights, but also the question of what explains *why* these and only these relations count as such. This answer should find some unity amidst the plurality of rights, some one constant form they all share with each other but with nothing else that *makes* them rights.

The vindication theory meets this criterion as well. Rather than saying that there are several unrelated roles that rights *can* play, the view says that there is a single unvarying role that all rights *must* play. All rights allow you to prove that the truth is on your side when you are a party to a disagreement about a breach of some jural duty. The vindication theory is thus an answer to our question about rights much like the one Socrates requests, and unlike the one Meno offers, regarding virtue.

So far, we've shown that the vindication theory deals well with challenges specific to recent theories of rights. However, what we've said also shows that the theory deals well with generic challenges a theory in any area must meet. One such challenge is that the theory must capture a wide range of particular intuitions about the view's topic. If we switch out the incidents in our examples with any number of others, we'll see that the theory does just this. Consider a privilege to join a political party, a claim against unreasonable searches, a power to sign a bill

into law, an immunity to being subject to a direct tax, and so on and so forth. The same reasoning we've used in examples (VI.i) through (VI.iv) will likewise show that the vindication theory confirms the intuition that these incidents are rights, along with many others like them.

Another generic challenge is for a theory to avoid the counterintuitive implications other views on the subject have, and the vindication theory also does this well. We've talked about how the other accounts are subject to certain counterexamples regarding what they say about claim-rights. The interest theory ascribes claim-rights to third-party beneficiaries, and the will theory withholds them from infants and animals. As long as we assume the open theory of jural duties, however, the vindication theory is not vulnerable to any of these problems. The open theory escapes all these counterexamples as an account of jural duties, as we've discussed in detail, and thus also avoids them as an account of claim-rights. Hence the vindication theory, when conjoined with the open theory, entails and explains all the relevant intuitions here.

A last point I want to make is that the vindication theory captures some general ideas about rights with a certain intuitive attraction. We invoke our rights during moments of *struggle*, where we insist others have wronged us, or that we have not wronged others – in defenses before courtrooms, in addresses to protesting crowds, in revolutionary declarations against those in power. We invoke rights with a view to *ending* such struggles on our terms – to conclude trials with rulings, protests with reforms, and revolutions with regimes which favor our side. We invoke our rights as *reasons* which support such a resolution – to justify our side's stance in this conflict against those who question and challenge our position. The vindication theory entails and explains the notion that rights have something fundamentally to do with such contexts and purposes. The theory does this by defining rights in terms of *disputes*, as well as *prevailing* in disputes, as well as the *arguments* which allow us to do so.

Let's turn to objections. In the first place, you might be concerned that the vindication theory has problems similar to the will theory, and for similar reasons. Recall the will theory's central issue, namely the implication that beings like infants and animals cannot have rights, since they lack the mental faculties they'd need to hold and wield powers over duties. Now, the vindication theory defines rights by reference to things like disagreements and arguments. However, beings that lack full rationality as a result cannot *disagree* or *argue* with others in any literal sense. Thus you might have the sense that the vindication theory also entails that such beings cannot have rights.

Note, however, that the ones disagreeing and arguing in the disputes the vindication theory invokes are the *advocates* on each side, and need not be the *parties* themselves. Take, for example, a case in which a person harms an animal. An advocate could in principle start a dispute *on the animal's behalf*, and then argue that the person has breached a duty by treating the animal this way. Suppose the advocate makes a sound argument for this contention, one in which the fact that the animal has a claim against such treatment is a core premise. This claim will then count as a *right* belonging to the animal, one as real as any other right, on the vindication theory.

A second reason why you might object to my argument is that I may come across as having begged the question in relation to some of my interlocutors. A crucial premise in my argument for my theory and against others is that our intuitions suggest that all types of incidents can constitute rights. However, recent proponents of other theories, including Kramer and Steiner, have argued in detail for their stance that only claims can count as rights. As we've seen, they

also grant that we have many intuitions to the contrary, but conclude from this only that our intuitions on the topic are untrustworthy. Some response to the argument they've made is in order here.

Let's first examine what their argument is. The case from Kramer and Steiner for the idea that all rights are claims is one we can interpret as follows. The first premise is that all our rights come with duties toward us on the part of others. In their words, we assume that to count as holding a right, someone must be "owed a duty with some specified content by somebody else."[263] The second premise is that rights come with duties when and only when these rights are claims. As Kramer and Steiner say, the assumption that rightholders are owed duties is true when this right is a claim, "but will otherwise be prone to be false."[264] The conclusion is that all rights are claims.

My response here would be to reject the second premise. Even supposing we grant that all rights *come with* claims, we need not grant that all rights *just are* claims. We could alternatively say that anyone with a right also has a claim – but the right and the claim may be *distinct*. As an example, consider the right to sell your home, which seems to consist in a power to transfer all incidents relating to the house. Now, we might say there's a claim-right that always comes with this power, such as one against being arrested for making the sale. However, we could still consistently say that the power and the claim are not *identical* – they count as two rights, rather than one.

2.3

[263] Kramer and Steiner (2007, p. 296-297).
[264] Ibid.

Again, the purpose of this chapter is to define with some precision the contours of the subject matter of my theory, namely justice and rights among fully rational beings. I have taken a number of the most important steps towards this end in the foregoing sections, namely by defining justice and rights. This leaves something else to be done, however, namely defining fully rational beings.

I define such a being as one with the sorts of complex cognitive and conative faculties of at least the level which is normal for mentally developed and capacitous adult human beings. These include faculties for activities such as practical deliberation, judgment, and choice, for theoretical conceptualization, inference, understanding, and so on. This definition implies by default that virtually all adult human beings count as fully rational, regardless of the fact that some of them might be more capable at theoretical or practical reasoning than others. Supposing that there are, or could be, other beings apart from humans with mental faculties similar to or greater than our own, they would count as fully rational beings also. On the other hand, this definition excludes certain human beings, especially children, along with non-human animals, and other forms of life. I would insist that such beings certainly do have rights, and are entitled to many important forms of moral consideration, which is in some cases, such as that of children, no lesser in degree than the concern owed to normal adult human beings. And thus, in formulating a definition of rights, it was crucial that we come up with an account which would not entail that these beings by conceptual fiat must be deprived of rights. Nevertheless, I will leave them out here, in my delineation of the scope of my project, since it is not my plan to give an account of what the rights of these sorts of beings are.

We can summarize all the ideas of this chapter as a whole by saying that the topic of my theory will be, again, justice and rights among fully rational beings, which is to say the subject of

directed and enforceable duties whose subjects and objects are beings with cognitive and conative faculties like those of adult human beings, as well as jural incidents which can vindicate parties in disputes over such duties.

CHAPTER 3:

RIGHTS AND SOVEREIGNTY

My aim in this chapter is to argue for the most central principle in my theory, namely that we all have a natural right to sovereignty. In what follows, I will define this right as one to a sphere where we have full and supreme authority over the rights we and others have. Moreover, I will derive this right from our nature as beings who can reason for ourselves about what to think and what to do. Another premise here will be that natural rights are ones we all have under a principle we can rationally recognize universally and necessarily. Still another will be that since we can reason for ourselves, we can only so recognize a principle giving us all spheres where our values have force.

This argument is a variant on the thought, which many liberal authors voice, that we all have certain unique rights to liberty due to our unique nature as rational agents. Thus Locke says our freedom is grounded on our having reason, and Kant that we have rights to freedom due to our humanity.[265] While such ideas are appealing, they prompt several questions. What is it about our rationality that entitles us to rights, and why would this aspect of our rationality matter in this way? To what rights does our rationality entitle us, and why does it entitle us to these rights in particular and not others? In many cases, the answers to such questions are absent or unclear. Here, I plan to lay out the argument in a form that is precise enough to address such questions.

My aims here are partly justificatory: I can defend my later ideas more cogently if I first explain why we should accept the principle on which they rest. My aims are also partly clarificatory: I can define my later ideas more exactly if I first explain how we should construe the princi-

---

265 Locke, *Second* Treatise, ch. VI, sec. 63; Kant, *Metaphysics of Morals*, 6:237.

ple from which they follow. Most crucially, I will later refer back to this argument to convey both what ownership means and why ownership matters according to my theory. As I will eventually discuss in detail, full ownership turns out to be nothing other than one instance of sovereignty, and the basis for the right to acquire ownership likewise turns out to be nothing other than our right to sovereignty.

As before, I also aim to use my argument to answer in advance certain objections you might otherwise raise against theories like mine. Many authors in the natural rights tradition may seem to give only weak grounds for their views, or else no grounds whatsoever. Locke, for example, defends his ideas about natural rights by appeal to God's will, Christian scripture, and Aristotelian natural teleology. Indeed, in Locke's view, natural law and natural right by definition have their source in divine commands embodied in nature's teleological order.[266] Even if you do not reject such ideas as false, you might still take them to be unsuitable as foundations for a more modern, secular form of liberalism.

Certain more recent authors in the natural rights tradition may seem to fare even worse than Locke in defending their theories. Nozick, for example, infamously makes sweeping claims about individual rights while providing hardly any justification for them.[267] He suggests they follow from Kantian and even Rawlsian notions, such as the Formula of Humanity and the separateness of persons. However, he offers no reason to accept that these ideas imply the specific rights he asserts, rather than, say, the ones Rawls himself affirms.[268] If you assume that Locke and Nozick are representative of the broader tradition to which they belong, you might question whether natural rights liberals have any real grounds for their theories.

---

[266] Locke, *Essays on the Law of Nature*. See Simmons' *The Lockean Theory of Rights*, Waldron's *God, Locke, and Equality* and Parker's *The Biblical Politics of John Locke* for more on the role of such ideas in Locke's political philosophy.

[267] Nagel, "Libertarianism Without Foundations."

[268] Nozick, *Anarchy, State, and Utopia*, p. 30-35, 48-51.

I intend for my argument here to answer such questions, proving that we can in fact plausibly defend natural rights liberalism. Contrary to what Locke's example may suggest, I'll show that we can do more to defend such a theory than invoke a God and a Bible whose believability, or at any rate whose relevance to political philosophy, many would dispute. Contrary to what Nozick's example may suggest, moreover, I'll also show that we can do more here than gesture vaguely at appealing ideas from elsewhere without explaining why the theory would follow from them. A natural rights theorist can indeed give a reply worth taking seriously to the basic question of why we should accept her views.

We should start by laying out the argument all at once, and going over the course we will take in the following discussion. The argument will have three premises, each one bringing out a new concept central to the reasoning, and one conclusion:

(1) I can by nature reason for myself, as can all others.

(2) I have a natural right to something when and only when a principle we can rationally recognize universally and necessarily says we all have such a right.

(3) When we can all reason for ourselves, a principle we can rationally recognize universally and necessarily must say we all have a right to sovereignty.

(4) I have a natural right to sovereignty, as do all others.

In what follows, I will first discuss the three premises, giving one section to each of them.

In every section, I will start with clarifications, explaining how we should construe the concepts the premise invokes. I will then move on to justifications, explaining what reasons we have to accept the premise so construed. Lastly, I will turn to objections, raising some challenges against the premise and then offering my responses. I will then turn to a final section in which I will explain in detail both how the conclusion follows and what the conclusion means. The core thought will be that the natural right to sovereignty gives us a status akin to the one an absolute monarch enjoys, albeit only within a personal sphere rather than over a domain subsuming other individuals.

A last point I should stress here is that my goals here are more modest and less sweeping than they might seem at first. Again, my aim is to do more than others have to give a plausible answer to the question as to what justifies natural rights liberalism. Now, the answers I give will no doubt raise further questions in turn, whose answers will raise still more questions themselves. After a certain point, however, I will have no more answers to give on these issues – and this point will not take us too long to reach. I aim to go further than others toward laying foundations for natural rights liberalism, yet even so I do not aim to go all the way, but at most to show how one might do so.

I should be more specific about precisely which questions I have in mind here. As we will see, I will touch in what follows on many subjects, including human nature, rationality, personal identity, and moral epistemology, among other issues in normative ethics, metaethics, and metaphysics. While I will say a few things about these subjects, and while I will back up what I have to say when I do, I will not present any complete theory of my own on such matters, nor commit to any theory already on offer. Pursuing these questions even further still would be a very important end, to be sure, but would nevertheless go beyond the much more limited project I attempt

here.

3.1

Let's start with the first premise, which let's recall says as follows:

(1) I can by nature reason for myself, as can all others.

We'll first explain how we should construe this premise, namely by defining the ability to reason for yourself. To wit, we'll define this as an ability to accept what you find your reasons most support even when your biases pressure you to do otherwise. We'll then explain why we should accept this premise, showing that we are in fact able to do as much by nature. This is so because our nature includes rationality, and rationality in turn entails the capacity to reason for yourself by the definition we've given.

The most crucial way this premise contributes to the broader argument is by implying that we can *reason freely* in a sense. This means in part that when we reason, we needn't all end up at the same values, but may reach a vast range of different ones. This in turn means a principle recognizable to us all must be one on which we can agree even as we disagree widely in our values. Such a principle must have the potential to draw *assent* from many standpoints which sharply *dissent* from one another.

There are many ways you might object to reasoning for oneself as a concept, and I also mean to address such concerns here. You may well ask whether reasoning for oneself is always achievable or desirable given what you might assume to be involved in such reasoning. You may

also ask whether our having this ability implies certain implausible views on how personal identity relates to our values. I intend to show that such concerns are unfounded, and that in the end the concept has no such objectionable consequences.

Let's start by clarifying what must be the case for you to be *able to reason for yourself*, and specifically for you to be able to do so *by nature*. The notion I have in mind here is the one many authors have stressed in calling on us to use our own reason in theoretical and practical matters. This is the same concept Locke invokes when he declares that a man should "know by his own understanding;" the same one Kant invokes when he extols having the "courage to use your own reason;" the same one Mill invokes when he applauds the man who "chooses for himself;" and also the same one to which many other earlier and later modern philosophers similarly appeal.[269]

To understand the ability at issue, we should first consider certain cases, namely ones where you face a question and need an answer. The question might concern what to think, say about some metaphysical or empirical problem, or what to do, say about some political or ethical issue. You might ask whether you should accept the doctrines of some religious sect, or the predictions of some scientific theory. You might ask whether you should take action to support a political cause, or assume some role in your personal life. When you raise such questions, there will often be various answers you might accept, with various forces pushing you toward each one.

First, there might be an answer which you find you have most reason to accept through

[269] Locke, *Conduct of the Understanding*; Kant, *What Is Enlightenment?*; Mill, *On Liberty*, ch. 3.

critical reflection. Suppose you raise the question in your mind, and grasp the answers you might give; look at the reasons for each one, and weigh them against one another; and find which answer your reasons favor on the whole. To name some examples, this is what you're doing when you examine the perspectives and arguments regarding a moral issue, an ontological puzzle, or a scientific debate, and pick out the view you find you have the strongest reasons to hold. This answer is the one which your reasons themselves prompt you to accept when you consider them aright.

Second, there might be an answer which merely gratifies your uncritical leanings, biases, and prejudices. Many such biases are external in origin, as is for example the tendency to conform to the views others around you accept, embracing an answer merely because this is the one customary in your church, your party, or your family. Others are instead more internal in origin, such as for instance the tendency to keep the views you now accept come what may, clinging to the answer to your question you have already come to affirm simply because you already affirm as much. This answer is the one your biases press you to accept, often with help from desires and emotions.

In some cases, these answers turn out to be one and the same, while in others they prove distinct and opposed. When you are lucky, the answer which holds up best under critical scrutiny will happen to be no different from the one which fits best with your unfounded biases, sparing you the burdens a conflict between them would bring. When you are unlucky, they will come apart, forcing you to endure either the tension involved in accepting an answer you find comforting but unjustified, or the turmoil involved in accepting one you find justified but uncomfortable. We can now define the ability to reason for yourself by reference to what answers you can accept, and in what cases:

(RY) I *can reason for myself* when and only when I can accept the answer to a question I've found I have most reason to accept, even when this is not the answer my biases put me under the most pressure to accept.

The basis for (RY) is that the definition captures various intuitions about what counts as being able to reason for yourself. Imagine that you belong to a conservative culture which dictates stringent sexual mores, or an aristocratic class insistent upon their own superiority, or an extremist group devoted to a fanatical ideology. When you critically reflect, you conclude that you have overwhelming reasons to reject these views; but due to a bias toward conformity, you feel pressure to accept the views which those around you accept. (RY) explains the intuitions that you have the ability to reason for yourself if you can reject these views, but lack this ability – at least in this instance – if you cannot.

This account fits with ones other philosophers have set forth on the subject. For Locke, reasoning for yourself means accepting answers only when your evidence shows their "solidity truth and certainty," rather than submitting to the "dominion of others in doctrines."[270] For Kant, to reason for yourself is to accept no answer but that which "appears to you most worthy of belief after careful and sincere examination," as opposed to deferring to another's "alien guidance."[271] For Mill, those who choose for themselves are those who decide using such faculties as "observation," "judgment," and "discrimination," as distinct from merely using the "ape-like one of imitation."[272][273]

[270] Locke, *Conduct*, par. 36; *Essay*, I.4.22.
[271] Kant, *What Does It Mean to Orient Oneself in Thinking?*, 8:146; *What is Enlightenment?*
[272] Mill, *On Liberty*, ch. 3.
[273] You may object that these authors are concerned only with external biases rather than internal ones, but this is not the case. Locke, for example, defines imposition broadly as "holding opinions by the authority of any thing but [our] evidence." He then says such imposition is "most dangerous" not when others impose on us, but when

What is most important about (RY) is that the definition entails that those who are able to reason for themselves are thus able to *reason freely* in a certain sense.[274] Supposing we can reason for ourselves in general, then we can in principle reject *any* answer to *any* question, should we find this is not the answer our reasons support. This means there are no views we must necessarily accept and approve, and which we cannot possibly question or challenge, without regard to the reasons we have or lack. Nothing is beyond rational scrutiny for us, in other words; we can put any views at all to this test, accepting them when they pass, and rejecting them when they fail.

This is so not merely for the questions and answers we consider in an aloof and detached way, but also for the ones we contemplate with deep interest and concern. The latter would include questions and answers regarding our fundamental values, the ones on which we base our life projects, social roles, and community allegiances. These values might include the ones involved in your ambition to become a decorated officer, your commitment to being a caring son, or your devotion to your synagogue. While you may be profoundly invested in these values in many ways, you are not unchangeably bound to accept them, and instead are free to potentially reject them.

There are two consequences here we should stress given the central place they will have in the argument to come. The first is that those who can reason for themselves can reason freely at what we might call the *interpersonal level*. Even supposing that others accept a given view, indeed even supposing that *everyone* else does so, they still have the capacity to reject this view and accept another. The second consequence is that those who have this ability are also able to

"we impose upon our selves" (*Conduct*, par. 36).

[274] You may object that even if we're free from a *descriptive* standpoint in the views we *inwardly accept*, we need not be free from a *normative* (or descriptive) standpoint in the views we *outwardly express*. I would agree that this does not follow, but also note that I haven't said otherwise. We'll get to such a normative conclusion in the end, but only after we've added several further premises.

reason freely at the *intrapersonal level*. Even assuming they now accept a certain view, indeed even assuming they *always* have, they have the ability even so to come to affirm some alternative instead.

We now need to define what must be the case for the ability we've been discussing to be one you have *by nature*. Let's say a being's nature comprises the features common and unique to beings like this one, and necessarily so. Thus a triangle's nature is what all and only triangles must share, namely that they are figures with three sides.[275] Likewise, our nature consists in the features singly necessary and jointly sufficient for counting as *one of us*. We'll also say, then, that the abilities we have by nature are the ones which follow from these natural features. In other words, they are the abilities such that any being who has our nature must have these abilities as well.

Our ability to reason for ourselves elevates us above other beings in the world.[276] Some have held that our nature compels us each to accept a given role in a given group, but this is false.[277] We are not like bees, disposed by biology to follow the rest of the hive in projects they can never understand or criticize or abandon, unable to leave the queen behind for a republican life. We are not like horses, disposed by training and breeding to carry out for life a task which they have no way to comprehend or scrutinize or relinquish, unable to trot off to any new calling.

[275] You may object that appealing to beings' natures as I do here is a problematically teleological move, suggesting the Aristotelian view that there are final causes disposing beings to realize their natures. Again, I would reply that I have said nothing here to commit myself to such a view; to say something is common and unique to certain beings is not by itself to say this is a good which they tend toward.

[276] There may be other features of ours which do so as well.

[277] Such views were common in certain pre-modern cultures according to authors such as MacIntyre (*After Virtue*, ch. 3), and we can see an aptly unflattering illustration of what these look like in concrete terms in Aristotle's *Politics*, bk. I.

What our nature instead does is allow us to question, and perhaps even renounce, any such supposed destiny.

We now have an answer to our earlier question about the notion that we have rights to liberty owing to our rational natures. This notion has considerable appeal, but can still appear odd when scrutinized. Reason may seem a merely computational capacity, taking premises as inputs and giving conclusions as outputs by fixed rules. What is there in such a *mechanical* faculty that could ever confer upon us any exalted moral status? Here we have the beginnings of a reply: rationality gives us the ability to reason for ourselves, which in turn gives us an important inward freedom. What's special about being rational is the *independence* this gives us from the dictates arational forces would impose on us.[278]

We should next turn to justification, looking at the reasons for accepting premise (1). What we'll find is that there is a straightforward argument for the premise with only two steps. Let's go over what these steps are and why they would be true.

The first step here is the point that our nature includes rationality, which is to say that rationality is among the features necessarily common and unique to us.[279] One reason to grant as much is that as I've said, whenever I refer to *us* in this inquiry, I am referring to fully rational agents, and not to any other beings. That *we* are naturally rational is thus true by default. Another reason is that even absent such a stipulation, rationality is too prominent as a feature of beings

[278] You might object that our ability to reason for ourselves doesn't entail that we have free will. I would agree, but would also observe as before that I haven't said anything to the contrary. I am saying that we are free, but not necessarily in the sense which concerns metaphysicians. I see my position as one which even a hard determinist could accept without any inconsistency.

[279] Note that this means rationality might not be the *only* such feature.

like you and I for a theory of our nature to omit.[280] This is no doubt why so many accounts say that we are rational by nature, as do those from Aristotle and Aquinas and Kant, and so few say otherwise.[281]

The second step is the point that our rationality entails an ability on our part to reason for ourselves, such that since we have the former we must have the latter also. To understand why this would be the case, let's consider what more specific capacities are involved in our ability to reason for ourselves as we have defined this concept here. One would be the *intelligence* we need to find through reflection what our reasons most support, surmounting whatever confusions or perplexities we face in doing so. The other would be the *resolution* we need to affirm these answers once we've thus found them, overcoming any biases or prejudices we have against doing as much.

Now, I contend that beings wholly lacking either of these two capacities would as a result be deeply irrational. On the one hand, their lacking *intelligence* would mean they are utterly powerless to see what their reasons enjoin on the whole, say because they are too oblivious to grasp what their reasons are or too insensible to weigh them. On the other hand, their lacking *resolution* would mean they are outright helpless to bring themselves to accept what their reasons commend, say because they cannot master their countervailing desires, emotions, or prejudices. I submit that beings with *absolutely no capacity* to do such things would not count as rational ones at all.

After all, this would mean they have mental dispositions we associate with lower animals rather than rational agents. Animals often show an incapacity to grasp what their reasons evince

[280] For a longer argument to this effect, see Hurka's *Perfectionism*, p. 39-40.

[281] Aristotle, *Nicomachean Ethics*, bk. I, sec. 7; Aquinas, *Summa Theologica*, I-II q. 1, a. 1; Kant, *Anthropology*, pt. I, bk. 1. Theorists who deny that rationality belongs to human nature are hard to find; Rousseau seems to take such a stance at various points in his *Discourse*, and Laozi and Zhuangzi seem to hold views in this spirit.

on the whole, such when they fixate on perceptions which mislead them as to their situation while ignoring others which attest to the reality, as does a dog who sees his owner as a stranger when she wears a hat. Animals also often show an incapacity to commit to what their reasons most support, such as when they pursue whatever object their strongest present impulses demand without regard to future pains they thus risk, as does a cat who cannot resist chasing after a much larger deer.

Thus beings who lack intelligence or resolution must be irrational as a result, which entails in turn that beings which *are* in fact rational by contrast must have both. Granted, even as fully rational agents, we have our failings and limits here – yet not because these abilities are missing in us, but because we fail to exercise or develop them. Now, again, our ability to reason for ourselves consists in intelligence and resolution, as employed for example in resisting social conformity or belief perseverance biases. What follows is that premise (1) is true, since as our first step says we are rational by nature, and as the second says those who are rational can reason for themselves.

Let's now move on to objections, dealing first with some basic criticisms to the effect that reasoning for ourselves is actually something we can't or even shouldn't do. As we'll see, these objections rest on mistaken assumptions about the subject.

To begin with, you might protest that in many cases we *cannot* in fact reason for ourselves, since doing so demands various qualities which we often do not have. To reason thus, we must be imaginative enough to see the answers there might be, perceptive and judicious enough

to grasp and weigh our reasons, and firm enough to accept the answers we see our reasons enjoin. However, these are not qualities which come *naturally* to us, but ones we must cultivate through diligent and protacted effort. Some never try to do so, while others try and fail – and so both lack the relevant ability. Indeed, Locke, Kant, and Mill seem to stress this very point often in their discussions.[282]

I would answer that this is in part true but on the whole false, as we can see by first considering a certain fact about abilities. In general, what you are able to do is what you would succeed in doing if you were to attempt to do so *in the proper way*.[283] Now, for many abilities, what counts as a proper attempt is something very minimal. To exercise my ability to lift my arm, for example, I only need to will myself to move. For other abilities, though, what's necessary for a proper attempt is more demanding. For instance, I have the ability to learn Finnish – but I can do so only by studying the language, and doing so at great length and with great effort, rather than by merely directing myself to become fluent.

You would be right to say we sometimes lack an ability of the *former* sort to reason for ourselves, but wrong to say we ever lack an ability of the *latter* sort to do so. Certainly, there may be cases where we cannot reason for ourselves on command, we might say, and instead could only manage to do this after much further preparation. However, there are no cases where we simply could *never* reason for ourselves no matter how we might try to do so – and here Locke, Kant, and Mill appear to agree.[284] Some questions are so difficult, cognitively, conatively,

---

[282] For example, Kant says in *What is Enlightenment* that a person under "self-imposed nonage" is "at first really incapable of using his own understanding."

[283] In general, such conditional definitions of abilities and related concepts go back at least as far as Hume's *Enquiry* (8.1). The *in the proper way* qualification is my own addition, not present in many definitions, but still a warranted one. Clearly, to exercise some abilities, you need to not merely try to do so, but try *hard enough*, and using the *right means*; not just any effort, however unmotivated and ineffectual, will suffice.

[284] For example, even though as we've noted Kant says in *What is Enlightenment* that some are "at first" unable to use their own understandings, he still insists that they can become able to do so in the long run; what holds them back is not "lack of understanding" but "indecision and lack of courage."

or affectively, that *for now* we cannot consider them critically – but no questions are *forever* beyond us to examine.

Taking another approach, you might object that reasoning for ourselves merely involves mindless contrarianism, and excludes thoughtful orthodoxy. In other words, to reason so is just to always disagree with others, even when doing so is unjustified, and never agree with them, even when this *is* justified. You might also insist that reasoning for yourself much entails resisting all influences on your reflections from others, never allowing anyone else to at all affect what you think and choose. As a result, this requires never receiving any guidance at all from others in our thinking, and never regarding anyone else's testimony as a reason to accept any view. All of these things, however, are either unachievable, undesirable, or both.

I would reply first by pointing out that, on my view, reasoning for yourself does not merely mean disagreeing with others. Again, you reason in this manner when you accept what your reasons commend on the whole, even when your biases push against this. Thus mindless contrarianism is not only insufficient for but *incompatible* with reasoning for yourself in cases where you have most reason to accept what others accept. Symmetrically, thoughtful orthodoxy is not only compatible with but even *necessary* for reasoning for yourself in the same cases. Reasoning for yourself is not about differing from others *as such*, but differing from them *when* this is the rational thing to do.

I would reply secondly that your reasoning for yourself, according to my construal ,does not require that others in no way shape what or how you think. When others provide you with education or engage you in dialogue, they affect you in ways which can *help* you sort out by reflection what you have most reason to accept. Moreover, when you have grounds for trusting others' judgments in an area, then you not only can but *must* take their views into account to

properly reflect on the subject. Reasoning for ourselves entails resisting what we might call *negative* epistemic influences others might have on us, but not avoiding such *positive* epistemic influences.

Let's last look at a subtler objection to the idea that we can reason for ourselves. We often say that certain values we have, such as religious, political, or moral convictions, are part of what makes us who we are. Now, I've said that when you are able to reason for yourself, you are therefore able to give up your values – even, potentially, some of your most fundamental ideals – and take up new ones in their place. You may object, however, that this would have to mean that if we can indeed reason for ourselves by my definition, then our values cannot in fact be necessary for or essential to our identities. After all, what is essential to a thing is what the thing cannot lose without ceasing to be, or at any rate ceasing to be what it is. Hence, if we suppose, as is plausible, that certain values are indeed essential to us, then there must be *some* limits to our ability to reason for ourselves.[285]

My first reply here would be to grant that there must indeed be some significant sense in which certain values are central to our identities. We base upon our values the ways in which we conduct our lives and relate to others, as well as the ways we see ourselves and our world, at the deepest levels. My second reply, however, would be to nevertheless insist that our values cannot be fundamental to us in the especially strong sense that there is *no way* for us to ever change them. For we have strong intuitions to the effect that the same person who holds certain values at some earlier time can hold vastly different values at a later time. This sort of change would be impossible, however, on the supposition that our values are essential to us in the way this objection contends they are.

[285] This is my reconstruction of some of the objections to modern and especially liberal views of the self we find in such texts as MacIntyre's *After Virtue* and Sandel's *Liberalism and the Limits of Justice*, which you might raise against my theory as well.

One way to see this point would be to think about cases of dramatic conversions, such as ones in religious beliefs or political attitudes. The once anti-Christian Paul became an apostle after his vision of Jesus; the formerly belligerent Ashoka became a zealous Buddhist after the Kalinga War; Wordsworth, at first a radical, became conservative following his disillusionment with the French Revolution; Pius IX, at first a liberal, became reactionary following his perilous encounter with republican unrest. These are all examples of individuals who gave up values that were central to how they lived and viewed themselves, and took on new values instead. They changed their lives, inwardly and outwardly, at the most fundamental levels.

Intuitively, however, when they made this change, they did not cease to be the same individuals as they were before, at least not in the very most literal sense. Saul and Paul were not truly distinct persons, in anything more than a figurative sense – at any rate, they were not distinct in the same way that Saul and Peter were distinct. Presumably, Paul held all the same property, was bound by all the same contracts, and owed all the same debts as Saul; indeed, Paul was still responsible for all of Saul's past sins. This would make very little sense if Saul and Paul were genuinely distinct persons – just as little as if Saul's obligations and entitlements had jumped over to Peter instead. The same goes for Ashoka, Wordsworth, Pius IX, and anyone else with a similar story.

What our intuitions about these stories suggest is that one and the same person can indeed have two very different, even opposite systems of values at different times. This means that the objection under examination here is unfounded: our values are essential to us in many ways, but not in the strict sense that changing them while remaining ourselves is impossible. Hence there is nothing about the conditions for personal identity which would stop us from questioning and perhaps rejecting even the most fundamental which values we hold. While I do not want to commit

here to any broader view on personal identity, I do still want to contend that any plausible view on the subject must admit this point.[286]

3.2

Let's go on to the second premise, which to repeat says the following:

(2) I have a natural right to something when and only when a principle we can rationally recognize universally and necessarily says we all have such a right.

I will defend this premise by showing that (2) is the most plausible answer to the question of how to define natural rights. In order to do so, I will first lay out five ideas which appear often in the natural rights tradition about what marks out such rights. Next, I will go on to argue that premise (2) entails and explains all five ideas at the same time in a cohesive and unified way. The premise is thus justified as an apt explanation for our most basic intuitions about what makes a right count as natural.

What's most important about this premise for the broader argument is that we will infer from this definition what contents the principles of natural right must have. Given the diversity in our values, we cannot *all* recognize at once any principle under which the values of only *some* among us have force, while the values of others do not. Hence a principle all of us in all cases can recognize must be one granting us all rights to spheres where our own values hold sway, which is to say rights to sovereignty.

[286] Here I take myself to be building on what Rawls says, apparently with a similar point in mind, and also using Paul as his example, in *Justice as Fairness: A Restatement* (p. 21-23).

Bringing up natural rights is certain to invite objections, and another important task for us here will be to respond to them. Natural rights may seem bound up with metaphysical views many would reject, such as beliefs in God and natural teleology. They may also appear to depend upon various views in metaethics and moral epistemology that are similarly controversial. I will show that this is not the case: natural rights theory does not rest on any one view on such subjects, and can fit with many.

When we look at what authors in the natural rights tradition say about what such rights are, there are five ideas in particular we'll see come up again and again. These are ideas on which many theorists agree, even when they disagree on quite a few other subjects; we can find several both in Locke and in Hobbes, for example. These ideas also correspond to notions which are just as common in the still earlier ancient and medieval natural law tradition, going back to Aquinas, Cicero, and so on.[287]

As our first step here, we should start by discussing the five ideas one by one. For each idea, we will first explain in detail what the idea in question means in the first place, and then survey how various past authors in the tradition have stated this idea. To list them all up front, the five ideas respectively cast natural rights as: those arising from our nature; those not arising from political institutions; those we have even absent such institutions; those attributable to us all; and those recognizable to us all.

(i) Natural rights, simply enough, are those which *arise from our nature*.

[287] Cicero, *On the Laws* bk. I, *On the Commonwealth* bk. III; Aquinas, *Summa Theologica* I-II q. 90-108.

The point here is that natural rights are opposed to ones which are extrinsic or acquired. We all have a certain nature, one comprising the features defining beings like us. Many authors describe natural rights as those which arise from this shared essence, in the sense that the latter explains at least in part why we have the former. Since philosophers tend to define our nature in terms of our rational faculties, they've thus also tended to view our natural rights as ones we have owing to our reason.

Thus Locke, drawing on ideas he ascribes to Aristotle, says that natural law and natural rights arise from our nature, which is a capacity to act "in conformity with reason."[288] Condorcet says along these lines that natural rights as such "derive from the nature of man" as a "sensible being, capable of reasoning and having moral ideas."[289] In the same spirit, Kant also says that a natural or "innate" right is one "which belongs to everyone by nature," and thus "by virtue of his humanity," which he equates with rationality.[290]

(ii) Natural rights are those which *do not arise from political institutions*.

Here, the point is that natural rights are opposed to ones which are positive or constructed. When we interact with each other according to certain patterns, these patterns can form conventions. Ultimately, conventions on the largest scale include political institutions such as states, laws, and so on. Many describe natural rights as ones which *do not* arise from

[288] Locke, *Essays on the Law of Nature* I. Here I assume, as I will throughout, that what Locke says about natural law also applies in the fundamentals to natural rights. You may protest at this, since Locke does indeed distinguish the two, and focuses on the former significantly more than the latter. I'd note in reply that he defines one in terms of the other, suggesting that natural right is what natural law neither enjoins nor forbids. This would suggest that natural right is part of the natural law, just as permissions are as much a part of a morality as prohibitions.

[289] Condorcet, *Letters of a Freeman of New Haven.*

[290] Kant, *Metaphysics of Morals*, 6:238.

institutions like these, especially states. Hence they are unlike legal rights, for example, which we have due to the laws which bestow them.

Thus Grotius distinguishes natural from "Voluntary Right," and takes the latter to include "Civil Right," which he says is that which "results from the Civil Power."[291] Locke contrasts natural law and natural rights with "positive civil laws" which are subject to human authorities, who can thus "make or remake [such] laws at their will."[292] Kant similarly holds that our natural rights are those which are "non-statutory," as distinct from "positive (statutory) right, which proceeds from the will of a legislator."[293]

(iii) Natural rights are those which *we have even absent political institutions.*

The point in this case is that natural rights are opposed to ones which are specifically civil or political. In other words, they're ones we'd have even in a situation where there were no states and no laws. Hence many theorists say that natural rights are those we hold in the state of nature, without any governments around to direct our actions. According to some views, they are also rights we lose when we enter into civil society, while according to other views we instead keep them in part or in full.[294]

Hence, on Hobbes' view, the "right of nature" is one which we have in the state of nature, but which we then "lay down" when we consent to the Sovereign's rule.[295] For Locke, we hold certain natural rights before we enter into political society, at which point we "resign" some such rights by our consent even as we retain others.[296] Kant also says our natural rights are ones we

[291] Grotius, *Laws of War and Peace*, I.1.14.
[292] Locke, *Essays on the Law of Nature* I.
[293] Kant, *Metaphysics of Morals*, 6:296.
[294] See Edelstein's *On the Spirit of Rights* for an intellectual history of the clash between these views.
[295] Hobbes, *Leviathan*, pt. I, ch. XIV.
[296] Locke, *Second Treatise*, ch. VII, sec. 87.

have even in a state of nature, although he stresses that such rights "remain in force" when we enter the civil condition.[297]

(iv) Natural rights are those which are *attributable to us all*.

Here, the idea is that natural rights are opposed to those which are peculiar or exclusive only to some. Authors often say that natural rights are ones which we all have alike, no matter how unlike each other we happen to be in other ways. As earlier authors often stress, they are thus not exclusive to citizens of any state, or members of any class, or adherents of any faith. As earlier figures often deny, but later ones often insist, they are also not peculiar to those of any specific race, gender, or sexuality.

Accordingly, Hobbes says that the right of nature is one which "each man hath," and Locke proclaims that an equal natural right to freedom belongs to "every man."[298] Thus Mason and Jefferson likewise stress that natural rights appertain to "all men," while figures like de Gouges and Stanton urge that the same holds for women as well. In much the same spirit, Locke and Lafayette contend that natural rights do not depend on religion, while Hall and Douglass contend they do not depend on race.[299]

(v) Natural rights are those which are *recognizable to us all.*

The idea here is that natural rights are opposed to ones discernible at most to some partic-

[297] Kant, *Metaphysics of Morals*, 6:242, 6:257.
[298] Hobbes, *Leviathan*, pt. I, ch. XIV; Locke, *Second Treatise*, ch. VI, sec. 54.
[299] Locke, *A Letter Concerning Toleration*; Lafayette, *Declaration of the Rights of Man and Citizen,* art. 10; Hall, *Petition 1/13/1777*; Douglass, *What to the Slave is the Fourth of July?*

ular individuals, or only in some contingent cases, but not others. Again, there are certain rational faculties we all have by nature, and many authors hold that natural rights are ones we can all come to grasp by using these faculties. These are therefore rights which anyone can rationally see we have, rather than only someone with a supposedly privileged religious, philosophical, or cultural perspective.

Hence, for Hobbes, principles of natural law and natural right can be "found out by Reason," and indeed such laws and rights constitute "dictates of Reason."[300] According to Locke, natural law and natural right are "discernible by the light of nature," which means given our rational nature that they "can be known by reason."[301] Likewise, according to Kant, natural rights are those "which can be derived from *a priori* principles," or in other words "can be cognized *a priori* by everyone's reason."[302]

Ideas along such lines go back to ancient and medieval natural law theorists, who often cast such laws as discernible by natural reason, even *identical* to reason.[303] Cicero calls the law of nature "the highest reason, implanted in nature," and the *Institutes* say that this law is one which is "prescribed by natural reason for all men."[304] Similarly, for Augustine, "natural law is transcribed... upon the rational soul," while for Aquinas this law is "known by [us] naturally" and therefore "equally known by all."[305]

What we've just surveyed here are the five most common and basic ideas in the tradition

[300] Hobbes, *Leviathan*, pt. I, ch. XIV, XV.
[301] Locke, *Essays on the Law of Nature*, I.
[302] Kant, *Metaphysics of Morals*, 6:296.
[303] I should be clear that I do not want to commit myself to the latter idea, which seems dubious to me.
[304] Cicero, *On the Laws*, bk. I; *Institutes*, 1.2.1.
[305] Augustine, *Eighty-Three Different Questions*, q. 53, 2; Aquinas, *Summa Theologica*, I-II q. 94, a. 4.

about what natural rights are. As a result, they constitute the most central intuitions about such rights for which a theory about the subject would have to account. These ideas fit rather than clash with one another, as we might expect given that authors often accept several at the same time. We can consistently accept all five ideas at once, and in fact in some cases we cannot consistently accept some yet reject others.[306]

Even so, these ideas are several in number and diverse in content, when what we need is a single definition of natural rights. This definition must cover ideas (i) through (v), entailing in conjunction with other reasonable suppositions that they are all true. This definition must be as unified and cohesive as the subject admits, capturing these ideas with simplicity and parsimony. We would have reason to accept such a definition as one which aptly explains fundamental intuitions about natural rights.

We'll find that we can craft such a definition from idea (v), which concerns universal recognizability, and also from idea (iv), which concerns universal attributability. This definition will thus treat these ideas about universality as primary and definitive, and the ideas about essentiality and non-conventionality as secondary and derivative. In this we follow several other authors in the natural rights tradition, such as Locke and Kant, who also seem to treat these ideas as more fundamental than the rest.[307]

The definition which can meet all the conditions we've set out here is simply what we've stated above as premise (2). Again, (2) defines a natural right as one which a principle we can rationally recognize universally and necessarily says we all have.

Let's now go over a few clarifications. The definition of natural rights we've given in-

[306] For example, the idea that they arise from our nature entails that they do not arise from convention.

[307] For example, Locke invokes this idea at the point where he first explicitly defines natural law in his *Essays on the Law of Nature*, whose central aim is to explain how natural laws can be universally knowable given Locke's empiricist rejection of innate ideas. Kant also refers to this idea in his first definition of natural rights in the *Metaphysics of Morals*, which he gives just before stating one of his theory's most foundational principles, namely that we have an innate or in other words natural right to freedom (6:237).

cludes references to several different concepts, including *principles*, *rationality*, *recognizability*, *universality*, and *necessity*. We should explain these concepts here.

First, let's discuss the reference to *principles*, and the *rights they say we have*. The principles invoked here are ones of justice, which are generalizations about what rights beings have or lack, and hence about what is just or unjust. Such a generalization may imply, once conjoined with other facts, that *we* in particular have certain rights; and these are the rights the principle says we have. The point is that natural rights rest on general rules, rather than specific claims, regarding the rights we have.

Second, we should go over the definition's reference to *rational recognizability*. We've already explained how we can critically reflect on a question, namely by grasping the answers, weighing the reasons, and finding the answer they most support. When you come to accept a true principle you have reached through such reflection, you thereby rationally recognize the principle in question in the relevant sense. A principle that we *can* thus recognize is one which we *could* reach in such a way.

Third, let's talk about the reference to *universal* and *necessary* recognizability. We'll say that principles are rationally recognizable on a universal basis when any one of us can come to thus recognize them. We'll also say that principles are so recognizable on a necessary basis when we can come to thus recognize them in any case. Natural rights are thus ones we can grasp using only our natural reasoning faculties, and our ability to do so does not depend on particular or contingent facts about us.

We should next turn to justification. Again, the reason why we should accept (2) is supposed to be that the definition entails and explains our five ideas about what natural rights are in a unified and cohesive way. We'll now prove that this is the case.

We can already see how (2) captures ideas (iv) and (v), namely by directly invoking universal recognizability and attributability. However, we need to show how (2) covers the other three ideas, which receive no such explicit reference in the definition. Recall that (i) is the idea that natural rights are ones which arise from our nature, (ii) is the idea that such rights are ones which do not arise from political institutions, and (iii) is the idea that such rights are ones which are present even absent such institutions.

As a first step, let's imagine that there are certain rights which are natural according to the definition set forth in premise (2). Let's then consider what conclusions follow from this premise with respect to ideas (i), (ii), and (iii), taken in reverse order:

(vi) Because these rights fulfill (2), they must be ones a principle we can recognize says we all have. Since by our definition we can only recognize *true* principles, these rights must indeed belong to all. Now, assuming that we all have these rights, then even those among us who happen to be in a context where there are no political institutions, such as states, must have them too. Hence the rights in question must be ones we have in a state of nature.

(vii) Given that as we've seen these are rights we all have in common, what gives rise to them must also be something we have in common, in any context in which we might happen to find ourselves. Again, one context in which we might end up is a state of nature, where there is no government or law. This means that being under such institutions is *not* something we have in common in every context. Hence these rights do not arise from such institutions.

(viii) Again, because these are rights which we all have in common, what they arise from must be something we have in common. Indeed, as we've just seen, this must be something which we all have in common no matter what, in any context at all. Now, the things we all have in common in any context are just the things which make up our nature, in part or in full.[308] Hence, these rights must arise from our nature, if they arise from anywhere at all.

We've now seen the grounds for accepting (2) as a definition of natural rights, namely that the premise takes the plurality of ideas in the tradition about what such rights are and brings them together all at once under a single unitary conception.

In sum, we've defined natural rights here as ones which are universally recognizable as well as universally attributable. They are universally recognizable in that they are rights we can all grasp through rational reflection using our natural faculties. Thus there cannot be natural rights which I can discern by my reason but you by contrast cannot, due to any feature I have yet you lack, such as religious revelation, philosophical insight, or ethical self-cultivation. Instead, my reason and yours hold equal weight here: if I insist that I can recognize a certain natural right, yet also deny that you can acknowledge this right yourself, then I commit myself to a contradic-

[308] You may object that there are many features we all have in common which aren't part of our nature, such as the fact that we're all self-identical. However, such features are indeed part of our nature, since they're among the *necessary* and sufficient conditions for counting as a being like ourselves. This is because a feature like self-identity is trivially necessary for counting as *any* sort of being at all.

tion.

Natural rights are universally attributable in that they are rights we all have, however different we may be in other ways. Thus there cannot be natural rights which I have but which you do not have as well, owing to some feature I have yet you lack, such as my race or ethnicity, my gender or sexuality, or my nationality or citizenship. Rather, you and I must be equal in this respect as well: supposing I avow that I have some particular natural right, but then deny that you too have the same right yourself, I once again in effect contradict myself. These two forms of universality then imply that natural rights must arise from our nature, not arise from convention, and so on.

Let's lastly consider some objections. Natural rights theorists, especially in the past, have often held certain views which many today, though not all, would reject. These authors also often give the sense that they regard these views as the foundation for what they have to say about natural rights. Past authors seem to connect natural rights to metaphysical views like Christian theism and Aristotelian natural teleology. They also seem to connect such rights to views within metaethics such as a strong moral realism, or else rational intuitionism. This may lead to you think that natural rights theories rest on such views, which may lead you in turn to reject such theories.[309]

I will respond to this objection by first showing that natural rights theorists do not in fact

[309] You may protest that there's nothing wrong with theism, or with realism, and so on, or that these views shouldn't be classed together with each other. I would answer that I'm not suggesting any of these views are false, or even that any of them are at all implausible. I'm only arguing that natural rights theory doesn't entail them, and so objections supposing otherwise are unfounded.

hold any one view on such subjects. Instead, the figures within the tradition vary a great deal in their stances on all these issues in metaphysics and metaethics. I will then argue that this variety suggests that a natural rights theory need not presuppose any particular view on these topics. Such theories are not always bound up with theism, teleology, realism, or rational intuitionism, and so on – or with their opposites. Accordingly, I myself will take no stand on the issues I will survey here, neither accepting nor rejecting any particular stance on theism, natural teleology, realism, or intuitionism.

We should start by talking about God. To be sure, many figures in the natural rights tradition are theists, and many say such rights have theological foundations. Locke is a case in point here, given that he appeals constantly in his arguments to God, whom he suggests is the origin and foundation of natural law and thus natural right. Still, there are others, such as Grotius, who are believers, yet stress that natural rights have no such divine basis, and hence would still obtain "even if... there is no God."[310] Indeed, there are figures who reject God altogether in metaphysics, but still accept natural rights in moral and political philosophy, including d'Holbach and Maréchal.[311]

Let's now turn to natural teleology. Here we can once again find authors who associate natural rights with final causes understood in broadly Aristotelian terms. Locke, for example, says there is a "special sort of work each thing is designed to perform," which furnishes "valid and fixed laws of operation appropriate to its nature."[312] Nevertheless, here as elsewhere, there are others in the tradition who do not share these notions, and indeed some who take a radically contrary stance on the topic. Hobbes and Spinoza, for example, are among the foremost natural

[310] Grotius, *Laws of War and Peace*, Prolegomena. Tierney notes that there is precedent for such claims in even earlier texts within the natural rights tradition (*The Idea of Natural Rights*, ch. 13).
[311] D'Holbach, *System of Nature*; Maréchal, *Fragments of a Poem on God, Manifesto of the Equals*.
[312] Locke, *Essays on the Law of Nature* I.

rights theorists – yet both are emphatic that in nature there are only efficient and mechanistic causes.[313]

As for realism, there are indeed figures in the tradition who seem to affirm mind-independent moral truths in terms at which even today's realists might balk. Locke can again serve as our example, as he asserts at times that moral standards are divine commands, and at other times that they are on a par with mathematical facts.[314] Still, as before, certain other natural rights theorists tend more towards anti-realism, seeing morality as more dependent on our mental states, such as beliefs and desires. Hobbes, for example, holds the decidedly anti-realist views that the good is simply attaining what we desire, while the just is simply conformity with our agreements.[315]

Lastly, natural rights theorists' stress on principles we can recognize using our reason may seem to suggest a moral epistemology akin to intuitionism, on which we all have certain rational faculties allowing us to apprehend self-evident moral truths; and indeed some authors in the tradition hold such views, as does Price for example.[316] There is disagreement between natural rights theorists on this issue as well, however: interestingly, here Locke is among the dissenters, since as an empiricist he gives an account on which we come to know the natural law not by any such intuitive capacity, but rather by inferring from our perceptions that God exists and ordains certain laws.[317]

The fact that these authors vary in their views on all these subjects gives us reason to doubt that natural rights theory must assume any of these views in particular. To say otherwise

[313] Hobbes, *De Corpore*, ch. X; Spinoza, *Ethics*, pt. I, appendix.

[314] Locke, *Essays on the Law of Nature*; *Essay Concerning Human Understanding*. We should note, however, the fact that Locke takes a hedonist stance regarding the good (*Essay*, 2.28.5), which means that his form of realism at very least cannot be a wholly pure one.

[315] Hobbes, *Leviathan*, pt. I, ch. VI, XIV, XV.

[316] Price, *A Review of the Principal Questions in Morals*, *Observations on the Nature of Civil Liberty*. Jefferson's famous claim in the *Declaration of Independence* that certain truths about our natural rights are "self-evident" may suggest such a view as well.

[317] Locke, *Essay Concerning Human Understanding*; *Essays on the Law of Nature*. The inference Locke has in mind is more or less the teleological argument for God's existence, with a few added steps to reach moral conclusions.

would be to take the stance that some of the foremost natural rights theorists have misunderstood and contradicted the assumptions of their own theories. Supposing natural rights must depend on God or teleology, then authors like Grotius and Hobbes, for example, are wrong about the tradition they themselves have shaped. Granted, this is possible, since authors can sometimes miss their views' implications – but still improbable, no less than Plato's misjudging Platonism, or Aquinas Thomism.

We pass now to one last challenge, namely another criticism which concerns moral epistemology, but which makes a stronger point than the previous objection. You might grant that natural rights theories do not assume Price's intuitionism, say, but still suspect that such theories assume too simplistic a view of moral knowledge. All this talk of rational recognition may seem to suggest a picture on which there are certain moral truths we'd all see as manifest were we to reflect clearly on moral issues. This seems naive, however, especially given how much we disagree about morality: how could there be one truth plain to all when we have so many clashing views here?

We can make the criticism more vivid with an example. For any natural rights we might affirm, there will be many people, indeed nearly whole cultures, who reject them. For example, we might say we have natural rights to religious freedom, even for those whose faith is in the minority. However, many in the ancient and medieval West, for instance, would have denied that we have any such right. How can we reconcile these two points except by saying all these people simply failed to use their reason? This stance is tempting, but in the end implausible: this would mean the natural reasoning faculties we've had throughout history went unused until the modern era.

I would reply in the first place that my definition does not require that there be such

truths. I've defined natural rights in terms of what we all *can* recognize using our reason, not what we *must*. The idea is not that anyone who uses her reason will *necessarily* acknowledge these rights, but that anyone who uses her reason may *possibly* come to do so. This allows us to reconcile natural rights with moral disagreement without having to say that those who do not affirm these rights have failed to reason properly. We can grant that they did indeed follow wholly valid paths in their reasoning while still saying they did not follow the path leading to our true natural rights.

Thus we can deal with such examples without claiming that those who deny the rights we see as natural are wholly irrational. We may say the ancients and medievals did indeed reason clearly on the issue *given* the premises from which they began. These premises may well have given them cogent reasons to stand by their view that we do not have rights to religious freedom. What we need to then add is that they also had before them reasons to take the opposite view that we *do* indeed have such rights. They may not have discerned these reasons, let alone accepted their consequences, but since they *could* have done so these rights were rationally recogniz*able* for them.

I'd reply secondly that the fact that we disagree so much about morality is not only consistent with my argument, but is among my argument's central assumptions. The condition that the principles of natural right must be ones on which we can reach *unanimity* is to be certain extremely strong, given the *multiplicity* in our moral views. Indeed, we might doubt that a principle could ever meet such a demanding criterion: on what one principle could there possibly be any accord between all our many and discordant perspectives at the same time? As I'll argue in a moment, some principles *can* in fact satisfy this condition – but only by ascribing us all rights to sovereignty.

3.3

Let's next move to the third premise, which once again says as follows:

(3) When I can by nature reason for myself, a principle we can rationally recognize universally and necessarily says I have a right to sovereignty.

I will begin with clarifications, to wit by first defining authority in general, and then sovereignty as one form of authority in particular. Specifically, I will say that authority is the right to change others' rights in some sphere, while sovereignty is full and supreme authority. I will then proceed to justification, defending this premise by appeal to ideas about what beings like ourselves can rationally recognize. The central point will be that no one can so recognize a principle of justice which in a certain sense fully diverges from her values. Thus a principle anyone in any case can rationally recognize must be one giving each person a sphere where her values have force.

The argument I will give here will be broadly similar to ones several authors have given in reflecting on liberalism's foundations. This line of thought shows up in texts from past figures like Kant, as well as recent ones like Rawls, Steiner, and Gaus.[318] These authors start from the idea that certain principles governing justice and rights must be ones which everyone can in reason accept. They then go on to remark that there are many profound disagreements between us in our moral, religious, and philosophical viewpoints. They next observe that these

[318] Rawls, *A Theory of Justice*, *Political Liberalism*, *Justice as Fairness: A Restatement*; Gaus, *The Order of Public Reason*, *The Tyranny of the Ideal*; Steiner, "The Natural Right to Equal Freedom," *An Essay on Rights*, "Human Rights and the Diversity of Value."

disagreements drastically limit the range of principles on which there can be reasonable consensus between us.

To wit, there can be no such consensus on a principle which favors those with one such view, such as by imposing some religion's rules on everyone for instance. This is because those who do not share this view – to return to the same example, those who don't profess this religion – could never in reason accept such a principle. Hence, these authors argue, the principles of justice must be ones which give the same rights to each person as they do to all others, no matter what their views happen to be. Moreover, these rights must give each person scope to act freely in accordance with her own viewpoint without suffering any interference from others in doing so.

Again, what we should do first is define authority generally, and then go on to define sovereign authority specifically. When I talk about authority, I have in mind the status belonging to such figures as legislators, generals, judges, and so on. Most theorists agree in defining authority as *the right to give duties*, and particularly what I have called jural duties. We can find such definitions in past figures like Locke and Kant, and in more recent ones like Estlund and Huemer.[319] For example, Kant defines authority as the right to "bind others by [one's] choice."[320] I would accept a variation on this account, one which stresses not only *giving duties* but *changing rights* more broadly:[321]

[319] Locke, *Second Treatise*, ch. I, sec. 3; Kant, *Metaphysics of Morals*, 6:224; Estlund, *Democratic Authority*, p. 118; Huemer, *The Problem of Political Authority*, ch. 1. A well-known definition along the same lines also appears in Wolff's *Defense of Anarchism*, ch. I.

[320] Kant, *Metaphysics of Morals*, 6:224.

[321] The change is needed because there are some ways of using authority which do not involve giving anyone duties, but instead only giving privileges, powers, and so on. I'll give examples shortly.

(A) I have *authority* in a sphere when and only when I have rights to change others' rights in this sphere.

To have authority is thus to have power-rights to give others rights they lack or else take rights they have. This includes rights to give others duties, since to give one person a claim-right is to give another a jural duty. However, this can also include rights to give or take privilege-rights, power-rights, and immunity-rights. Consider some examples. A legislator's authority to legalize a drug is a right to give those she governs the privilege-right to use this drug. A general's authority to promote a cadet to captain is a right to give him the rights proper to this new rank. A judge's authority to dismiss a case with prejudice is a right to give an immunity-right against further suit.[322]

For clarity's sake, let me say more about what I mean by a *sphere*, as well as what I mean by *rights within a sphere*. A sphere is just a set of actions with some common feature, and rights within a sphere are just ones pertaining to those actions. An example of a sphere might be one defined in spatial terms, as the set of actions which occur in a certain place. Rights within this sphere would include privileges to do things in this place, claims against others' doing so, and so on. Despite what the name may suggest, however, a sphere need always not be spatial in nature; there is a sphere for *any* feature actions can have in common, no matter what sort of feature this may be.

I want to note three points about authority so defined, the first one being that that authority is a matter of right rather than might. Authority, as the right to change others' rights, is distinct

[322] You might object that authority can also involve the right to change your own rights. This is true, and in fact follows from my definition. This is because you can change your own rights by changing others' rights in relation to you. You can give yourself a privilege-right, say, by taking away someone's claim-right against you.

from what we might call *control*, or the ability to direct others' actions. For example, a criminal with a knife does not have authority over you, but may still have control, while conversely a policeman without a gun may not have control over you, but nevertheless has legal authority. The reason why is that between the two of them only the unarmed policeman has the legal right to tell you what to do, even though only the armed criminal has the might to make you do as he tells you.

Second, authority comes in several kinds, and these kinds can come apart. To have authority is to have certain rights, and since rights can be legal, moral, and so on, the same is true for authority as well. You can have authority of one such kind while lacking authority of another. For instance, imagine a country embroiled in civil war. There might be a brutal despot now in power who has the legal authority to govern without having any moral authority, say because he massively violates human rights. There might also be a resistance leader now in prison who has the moral authority to govern without having any legal authority, say because the law bars her from office.

Third, the authority I have in mind here is enforceable, such that responding with appropriate force when others refuse to comply is permissible.[323] This is because I've defined such authority in terms of rights to change *rights*, and I've defined rights in terms of directed and *enforceable* duties. Again, figures like lawmakers and generals have this sort of authority, since legally they can make decisions that others may be compelled to respect. Figures like club presidents and sports referees lack this sort of authority, since they may not coerce anyone into following the rules that they make. Hence there is no authority, in the sense that interests me, where there is no coercion.

[323] The type of permissibility varies with the type of authority. So, for example, legal authority means legally permissible force, moral authority means morally permissible force, and so on. Thus enforcing legal authority must be permissible in legal terms, but need not be so in moral terms.

Next, I want to define the various degrees of authority which someone can have. To do so, I'll first need to define the parts which form someone's authority as a whole. I will define such parts, which I will call *aspects of authority*, in the following way:

(AA) I have an *aspect of authority* in a sphere when and only when I have some right to change others' rights in this sphere.

In short, while authority consists in rights to change rights *in general*, an aspect of authority consists in one such right *in particular*. For example, a head of state might have on the one hand the right to appoint cabinet members, thus giving them rights to direct executive departments. On the other hand, she might also have the right to pardon convicts, thus giving them a right to leave prison, and all other rights they regain on release. These are two distinct rights the head of state has to change others' rights within a particular sphere, namely the country which is under her leadership. Hence they count as two distinct aspects of her authority according to our definition.

Having defined the aspects of authority, we can now define *partial authority*. In some cases, authority is narrow and constrained; we might describe such authority as qualified, restricted, or circumscribed. I will define this authority as follows:

(PA) I have *partial authority* in a sphere when and only when I have some aspects of authority I can have in this sphere, but not others.

An example of someone with partial authority would be a democratic legislator. Such a

legislator has a right to change rights, namely by casting votes to pass laws. Nevertheless, the authority she has is subject to several important limitations. She may have the right to so change the rights of those residing in her country who are under the legislature's jurisdiction – but not of anyone else. She may have the right to change rights in areas of conduct the constitution allows the legislature to regulate – but not in any other matters. Finally, she may have the right to change rights when at least half the other legislators vote the same way she does – but not in any other case.

Now that we've defined partial authority, we can turn to defining *full authority*. In some cases, authority is so broad as to have no constraints at all; we might describe such authority as absolute, plenary, or limitless. I will define this authority as follows:

(FA) I have *full authority* in a sphere when and only when I have all aspects of authority I can have in this sphere.

An example of someone with full authority would be an autocratic dictator. Within such a dictator's territory, she has the legal right to grant any rights she chooses to those under her rule, and likewise the right to take such rights. Here, each *person* is under her power: there are no immunities, such as those diplomats possess, which would exempt anyone from her jurisdiction. Here, each *issue* is subject to her power: there are no limitations, such as those constitutions mandate, which would protect any activity from her control. Lastly, this holds in any *context*: there are no restraints, such as those legislatures impose, on when, how, or why she may use her power.

Lastly, I want to define one particular form of authority, namely *sovereignty*. When I talk

about sovereignty, I have in mind the status which belongs to independent states, and to the foremost powers within them. While some say that sovereignty is an ambiguous and equivocal notion, there is in fact not much dispute about how to broadly define the concept; and while there is a great deal of disagreement about the details, there is no more controversy in the case of sovereignty than there is in the case of many other concepts we would not deem intrinsically undefinable.[324] To wit, most authors agree in defining sovereignty as *supreme authority*. Historical figures like Bodin and Hobbes associate sovereignty with supremacy, as do contemporary theorists including Jackson and Philpott.[325] I would accept a variation on this account stressing not only *supremacy* but *fullness*:[326]

(S) I have *sovereignty* over a sphere when and only when I have full and supreme authority over this sphere.

You have *supreme* authority when you have an authority which is not subject to any higher authority in turn.[327] For example, a lord's authority is supreme when he is not under the rule of any still more powerful figure. Someone else's authority is higher than yours when she can take away your right to change others' rights. If there is a king who can depose this lord, for instance, then the king has higher authority than the lord. You thus have full sovereignty when you have

[324] For example, Skinner and Hent start the introduction to *Sovereignty in Fragments* by calling sovereignty "a highly ambiguous concept." However, they then proceed to base their ensuing discussion around a definition more or less along the same lines as the one I give here. Rightly stated, their point seems to be not that this definition is false, but that there are important questions the definition does not answer. This is true, but not a defect in a definition, which need not and cannot tell us all we might want to know about the subject defined.

[325] Bodin, *Six Books of the Commonwealth*, bk. I, ch. VIII; Hobbes, *Leviathan*, ch. XVII-XVIII; Jackson, *Sovereignty*, p. 6; Philpott, *Revolutions in Sovereignty*, p. 16-17.

[326] The change is needed because authority can arguably be supreme yet partial, and such authority seems not to count as sovereign. For example, there might be an official with irreversible veto power over laws – but only in regards to certain laws in certain cases. This authority would be supreme in a clear sense, but would still be limited in ways which seem incompatible with true sovereignty.

[327] This is the way Philpott defines the term (*Revolutions in Sovereignty*, p. 16), as do many others.

full authority over everyone in a sphere, and no one has authority over you. Such is the stature of an absolute monarch, for example, who rules over all in her realm, but is under no ruler herself.

There are three consequences of this definition that I want to stress. The first is that sovereignty must be *universal*. If you have sovereignty, then you have the right to change the rights of *anyone* within your sphere, with no exceptions. Otherwise, there would be possible rights to change others' rights that you lack, namely rights over the persons who are exempt. Thus, no matter what rights I have outside your sphere – whatever station and esteem I enjoy elsewhere – my rights inside your sphere are subject to your will. The only qualification is that beyond this sphere, you need not have authority over anyone at all, and indeed others might have authority over you.

The second consequence is that sovereignty must be *comprehensive*. For you to have sovereignty is for you to have rights to change *any* rights others have in your sphere, with no limitations whatsoever. Were there such limits, you would not have *all* the rights you can have to change others' rights, since you'd lack the right to change the rights that lie past these limits. Thus you may give or take rights to any action in any domain: religious worship, ethical conduct, and political discourse are all yours to regulate as you choose. Again, however, even though you are able to change all rights within your sphere, you might still not be able to change any rights without.

The third consequence is that sovereignty must be *unrestricted*. When you have sovereignty, there are *no* conditions other than your choice that must obtain for you to exercise your right to change others' rights. After all, if there were such conditions, you would lack certain possible rights, namely ones you could exercise even when these conditions are unmet. You can thus use your sovereignty as you choose under any circumstances; there is no reason or pre-

text you need to have in order to do so, nor any excuse or defense others can give to keep you from doing so. As before, though, outside your sphere you might not have authority in any context at all.

What we tend to have in mind when we bring up sovereignty is a status on a collective and public scale, one belonging to states and to those who rule over them. However, our definition does not dictate that sovereignty can *only* obtain at this level, and so allows that the same status could obtain on a personal and private scale as well. Whereas sovereigns on a public scale rule over whole countries and their denizens, sovereigns on a private scale might thus rule only over themselves and their holdings. Thus what I will argue here is that we all have by moral right the same sovereignty over private spheres which states and their rulers have by legal right over public spheres.

Let's next justify the premise that if we can reason for ourselves a principle rationally recognizable to all of us in all cases must grant us rights to such sovereignty. We'll do so by laying out an argument in three steps, starting with the following:

(i) When I can reason for myself, a principle of justice I can rationally recognize cannot fully diverge from my system of values, as is the case for all others.

We first need to explain how we should construe this step, starting by defining a *system of values*. Again, by my nature as a fully rational agent I am able to reason for myself, or to ac-

cept the answers I find through reflection my reasons most support. One especially significant way in which I can use this ability is by forming my own ideas about what constitutes the good, both for individuals and for societies. I can raise questions about the subject; grasp the various answers I might give; weigh the reasons for and against each; and accept the one my reasons favor. Once I've done so, the answer I have reached in this way is the system of values I rationally accept.

After I have reasoned for myself in this way, I might end up at any view of the good which is at least *minimally defensible*. For a view to count as such, there must first be reasons to accept the view which are apparently persuasive from my standpoint, and hence might lead me to conclude that this view is the most plausible one. Secondly, moreover, there must also be no reasons to reject the view which are obviously decisive from my standpoint, and hence would force me to conclude that the view is not tenable enough to entertain. *Any* system of values which fulfills these distinctly thin conditions is one which is at least minimally defensible in my terms.

This means that the answers I may reach when I reflect on the question of what constitutes the good are many and diverse. I might hypothetically come to hold values which enjoin creativity and individuality, as do figures such as Blake or Shelley, or ones which extol tradition and religion, as do authors such as Confucius or Aquinas. The values at which I arrive might also be ones which uphold secularism and progress, in line with theorists like Condorcet or Marx, or ones exalting wisdom and tranquility, in line with thinkers like Plato or Laozi. Depending on the premises from which I start, I might draw conclusions in line with any of these systems, among many others.

We should next define what must be the case for a principle of justice to *fully diverge* from my values. Different principles of justice may relate in different ways to the system of val-

ues I have accepted. There will be some principles of justice with which my values fit well, and others with which they do not. Specifically, the two fit insofar as the rights the principles say we have are just those *consonant* with my values, which is to say the ones necessary for or compatible with the realization of my values. A principle fully diverging from my values is one which says there is *no sphere at all* in which the rights we have are all and only those which are consonant with my values.

We now ought to discuss why we should grant that I cannot rationally recognize principles thus divergent from my values. We'll do so by first bringing out an intuition about a concrete case and then looking at the abstract explanation for this response.

To begin with, let's imagine that my reflections lead me to a view of the good which is a form of romantic individualism. Such a system of values would say that what is good is originality and authenticity, in opposition to conformity and propriety. For reference, we might picture a free-spirited Byronic hero's ideals, affirming creativity, emotion, and so on as ultimate ends. Again, the rights consonant with my values are those we must enact to fulfill these values, or can enact without frustrating them. The rights which are consonant with my romantic view of the good would thus include ones to express my individuality and against others' stopping me from doing so.

Suppose I then consider a principle of justice which exemplifies religious traditionalism in an especially extreme form. The principle says that in all spheres we have rights to do what this faith deems pious, but no right to do what the faith deems sinful. Imagine that the religion on which the principle is based is one which demands obedience to strict communal norms and forbids any deviation toward outsiders' lax ways. Our reference here might be an arch-conservative Anabaptist church's ethos, upholding customs prescribing rigid simplicity. The principle thus

says that in *any* sphere we have rights *only* to practice austere discipline according to the congregation's rules.[328]

Clearly, this religious traditionalist principle of justice is fully divergent from my romantic individualist system of values. The two would *at least partly converge* if there were a sphere where the principle says we have the rights consonant with my values. The principle would then grant me at least *some* space in the world where my values have force, even if they have none elsewhere. Nevertheless, the principle does not in fact allow me even this much, but by contrast denies me any such space whatsoever. The traditionalist principle my individualist values are at odds not merely here and there, but always and everywhere – and this is just what constitutes a full divergence.

Now, let's suppose I accept both the romantic system of values and the traditionalist principle of justice at the same time. This means I hold as a romantic that what is good is to follow my individual passions, yet I also hold as a traditionalist that what is just is to obey my community's strictures. I thus take the good to involve transgressing what *I myself* see as just, and the just to involve suppressing what *I myself* see as good, not merely in *some* spheres but in *all*. Intuitively, this stance makes no sense. I cannot in reason accept a principle of justice which is so *categorically antagonistic* to what I have in reason accepted as my system of values that the two fully diverge.

We should now see whether we can give a principled argument to support and explain the intuition which we've just set out. While there are many different ways we might do as much, I will focus on the one which seems the most plausible to me.

This approach has to do with what our principles and values jointly imply about the relation between justice and goodness. We should start by noting that when I accept a given system

[328] You might object that many traditionalists would reject such a principle. I agree, of course.

of values, and then accept a given principle of justice, I thereby commit myself to a certain view about how goodness and justice relate to each other. The rights which my principle of justice says we have may interact in various ways with the ends my system of values says are desirable; the former might for example enshrine, eschew, or simply ignore the latter. The way my principles and my values interact is the way I view the relation between justice and goodness, at least implicitly.

There are many different ways I might view this relation, and several such views have proponents representing various different perspectives on political philosophy. One view is that the just is based upon the good, as authors like Aquinas and MacIntyre hold, insisting that justice is directed at what they conceive as our flourishing. Another view is that the just is *not* based on the good, as authors like Kant and Rawls hold, contending that justice is not oriented around happiness however conceived.[329] We cannot yet answer the question as to which view here is true and which is false; but what we can say for now is that these views are both initially *coherent* and *intelligible*.

However, supposing I accept a principle which fully diverges from my values, I commit myself to a very different sort of view. The view I thereby take is not that the just is based upon the good, as this would imply a positive correlation between them. The view I take is also not that the just *isn't* based upon the good, since this would imply that they have no correlation at all. Rather, I in effect view justice and goodness as *negatively correlated*, as opposites so thoroughly antithetical as to be fully divergent. While figures such as Aquinas see justice and goodness as partners, and while figures such as Kant see them as strangers, I for my part view them in a sense as *enemies*.

[329] Aquinas, *Summa Theologica*, I-II q. 90, a. 2; MacIntyre, "The Privatization of Good;" Kant, *Metaphysics of Morals*, 6:230; Rawls, *A Theory of Justice*, p. 27-28.

Intuitively, such a view about how the just relates to the good is not intelligible. To suppose that one consideration in ethics, namely justice, is absolutely and essentially inimical to another such consideration, namely goodness, would seem absurd. This would mean in effect that ethics is at war with itself, issuing imperatives about justice and encouragements about goodness which do not match in any cases at all. Plausibly, the rational thing to do here wouldn't be to stand by both my clashing views on justice and goodness at once, but instead to discard one to resolve the conflict. Hence my recognizing a principle fully diverging from my values cannot be rational.[330]

Since what we've said here does not rest on anything specific to *me*, the same holds for every other person in general as well. This means no one else can rationally recognize a principle which fully diverges from her values any more than I can.

Let's now move on to the second step in the argument for the premise:

(ii) When we can reason for ourselves, a principle of justice we can rationally recognize universally and necessarily cannot fully converge with anyone's system of values, but must partly converge with everyone's systems.

The first thing for us to do here is explain what this step means in the first place, and specifically to define *full* and *partial convergence* between principles and values. Recall that a

[330] You may object that a view of the good and a principle of justice can't outright contradict one another, since they're simply about two distinct subjects. I'd reply that I haven't said they're in contradiction in the same way as p and $\neg p$; I mean only that they conflict in a broader and less formal sense.

principle of justice fully diverges from my values when there is *no* sphere where the rights the principle says we have are just those consonant with my values. Accordingly, the two fully converge when in *all* spheres the rights the principle says we have are those consonant with my values, and they partly converge with each other when this is the case in at least *one* sphere. In short, fully convergent principles say my values reign *everywhere*, and partly convergent ones that my values reign *somewhere*.

Let's now explain the basis for this step. The most crucial point here is that what holds for me in regards to rationality holds just as much for every other person as well. Everyone else has the same nature I have; thus they are naturally rational just as I am; and thus they have the same ability by their nature to reason for themselves as I do. This means they too can raise the question as to what constitutes the good, and they too can reach their own answers on the issue. This also means they can reason freely at the interpersonal level, and so needn't all come to the same answer to the question. They can instead give many different answers, splitting into distinct sects and schools.

A point we should stress is that the range of answers we might reach after we reflect on this question is immense and varied. In some cases, we may form answers of wholly different general kinds: while I become a romantic, you may become a traditionalist, the next person a progressive, the next after her a contemplative, and so on. In other cases, we may form different specific answers of the same general kind: among those who become traditionalists, I might become a Catholic, you a Confucian, and others Sunnis, Shaivists, and so forth. Even supposing we all engage in entirely rational reflection, we might still emerge with dissenting perspectives on the good.

As such examples show, the range of answers we might give is broad enough to include

values which are starkly opposed. For example, between individualist and traditionalist systems of values, there is not simply diversity, as though those who accept the one could with consistency be neutral toward the other. These systems of values instead affirm essentially incompatible notions of the good, such that what each counts as a flourishing life the other counts as an abysmal one. Thus the two are so *radically contrary* that to be consistent anyone who holds a steadfast commitment to the former must also have an equally forceful resistance to the latter, and the reverse.

In fact, this range is so wide that for *any* system of values within, there is also another such system which is radically contrary. Recall that someone can through rational reflection come to any view of the good which is at least minimally defensible. Such a view is one which there are some apparently persuasive reasons to accept and no obviously decisive reasons to reject. This however is a bar *any* view of the good can clear apart perhaps from ones which are manifestly unjustifiable or self-contradictory. Hence all views which meet the criterion will have an opposite which does the same: individualist as well as traditionalist views, progressive as well as contemplative ones.

When two systems of values are radically contrary, a principle fully *converging* with one must fully *diverge* from the other. For example, let's picture on the one hand a Christian fundamentalist and on the other an Islamic traditionalist system of values. A principle fully convergent with the former system would say that in all spheres we have rights only to obey Christian precepts and doctrines, regressively interpreted. However, such a principle would mean that there is no sphere where we have rights to observe the very different precepts and doctrines associated with the Islamic tradition. A principle fully convergent with the former cannot but fully diverge from the latter.

Let's now go on to consider a progressive system of values of a certain sort, along with a corresponding principle of justice. Suppose the values in question extol actively laboring together with others to make material improvements to your society, and eschews detachment from such efforts. Our model might be the values expressed in Soviet propaganda, revering productive exertion and devoted selflessness.[331] The rights consonant with such values include ones to realize this comradely ideal, and exclude ones to act and live otherwise. A principle of justice fully convergent with this system would say that in any sphere the rights we have are these and only these.

We'll next introduce a certain sort of contemplative system of values together with a corresponding principle of justice. These would be values which enjoin inward rumination with a view to spiritual ends, and forswear all worldly concerns and entanglements as obstacles to this endeavor. The model in this case might be an ascetic Jain mendicant's code, demanding self-denial as a means for the liberation of the soul. What would be consonant with these values would be rights to practice this code and against interference from others in doing so. A principle of justice partly converging with such a system would say that these are the rights we have in at least one sphere.

Now, these systems of values are radically contrary, and so the former's principle of justice fully diverges from the latter. The authoritarian progressives' values say that what is good is to take part in collective work to improve society in material terms, and their principle says that no one has rights in any sphere to shirk such labor. By contrast, the spiritualistic contemplatives' values say that what is good is a meditative life removed from all such temporal distractions, and their principle says we have rights to lead this life in some space or other. Thus the progressives' principle denies contemplatives even one sphere where their values have force as a matter of

[331] You may object that many progressives would reject such values. Again, I of course agree.

right.

When put together, the points we've made have consequences for the rational recognizability of principles like this one. To be sure, there would be nothing to stop the authoritarian progressives themselves from rationally recognizing this principle. Even so, spiritualistic contemplatives could have no way to do the same, given the principle's full divergence from their values. Thus *for someone in some case* the principle is not rationally recognizable, and so cannot be such *universally and necessarily*. The same is true for all principles in general: those which fully converge with any one system of values cannot be rationally recognizable on a universal and necessary basis.

We can also deduce what a principle must be like to pass the same test that the principles we've just discussed must all fail. To do so, the principle must at least partly converge with *everyone's* systems of values, rather than fully diverging from *anyone's*. In other words, the principle must give everyone a sphere where the rights we have are all and only those consonant with her values. Against such a principle there can be no objections like the ones against those which give force to one specific system of values. As a result, rationally recognizing a principle which partly converges with everyone's values is possible for anyone in any case, which is to say universally and necessarily.

We should take a moment here to picture what a principle like this would entail. Such a principle would not foist any one view of the good onto the world as a whole, saying for example that in all spheres we must abide by Hindu values or Maoist ones. The principle would instead split the world into many parts, one part for each person, and would say that in each the values which hold sway are the ones this person holds. Hence the principle would give a sphere to the individualist, another to the traditionalist, still another to the progressive, yet another still to the

contemplative, and so on. Each person's values would have force in her own sphere, but none in any other.

We can turn next to the third step in the argument for the premise:

(iii) A principle of justice which partly converges with everyone's systems of values must say that we each have a right to sovereignty.

To see why we should accept this step, the first thing we will need to do will be to recall a few points we've set out thus far. Again, a principle which anyone in any case can rationally recognize must partly converge with everyone's systems of values. This entails that the principle must give each person a sphere where the rights we have are those consonant with her values. Moreover, we can all reason for ourselves, which implies among other things that we can reason freely at the intrapersonal level. What this means is again that we are not bound to always keep the views we now hold, and are instead free to take up new ones, should we find we have reason to do so.

Suppose, then, that I use this ability, namely by critically reflecting upon my own values and in the end changing them. Let's say that I am at first an individualist, and accordingly I have my own sphere within which my individualist values reign. However, I then reconsider my views on the good, rejecting my individualist values and accepting contemplative ones instead. Imagine, now, that even though my ethical values change in this way, the rights we have in my

sphere do *not* change with them. While I now accept contemplative and not individualist views regarding what's good, the rules regarding what's just here are still individualist and not contemplative ones.

As a result, in such a case, there is no longer any sphere at all where the rights we have are those consonant with my values.[332] This means in turn that the principle of justice that is in place is one now which fully diverges from my values in this case. Such a principle is one I cannot rationally recognize, and thus one which cannot be so recognizable universally and necessarily. Hence to be so recognizable a principle must say that when my values change the rights we have in my sphere change with them. Justice in my sphere is not tied to any one view of goodness, but is instead is tied only to the view I now accept, whatever view this might happen to be at any given time.

We can now at last see what all this has to do with authority and sovereignty. We've shown here that I can change my own view of the good, and that when I do so rights in my sphere change accordingly. Thus I have the ability to change rights in my sphere, namely by exercising my further ability to change my own system of values. Recall that on our definition, authority is the power-right, or in other words the ability, to change the rights others have in a sphere; so by this standard I have authority here. My view of the good is what decides the rules of justice here, meaning in effect that *I* am the one who decides those rules – which is just to say the one with authority.

Now, this authority I have within my sphere must be not merely *partial*, but *full*: I must have all the rights I can have to change others' rights in this sphere, as (FA) says. For assume that there is some such right in my sphere which I lack the right to change; and suppose I change my

[332] At any rate, if there were such a sphere elsewhere, this would be only by contingent chance, and would not be the case necessarily.

system of values to one with which this right is dissonant. Then my sphere will cease to be one within which the rights we have are all and *only* those consonant with my view of the good. The principle in effect here would thus fully diverge from my values, and hence would not be rationally recognizable for me. Hence a principle anyone in any case can so recognize must grant me full authority.

Indeed, my authority must be not only full but supreme, and thus *sovereign*. Let's suppose that I am under some superior who can take away my right to change others' rights within this sphere. This would mean I lack certain rights to change such rights here – namely, ones I could exercise without my superior's leave. This however would go against what we've just shown, namely that within this space I have all possible rights of this sort, or in other words that I have full authority in this context. Hence I cannot be under any such superior, which means my authority is supreme. Sovereignty, however, is full and supreme authority, according to our definition in (S).

In sum, to be rationally recognizable for anyone in any case, a principle of justice must say that I have a right to sovereignty, and must also say the same for all others as well.

Let's now turn to some objections. We should start by considering some challenges to the first step in the argument. Again, this step says that I cannot rationally recognize any principle of justice fully diverging from my values, nor can anyone else.

You might protest that there is nothing unintelligible about the idea that justice and goodness fully diverge from each other. We've associated justice with morality and obligation, and

we've also associated goodness with happiness and flourishing. However, the thought that morality and happiness can come apart is not only a conceivable but indeed a rather familiar one. Many philosophers from Plato through Kant, among many others, have treated this as a possibility and often as an actuality. The idea that the just and the good can fully diverge may seem like nothing more than a variant on this plausible notion that morality and happiness are frequently at odds.

I would answer first by saying we should look more closely at what these clashes between morality and happiness involve. We can sum them up in the following way: oftentimes, we must sacrifice happiness to be moral, or else we must violate morality to be happy; and sometimes, the requisite sacrifice or violation can be a drastic one. However, we should note that this sort of conflict does not exclude the prospect that morality and happiness are still largely and roughly consistent, such that in most cases their demands do not come too far apart. Indeed, even those who lay the most stress on these conflicts tend to grant that this is so at least under ordinary circumstances.[333]

However, full divergence entails a clash between justice and goodness which is much more drastic than splits like these. Such divergence entails that they conflict not merely *sometimes*, or even *oftentimes*, but *always*, or in other words in every sphere. To imagine an example of full divergence, we'd have to picture something much more extreme than a world like ours where we must often choose between being moral yet unhappy and being happy yet immoral. We'd instead need to picture a world like one where morality demands mortifying self-abnegation, or happiness demands committing abhorrent wrongs, *regularly* and indeed even *uniformly*

[333] For example, even as Glaucon humors Thrasymachus' argument that being just serves another's good but not one's own, he grants that acting justly is at least usually to one's advantage, if only because you'll be rewarded for doing so and punished for doing otherwise (*Republic* 362d-366d). Kant acknowledges the same point with his shopkeeper example (*Groundwork* 4:397).

across all contexts.[334]

The idea that justice and goodness are related in such a way seems far less tenable, however, and indeed far less coherent. The stance that justice and goodness both have force for us, but *always* push us in contrasting directions, is rationally precarious. If you came across a view of justice and a view of goodness together entailing that the two are thus related, the rational conclusion to draw wouldn't be that we're doomed to be either unhappy or immoral, but that at least one of these views must be wrong. Accordingly, those struck by seeming conflicts beween justice and goodness tend to reinterpret them to fit each other, or repudiate one or the other as lacking force.[335]

Let's next move on to an objection which addresses steps (ii) and (iii) in the argument. To repeat, (ii) says that a principle we can all rationally recognize universally and necessarily cannot fully converge with anyone's values, but must instead partly converge with everyone's. On the other hand, (iii) says that only a principle which ascribes us a right to sovereignty can meet this condition.

One reason why you might take issue with these steps is that they imply that no other sort of principle of justice apart from the one we've affirmed could be rationally recognizable on a universal and necessary basis. However, there certain other such principles which you may well

[334] Note that there are other forms full divergence can take given our definition. We've focused on how a principle so diverges from certain values when the former is too restrictive, forbidding the realization of the latter. However, there can also be a full divergence when a principle is too *permissive*, allowing others to do things which prevent the realization of those values.

[335] As an example of the former, Plato responds to Thrasymachus' claims about the conflict between justice and happiness by coming up with new accounts of both on which they are complementary. As an example of the latter, Nietzsche rejects justice along with the rest of morality as a mere sham, affirming only happiness as he distinctively construes the concept.

find appealing, and which might even seem to meet the criteria we've set out in our argument. You might well ask precisely why these alternative principles wouldn't turn out in the end to be the ones which fulfill the criteria we've set forth.

The first alternative which comes to mind here for many is bound to be a democratic principle. Such a principle would give us not individual sovereignty over different spheres, but instead collective sovereignty over one and the same sphere. This would mean giving us each partial authority over this shared sphere through a decision-making procedure which takes all our wills into account. A democratic principle would have many desirable advantages in general, arguably including ones responsive to the particular concerns we've raised. After all, if the problem is to find a principle agreeable to many diverse systems of values, democracy might seem a solution with the needed ecumenicity.

The issue with a democratic principle, in brief, is that because your individual control over democratic procedures is limited, there is nothing to stop them from leading in at least some cases to outcomes which fully diverge from your values. While there are many different procedures for translating an aggregate of individual choices into a unitary democratic decision, none of these procedures can exclude such outcomes altogether. Under majority rule, you may always end up in the minority; under consensus rule, others may veto all of your proposals; and so on. When this sort of result occurs, the democratic procedure in question can result in decisions which are deeply adverse to what you view as good, and you will thus be unable to rationally recognize the principle from which they arise; and so this principle will fail our criterion. At least some conflicts, in short, are too acute, too fundamental, for democracy to settle in a way that all can in reason accept.

You might object here that democracy is still the best form of government, all things con-

sidered, despite such problems. I would reply that here I am not rejecting democracy in general, but only rejecting the application of a democratic principle at one particular level. I do not at all deny, and indeed I would strongly affirm, that there is a domain of public issues which are properly subject to democratic decision, as a matter of *political* or *civil* right. At the same time, however, I affirm that there is also a domain of private issues properly subject to personal decision alone, as a matter of *natural* right. I take my stance here to be a variant on the familiar thought that democracy is of course good, but must nevertheless stand on a liberal foundation of individual rights which are placed beyond collective control.

For fewer objectors, although still some, another alternative which may come to mind would be what we might call a multinationalistic principle. Such a principle would not give individual spheres to each person, but instead collective spheres to all persons who share a given system of values. The world would thus be split up into nations, their membership defined in terms of shared values, and within each nation these values would hold sway. Even if you do not find such a scheme desirable, you might still contend that this plan would fulfill all the criteria we've set out in our argument. After all, a multinationalist principle seems to give each person a sphere where her values are in force – the sphere of those who belong to her nation, defined as the group of people who share her values – and thus does not fully diverge from her view of the good.

The problem here is that the multinationalist principle faces a dilemma, either failing the recognizability criterion or collapsing into the individual principle. For suppose that after joining the nation of those who share your values, you exercise your ability to reason freely at the inter-

personal level, and come to accept some new view of the good clashing with the views of others in your nation. In such a case, any given multinational principle must entail one of two things. In particular, the principle either *does not* entail that you have a right to a distinct sphere where your new, altered values are in force, or by contrast the principle *does* entail that you have such a right. If the former is the case, then the principle grants you no sphere where your values hold sway, and so is not rationally recognizable for you; if the latter is the case, then the principle grants you a right to individual sovereignty.

What's wrong with illiberal multinational principles in the end is that they admit that sovereignty matters at one level, but neglect that sovereignty also matters at another. At the collective and external level, they affirm that whole communities distinguished by their values have rights to independence from any other such community's control. At the individual and internal level, however, they deny that lone individuals, when they are dissenters or when they belong to minorities, have rights to independence from their own community's power. This stance is unstable, however: the most plausible premises which support collective sovereignty prove when followed to their furthest conclusions to support individual sovereignty as well. The only principles not subject to this problem are liberal ones.

3.4

We are now at last in a position to sum up the argument and draw out the conclusion. By my nature, I have the ability to reason for myself, and all others are able to do the same; this is so because we are rational by nature, and those who are rational can reason for themselves. A natural right is one which a principle anyone in any case can rationally accept says we have; this is so

because such universal and necessary recognizability is what defines natural rights. Principles are thus recognizable for us just when they grant us all rights to sovereignty; this is so because we cannot so recognize a principle which denies our values force in all spheres. Thus we must all have rights to sovereignty, or to spheres in which we have full and supreme authority.

Let's think about what this means. We can understand individual sovereignty on a private scale by a comparison to individual sovereignty on a public scale, namely in absolute monarchy. An individual sovereign is, in her own sphere and by natural right, precisely what an absolute monarch is in her realm and by positive right. In both cases, the sovereign may set any rules she chooses in her domain, and others have no power to veto them beforehand or revoke them afterward. Within she is within her domain, justice allows the sovereign to do whatever she chooses whether or not she has any permission from others to do so. By contrast, when others are in the sovereign's realm, justice allows them to do as they choose only when they have the sovereign's permission to do so. Our conclusion, then, is that each person is a queen in her own compass, a monarch in miniature, her authority limited only by the like authority of others.

CHAPTER 4:

SOVEREIGNTY AND OWNERSHIP

In the last chapter, we raised the question of what rights we have as fully rational agents, and there I gave the general answer that we have a right to sovereignty. In this chapter, my primary aims are to give a more specific answer to the question of what rights we have – namely one which emphasizes rights to private ownership and unilateral acquisition – and also to set up the still more specific answer I will give in the next chapter after this one, namely by giving an account of the relationship between ownership and acquisition in particular and justice and rights in general.

In this chapter's first section, I will present and defend my own view of what ownership and acquisition are to begin with. My most central idea here will be that ownership is to be defined in terms of authority: on my view, to own an object is to have rights which come with authority over the object's sphere – in other words, authority over interactions with the object. I will defend this idea by arguing that such an account not only aptly captures many intuitions about what sorts of rights count as ownership rights, but also resolves several problems which have been longstanding in the literature in the area. To wit, this definition accommodates both the observation that ownership rights are diverse, variable, and separable, but also the insistence that ownership must still have some unifying core as a concept. On the way, I will define several related notions as well, and in particular those of specifically *private* ownership and specifically *unilateral* acquisition.

In the second section, I will present and defend my own views about what sorts of rights we have in regards to ownership and acquisition. To be exact, I will argue for the principle that

we all have a natural right to private ownership, and the principle that we all have a natural right to unilateral acquisition – which I will refer to for short as (RPO) and (RUA), respectively. I will support both of these principles by arguing that these rights follow from the natural right to sovereignty which I have defended in the last chapter. Indeed, what I will argue is that when we take a close look, we will see that the natural right to sovereignty ultimately *just is* a right to private ownership, and moreover a right to acquire such ownership unilaterally; these rights turn out to be one and the same. To drastically abridge the much more detailed argument I will give later on, this is so because all actions are interactions with objects, which means that the authority over *actions* which sovereignty gives us also constitutes authority over *interactions* with objects – and this, in turn, constitutes ownership.

In the third section, I will then give my views about how our rights of ownership and acquisition are related to our rights more broadly. My central idea here will be what I call the *primacy principle*, or (P) for short, which says that all the rights we have follow from a certain set of facts – most prominently including facts about the conditions for the original acquisition of ownership rights, along with conditions for the other ways we can gain and lose such rights. In support of this principle, I will first adduce the *lineal thesis*, or (LT), which says that we have all and only those ownership rights which we have at some point gained by acquisition, transfer, or redress, and have not since lost by transfer, redress, or relinquishment. I will then adduce the *ownership thesis*, or (OT), which says roughly that all of our rights follow from our ownership rights. What these two theses entail together is that from the criteria for the acquisition, transfer, and so on of ownership rights – along with some further information, such as about who has fulfilled these conditions and when – we can deduce all the rights we have. We can thus answer the question of what rights we have by first answering the question of how we first acquire ownership

rights, and how we otherwise gain and lose such rights – which is exactly the approach I will take in the next chapter.

My secondary aim in this chapter will be to defend my ideas against the many objections you might raise against them. In the first place, you might deny that private ownership and unilateral acquisition are *legitimate*, contrary to what my principles assert. Many have condemned private ownership and unilateral acquisition in this way, arguing that they are inimical to various political ideals, prominently including ones of equality, community, and even liberty. From the standpoint of someone with this attitude, a theory like mine, which strongly affirms rights to both private ownership and unilateral acquisition, must seem repugnant, spurning lofty ends such as equality and liberty only to favor instead the lowly interests of mere property and possession.

Secondly, even if you grant the legitimacy of private ownership and unilateral acquisition, you might still doubt that they should have as *fundamental* a role in a theory of justice as my principles ascribe them. You may have the sense that the most general and foundational principles of justice should pertain only to abstract notions such as liberty or utility, rather than to any issue as concrete and specific as ownership and acquisition might appear to be. From such a standpoint, a theory like mine may well come off as merely bizarre, treating as central and fundamental what is properly nothing more than a subsidiary matter for applied political philosophy.

I will respond to these concerns, in sections two and three, in large part by appealing to the connections between ownership, acquisition, and sovereignty I defend in section two. On the one hand, private ownership and unilateral acquisition are indeed *legitimate*, I will argue, because we have a right to sovereignty, and the right to sovereignty just is a right to these things. I will contend that the objections from equality and liberty are decisive only against a *certain sort* of account of private property and unilateral acquisition rights, namely ones which countenance

certain sorts of inequalities in the distribution of these rights. My theory, however, will not be of this sort: I will argue that we all have *effective* rights to unilaterally acquire an *egalitarian* share of private property.

On the other hand, I will argue that ownership and acquisition are indeed *fundamental*, because the right to sovereignty is fundamental, and our right to sovereignty just is a right to private ownership and unilateral acquisition. If giving primacy to ownership seems counterintuitive, it is only because we assume certain things about the subject – to wit, that ownership is nothing more than an instrumentalizing, commodifying relation between a person and a mere means for satisfying merely material wants and needs. However, I will argue that these assumptions do not reflect an accurate understanding of what ownership ultimately is; once we grasp the notion aright, we will see that it need not involve this sort of relation, and can instead be something much more than this.

4.1

Again, what I want to do in this first section is define what ownership and acquisition are. Let me start out by considering what others have said about the definition of ownership before I move on to set out my own theory.

The question as to what ownership consists in turns out to be another one surrounding which there has been a lengthy discussion in philosophy and jurisprudence. We can divide the history of this discussion in the literature into three broad phases.

The first phase starts in the ancient era and ends only in the nineteenth century. During this phase, the tendency among most authors is toward seeing ownership as a simple and uniform

relation. Some figures from this phase define ownership merely as a right over an object, without saying anything more about what sort of right they have in mind. Locke, for example, says merely that property is "a right to any thing."[336] Others define ownership in terms of just one of the many sorts of rights owners can have over what they own, without bringing up any others. For instance, Aristotle says that property is "the right of alienation or not."[337] Others besides define ownership in terms of a few of the rights owners may have over their property, but still do not explain how they relate to the rest, or indeed to one another. Thus Blackstone only names rights of "use, enjoyment, and disposal" as well as exclusion.[338] In sum, authors from this first phase of the history of the literature on property often seem to assume that ownership is an intuitive concept for which no elaborate definition is necessary.

The second phase of this history starts in the nineteenth century, ending in the late twentieth. During this phase, there comes to be a pronounced tendency toward regarding ownership in an opposite way, as a complex and multiform rather than simple and uniform relation. Authors in this phase tend to stress that ownership rights are *diverse*, or in other words that they are of many sorts: they include everything from rights to exclude to rights to income, for example. They also note that such rights are *variable*, which is to say that they do not stay the same from one case of ownership to another: owning a home and owning a stock involve rather different rights, for instance. Finally, they often mark how such rights are *separable*, such that they need not all belong to any one person in particular: you alone may have the right to use an object which I alone have the right to sell, say.[339] In sum, figures from this phase see ownership as a "bundle" of rights so

336 Locke, *Essay*, vol. 2, bk. IV, ch. III, sec. 18.

337 Aristotle, *Rhetoric*, 1361a, trans. Ross (1959).

338 Blackstone, *Commentaries* *138. He (debatably) refers to exclusion in *Commentaries* *2.

339 Even though much of the literature on ownership revolves around the discussion of what authors call the *bundle theory*, a great deal about this theory is unclear. As the name suggests, this is a view on which ownership as nothing more than a bundle of rights. But as critics have noted, it is ambiguous what specific ideas if any the bundle theory includes beyond this basic image, which is vague and metaphorical (Penner, "The 'Bundle of

disconnected that to fit them all under a comprehensive definition may not be possible. Some authors from the period even go so far as to question whether, once we acknowledge all this multiplicity in the notion of ownership, we can even continue to regard the concept as coherent at all: for example, Cohen spurns ownership as nothing but "transcendental nonsense."[340]

Let's turn to the third phase of the discussion on ownership, which starts in the late twentieth century and is still going today. We should begin here by going over the points on which the parties to the discussion today are in agreement for the most part.

The most central point on which they're united is that ownership rights are sets of what we may call *Honoréan incidents*. These incidents are various rights and other jural relations which you can have with respect to others and in regards to objects.[341] They comprise all the many and diverse privileges, claims, powers, and immunities which some authors have seen as the sticks, so to speak, which make up the bundle of ownership. On the standard account, which comes from Honoré, the relevant incidents are the ones on a list that includes no less than eleven such rights and other relations in all.[342] We can make Honoré's complex list somewhat simpler, as others have, by grouping some items and striking certain others.[343] The simpler list this gives

---

Rights' Picture of Property"). Thus there seem to be many crucially different theories which go by this name, ranging from views which seem to reject ownership altogether as an incoherent notion (Grey, "The Disintegration of Property"), to views which seem to accept it as a concept but insist that it is to be understood in a highly disjunctive way (Munzer, "A Bundle Theorist Holds On to his Collection of Sticks"). Due to the ambiguity of the term, in what follows, I try where possible to refer not to the bundle theory as such, but instead to the more specific ideas which go by this name.

340 Cohen, "Transcendental Nonsense and the Functional Approach;" see also Cohen's "Dialogue on Private Property."

341 The point that ownership is a relation between *person and person* rather than *person and object*, oftentimes set out as some sort of profound insight which theories of ownership supposedly neglect, is thus in fact a trivial consequence of any theory on the subject except perhaps the very crudest, since ownership is plainly about rights, and plainly persons only have rights against other persons.

342 Honoré, "Ownership."

343 I have made two changes to Honoré's original list. First, I have omitted Honoré's incidents of prohibition of harmful use and liability to execution. I fully agree of course that ownership rights are subject to the limitations which these incidents entail. However, in my view it is redundant to include them on the list, since all rights by definition are subject to these limitations. For example, by definition all rights are subject to a prohibition on harmful use, since on pain of contradiction no one can have a privilege-right to violate the claim-rights of others. Secondly, I have omitted the incident of residuarity, which seems less important than the others, and which other authors have omitted in their own restatements of Honoré's list (see, for example, Gaus' "Property").

us is as follows:

(i) *Possession, Use, and Management:*

These include (a) the right to give to or keep from others the right to use the object, or in other words the right to exclude; (b) the right to use the object yourself; and (c) the right against others' using the object.

(ii) *Income and Capital:*

These include (d) the right to sell or rent or give the object to others; (e) the right to sell or rent or give the object's fruits to others; and (f) the right to keep the income from such exchanges for yourself.

(iii) *Security, Absence of Term, and Transmissibility:*

These include (g) various rights against others' taking away your rights to the object without your consent, with exceptions for certain specific cases, such as ones where you have committed some injustice.

More broadly, parties to the debate today agree on some basic insights which authors from the second phase emphasize, yet which authors from the first overlook. Thus none of them assume, as authors from the first phase seem to at times, that ownership is a self-explanatory concept there is no need to define in detail. Rather, as the consensus on Honoré's list tells us, they would accept that ownership is a more multifaceted notion which there is no obvious way to capture in a unitary formula. They grant that a theory of ownership must reckon with these

complexities and puzzle out what they mean for how we should construe the notion. Even if ownership turns out to be uniform as a concept in some respect, we must still explain why the idea is so multiform in other respects.

Let's now move on to what the parties disagree about in the debate over ownership today. We will start with a look at the general issue which is under dispute between these parties. We'll then look at the specific stances they take on this issue.

These parties have described the question their debate concerns in a few ways: some say the issue is whether the bundle theory of ownership is true, others that the issue is whether nominalism or essentialism regarding ownership is true, and so on. We can put the same idea in our own terms by going back to what we've said about how definitions can answer a *which-question* and a *why-question* about a concept. When ownership is our subject, to answer the former we must specify *which* rights count as ownership rights and which do not. To answer the latter, we must then give a unified, cohesive explanation to clarify *why* these and only these rights count as such. We might say the debate today is about whether the why-question about ownership is answerable at all, and if so then how. The issue is whether there is anything unifying all these various incidents which would explain why they and they alone are ownership rights. If there is such a feature, then this feature constitutes ownership's *essence*; but if not, then ownership is merely a *bundle*.

Hence, on the one hand, we have some recent authors who insist that property is indeed only a bundle lacking any such unity. One such author would be Munzer, who says that property

rights can consist in any one of a wide range of "constellations" of Honoréan incidents over an object.[344] This means that an immense array of incident-sets can be property rights, including many which do not have much in common that could explain why they all count as such. Munzer thus holds that property is a "disunified" idea which no monistic theory can capture.[345] Another author of this sort would be Grey, according to whom there is no "unitary" concept which covers the many different economic arrangements we associate with ownership today.[346] Our basic model for ownership is a right to a physical thing; however, we now know ownership involves many distinct rights, and that ownership can be over things which are not tangible at all. Hence, Grey says that property has "disintegrated" as a concept to the point where it has ceased to be useful.[347] Other recent authors who defend broadly similar theories include Epstein and Glackin.[348]

We also have, on the other hand, some recent authors who argue that ownership *does* indeed have a unifying essence. A first example would be Merrill, who says that what is central to ownership is the right to exclude, which he defines as the power-right to give out, or else to keep back, the privilege-right to use an object.[349] Merrill takes this incident to be necessary and sufficient for ownership, and to have the potential to explain all the other incidents; for instance, he says that the right to transfer simply consists in the right to give permanent rights of use to someone else.[350] A second example of an author with a similar stance would be Mossoff, who takes up the idea from many historical figures that what is necessary and sufficient for ownership is having in particular the rights of acquisition, use, and disposal.[351] Mossoff likewise argues that

[344] Munzer, *A Theory of Property*, p. 22-36.
[345] Munzer, "A Bundle Theorist Holds On to his Collection of Sticks," p. 272.
[346] Grey, "The Disintegration of Property," p. 69.
[347] Grey, "The Disintegration of Property," p. 74.
[348] Epstein, *Takings,* "Bundle-of-Rights Theory;" Glackin, "Back to Bundles."
[349] Merrill, "Property and the Right to Exclude," p. 740.
[350] Ibid., p 730-1; p. 743.
[351] Mossoff, "What is Property?" p. 376; see also "The False Promise of the Right to Exclude," and "Trademark as a

these rights can explain all the others we associate with ownership; he says for instance that the right of exclusion follows from the *exclusive* right to use the object oneself.[352] Other recent authors with theories in this category include Attas and Dorfman.[353]

What we'll do next is assess the advantages and disadvantages of these theories. This will serve to convey why there would be a need for us to look for a new theory, and also which features we aim to build into or else keep out of our own account.

Let's start with theories on which ownership is a mere a bundle of rights without anything in particular to unify them. Such theories plainly have the advantage that they capture the fact that ownership rights are indeed diverse, variable, and separable, as authors from the second phase of our history of the discussion of property correctly observed. Nevertheless, these theories also have the disadvantage that, in denying that ownership has an essence, they omit an answer to what we have called the why-question in regards to property. In other words, they decline to explain in any cohesive way *why* all the Honoréan incidents, and no other sorts of rights or jural relations, would count as ownership rights. Ownership, for all they tell us, is merely a "euphonious collection of letters" which we attach as an arbitrary label to rights which in themselves have little to no relation to one another.[354] However, a failure to answer the why-question is a defect in a theory on any subject, except in cases where doing so is impossible. You may object that such authors omit this answer by design – that the *point* of these theories is that there is no such answer – and insist that such an explanation is indeed impossible here. I would reply here that we are not entitled to draw this skeptical conclusion until we have tried all plausible approaches and found they fail; but as I will show in a moment, there is at least one

Property Right."

[352] Mossoff, "What is Property?" p. 393.

[353] Attas, "Fragmenting Property;" Dorfman, "Private Ownership and the Standing to Say So."

[354] Walton Hamilton, *Encyclopedia of the Social Sciences*, as quoted in Cohen's "Dialogue on Private Property."

other plausible approach which we have not tried.

Let's now move on to theories according to which ownership does indeed have an essence which unifies all the incidents. The advantage of these theories is that they do, by contrast, answer the why-question about ownership with a unifying explanation. They point to something which is ostensibly common and unique to ownership rights which makes them, and only them, count as such. Even so, the disadvantage of these theories is that ownership rights prove in the end to be too diverse and variable for the theories of this sort presently on offer to cover them all. Merrill's exclusion theory, Mossoff's integrated theory, and the others can capture many cases of ownership rights, even most. However, ownership is irregular enough for there to be at least some cases which these comprehensive definitions cannot subsume. You may object here that these authors are well aware of such complexities and have crafted their theories to deal with them. My reply however would be to note that theories can still fall to the very same problems they aim to solve, and in this case they do.

First we'll consider Merrill's view, which again says that the right to exclude is necessary and sufficient for ownership. Stocks are a counterexample to such a theory. As the matter is typically understood, to own stock in a firm is to have a share of ownership, or in other words partial ownership, over the firm.[355] In the most common case, the rights this involves are ones to a portion of the firm's income, as well as to vote in elections for the board of directors.[356] We should note however that these rights do not include or entail anything like a right to exclude others from the firm, whatever this would mean. A stockholder, at least as such, has no right to somehow bar others from being customers or employees of the firm, say, or exclude them in any other way.[357] Thus stock ownership shows, contrary to Merrill's view, that the right to exclude is

[355] Bodie, Kane, and Marcus, *Essentials of Investments*, 7th ed., p. 37.
[356] Ibid.
[357] Granted, a stockholder might vote for a director who would then have the right to exclude others from the firm.

not in fact necessary for at least partly owning something. Hence, while his theory of ownership is in many ways plausible, in the end we have reason to reject his account.

Merrill tries to deal with this issue by saying that stockholders have the right to exclude others from their stock in some sense.[358] For example, they have rights against others' taking their stock by theft or fraud, and Merrill counts these as exclusion rights. The issue with Merrill's response is that again his theory says that to own a thing is to have exclusion rights over *the thing itself*. While he notes that stockholders have these rights over their *stock*, this does not mean they have such rights over *firms* as such. They can exclude others from *their investments* in a sense, but not from *the firms in which they have invested*, as we have just noted. Hence, for all Merrill's reply shows, his definition still clashes with the common understanding that stockholders own firms.

Second, let's consider Mossoff's theory, on which to own objects is to have the rights to acquire, use, and dispose of them. Trusts are a counterexample to this theory. Again, as the matter is typically understood, trustees have ownership over the assets which they hold in trust on behalf of their beneficiaries.[359] Commonly, the rights this involves are ones to manage the assets, such as by buying or selling them to increase the trust's value on the whole.[360] The important point here is that these rights do not include or entail any right on the trustee's part to use the assets held in trust herself. A trustee as such has no right, say, to occupy any real estate that might be in the trust, or to otherwise use anything else she owns as a trustee. In sum, against what Mossoff's theory says, trust ownership proves that we can indeed at least partly own things without having the right to use them. As a result, even though the account from Mossoff captures

---

This, however, doesn't mean the stockholder herself has a right to exclude, any more than your right to vote for a President who can initiate military action entails a right on your part to initiate military action.

358 Merrill, "Property and the Right to Exclude," p. 751.

359 Sitkoff and Dukeminier, *Wills, Trusts, and Estates*, 10th ed., ch. 6.

360 Ibid.

many cases of ownership, we still have reason to reject the view as false.

Mossoff might try to address this problem by saying that a trustee's rights to manage the trust count as rights of use. For example, we've said that trustees can have rights to buy or sell assets to grow the trust, which Mossoff might count as use-rights.[361] The problem with this response is that there might well be a case in which a trustee does not have even these management rights. Conceivably, the terms of a trust might tell a trustee to hold onto property without further action until the trust terminates. Even in such a case, however, the trustee would be the owner of the assets in the trust, despite lacking these putative rights of use. Hence even given this reply Mossoff's theory would conflict with the understanding that trustees own what they hold in trust.

In sum, an apt definition of ownership must capture the concept's multiplicity, yet must also discern some unity in this plurality, all without falling to counterexamples in the process; but no theory of ownership as yet on offer can do all these things.

What I want to do next is to present and defend my own account of ownership. I'll start by going over some theories and intuitions which are in line with my view, and then look at some problems with them which I aim for my theory to resolve.

The definition which I will set forth in what follows will be a variation on the idea that ownership has to do with authority. This is a thought authors have voiced at many times in many ways in the historical and contemporary literature on ownership. Among historical figures,

[361] We might also ask whether these would more properly count as rights of disposal rather than use in Mossoff's terms, but let's ignore this more minor issue.

Blackstone speaks of property as a "sole and despotic dominion which one man claims and exercises over the external things of the world."[362] Among contemporary theorists, Waldron says that to have ownership over a resource is to be the one "whose determination as to the use of the resource is taken as final."[363] Gaus similarly notes that "over her property a person's decisions... have weighty publicly recognized authority over others."[364] Katz likewise holds that property is an "exclusive authority" to "set the agenda" for an object, indeed even a certain "sovereignty."[365] We can understand all these contributors as saying in their various ways that ownership is about an owner's authority with respect to an object and in relation to others.[366]

Whether or not we accept the views these authors defend, we can see why they would associate ownership with authority. Supposing that you own a home, for example, then there is a clear sense in which you are the one who is in charge within this space. You direct what goes on here in many ways, according to your own beliefs and desires: for example, you can require any others who come into your home to follow your cultural customs, respect your personal projects, and even adhere to your ethical standards. There are other ways besides in which you direct what happens in your own home: you can even direct *who* directs things there, allowing others to do so in part or in full, perhaps asking for payments in return, as for example occurs when you rent or sell the house for instance. Thus you seem to have over what you own something like the authority which legislators, generals, and judges have over their spheres, even granting that there

[362] Blackstone, *Commentaries* *2. Blackstone is sometimes taken to have presented an exclusion theory of property in this passage. I am not presenting such a theory here, and I would question whether Blackstone is indeed doing so in the passage quoted. (The mere fact that he uses the word *exclusion* in expounding his theory surely does not suffice as evidence for this interpretation.)

[363] Waldron, *The Right to Private Property*, p. 39.

[364] Gaus, "Property," p. 24.

[365] Katz, "Exclusivity in Property Law," p. 4; "Property's Sovereignty," p. 2.

[366] Interestingly, while the authors I have cited here are not opponents of private property as such, the idea that property is a form of authority has also been prevalent, perhaps especially so, among some of its more radical critics, such as left-anarchists. I credit these critics, and especially Spafford (see his article, "Social Anarchism and the Rejection of Private Property") for spurring me to think of ownership in these terms. Of course, my views about the *legitimacy* of private ownership as opposed to its definition will differ greatly from theirs (and I see no contradiction in this).

may be, and indeed in the real world almost always are, many limits on your prerogatives here.

Nevertheless, there are certain problems facing the idea that ownership is about authority which the other authors who have put forth this idea have not yet addressed. To see this, let's consider the simplest way we might capture the connection between ownership and authority in a definition, namely by saying ownership just *is* authority. Ownership rights would then presumably be what we have called aspects of authority, or in other words power-rights to change the rights of others in relation to an object. This definition would have many advantages, since there are several ownership rights which do indeed seem to be *identical* to these sorts of power-rights in such a sphere. One illustration would be the right to say who may use the object and in what ways, which is a power-right to give out or keep back the privilege-right to use the object. Another illustration here would be the right to sell the object, which is a power-right to give others your rights in relation to the object on the condition that they pay you.

However, this definition would also have some disadvantages, since there are other ownership rights which are *not* identical to power-rights in an object's sphere. In the first place, certain ownership rights turn out on a closer look not to be power-rights at all, but rather are in Hohfeldian terms privilege, claim, or immunity-rights. For example, surely the right to use the object owned can count as an ownership right, but this right is plainly in the first instance a privilege-right rather than a power-right. Second, some ownership rights pertain to something distinct from the object owned, and thus saying that they are aspects of authority over the object as such seems false. For instance, rights to the income from the object owned count as ownership rights, yet they pertain not to *the object itself* but to *what others give you* in trade for the object. Hence even though the idea that ownership is about authority has intuitive appeal, the idea needs a more nuanced statement than others have given in order to be viable.

I will argue that we can capture the intuitive notion that ownership has to do with authority, while at the same time dealing with the problems we've just discussed here, among several others, by defining ownership rights in the following way:

(OR) I have an *ownership right* over an object when and only when I have a right which comes with an aspect of authority over the object's sphere.

There are a few features of this definition you might wonder about, asking what they mean or why they would be needed. Before we go on to our further definitions, we should take the time to answer a few of these questions regarding (OR) here.

To start, I should say what I mean by *aspects of authority in an object's sphere*. Recall that an aspect of authority is a power-right to change others' rights in a sphere. Recall also that a sphere is the set of actions which have some feature in common. Now, let's define *an object's sphere* specifically as the set of those actions whose common feature is that they all involve interacting with this object in one way or another.[367] In other words, they are the actions such that when someone takes them she thereby does something *to*, *with*, *in*, *on*, or otherwise in relation to the object in question.[368] Thus aspects of authority over an object's sphere are rights to give to or

[367] Why would I define an object's sphere in terms of actions, rather than in spatial or otherwise physical terms? I do so because to define it in physical terms would be to presuppose by definitional fiat that there can be no such thing as intellectual property, which at least purports to be property in something which is not physical – perhaps an abstract or perhaps even a mental entity. There are good skeptical questions we can ask about intellectual property, but it would be unfair to prejudge them by simply defining ownership as over something physical.

[368] There are many puzzles here. How should we in turn define doing something *to* or *with* an object, and so on? If these things can't be defined in physical and causal terms (which they can't be; see the previous footnote), then how can they be defined? Aren't some interactions with an object so insignificant (such as my lightly grazing the wall of your home as I pass by) that they shouldn't count as part of the object's sphere for the purposes of defining ownership? I acknowledge these questions, but I see no need to answer them. I suspect these things may not be definable at all: it would not surprise me if the notion of doing something *to* an object is simply a primitive one. I also suspect that defining them would be a merely pedantic exercise: even if we sort out what counts as interacting with an object, and what distinguishes this from acting in a way which is merely incidentally related to the object, we would likely not learn more from this than we would from sorting out how many angels can fit on the head of a pin. And in any case, given that in most cases (though not all, as many

else take from others rights which pertain directly or indirectly to such interactions with the object.[369]

The aspects of authority you can have come in at least two sorts, with the first being what we might call *lower-order aspects*. These would be power-rights to change the privilege-rights or claim-rights others have regarding interactions with the object. Supposing for example that you are the one who gets to say who may draw from a well, walk on a shore, or cross over a bridge, this means you have an aspect of authority consisting in a power-right to give others the privilege-right to use these resource. To name further examples, assuming you are the one who gets to say who may *not* hike some trail, drive a car, or eat a fruit, then you have an aspect of authority constituted by a power-right to give yourself a claim-right against such use on their part.

The second sort of aspect of authority you can have in a sphere are what we might by contrast call *higher-order aspects*. These would be power-rights to change the power-rights or immunity-rights of others regarding interactions with the object. For instance, imagine that can I take the rights I now have concerning some parcel of land and give them to you through a sale; this entails that I have an aspect of authority in the form of a power-right to change your power-rights by granting you all my own. As a further illustration, say that as part of a rental contract I can cede my right to bar you from an apartment unit without good cause; this implies an aspect of authority on my end, namely a power-right to give you an immunity-right against such eviction.

What's more, I should also say what I have in mind when I refer in my definition to the rights which *come with* some aspect of authority over a certain object's sphere. Informally, we

property disputes reveal) we seem able to draw these distinctions well enough on an intuitive basis, a precise definition here seems unnecessary.

[369] Rights which *directly pertain* to interactions with an object are privilege-rights to use or not use the object or claim-rights to others' using or not using the object. Rights which *pertain indirectly* to these interactions are power-rights and immunity-rights over these privilege-rights and claim-rights (or regarding power-rights and immunity-rights over them in turn, and so on).

might say these are the rights you have *given* the authority you hold and *given* how you've used your authority. Formally, we'll say these are the rights such that the fact that you have these rights follows from two other facts in conjunction. The first of these two is the fact that you have some aspect of authority in this sphere, meaning a power-right to change privilege-rights, claim-rights, or what have you here. The second is the fact that you have or have not exercised this authority in some way, meaning that you have or have not used this power-right to make such a change.

There are two sorts of rights which meet this definition, the first of these being those which are outright *identical* to some aspect of authority in a sphere. Let's return to the example of a lower-order aspect of authority consisting in the power-right to give others the privilege-right to cross over a certain bridge. Again, rights come with an aspect of authority when the fact that you have these rights follows from the fact that you have such authority, among other facts. Now, the fact that you have such a power-right concerning the bridge trivially entails by reiteration the fact that you have this same power-right. Hence this right comes with an aspect of authority, and so counts as an ownership right, as do all rights which are identical to some such aspect.

The second sort of right which meets this definition are the sort which are not identical to but are still *derivative* of some such aspect of authority. We've referenced as an example of a lower-order aspect of authority the power-right to give oneself a claim-right against others' driving some car. Let's suppose now that you do in fact have this authority, and also suppose that you have in fact exercised this authority so as to give yourself this claim-right. What follows from these two facts in conjunction with one another is the further fact that you do indeed have a claim-right against others' driving the car. Thus this right comes with an aspect of authority, and

thus constitutes an ownership right, and the same goes for all rights derivative of such aspects.[370]

This nuance allows my theory to solve the problem I've brought up for any theory associating ownership and authority, namely showing how rights which are not identical to aspects of authority can count as ownership rights by such a definition. The solution is to define ownership rights not as aspects of authority but as rights which *come with* such aspects in my sense; as we'll see this covers all property rights, since the ones which are not identical to these aspects are still derivative of them.

Now that we've defined ownership rights, let's next define both *partly owning an object* – that is, what we might call fractional or qualified ownership – and also *fully owning* an object – that is, what we might call absolute or unlimited ownership:

(PO) I *partly own* an object when and only when I have some ownership rights I can have over the object, but lack others.

(FO) I *fully own* an object when and only when I have all ownership rights I can have over the object, and lack none.

Thus all rights that come with aspects of authority over an object's sphere are sufficient just by themselves for partial ownership, and no one such right is necessary. By contrast, no one right which comes with an aspect of authority over such a sphere can be sufficient, and all such rights put together are necessary, for full ownership.[371] When we think about partial ownership,

[370] Note that a right of yours can only be derivative of an aspect of authority in the cases where you actually have this aspect of authority. For example, a mere privilege-right to use an object does not count as an ownership right over the object if you do not have any authority over this privilege-right. Otherwise, your privilege-right to enter your friend's home when you've been invited in would count as an ownership right, which is not the case.

[371] Or, at least, all such rights which are possible in the first place. As we will see much later on, in some cases it is impossible to have certain ownership rights over certain objects, and this fact turns out to be crucial to avoiding certain problematic implications.

the examples that come to mind may well be things like your partly owning a plot of land in common with others in your town. However, when we take a closer look, we will see that nearly *every* instance of ownership under the law in the real world counts as partial ownership by our definitions. Even home ownership for example is subject to many limits, due both to public laws, like zoning regulations, and to private contracts, like homeowner's association rules.[372] To come up with an example of full ownership, we must in effect imagine one, by picturing something like home ownership and stipulating away all such constraints.

Having defined ownership rights in general, we can now also define *private ownership rights* – that is, individual or exclusive ownership rights – along with *common ownership rights* – that is, shared or joint ownership rights – in particular:

(POR) I have a *private ownership right* over an object when I have an ownership right over the object which no or few others also have.

(COR) I have a *common ownership right* over an object when I have an ownership right over the object which many or all others also have.

Hence whether ownership rights are private or common depends upon how many others share with you precisely the same right over precisely the same thing. For example, your car may be private property insofar as only you and perhaps your immediate family have ownership rights of use, sale, and so on in relation to this car; yet the road may be common property insofar as everyone in your community has rights to drive on it, to participate in democratic decision-making about it, and so on. There are a few complexities we must note here. The first is that

[372] This is why I mentioned earlier that our rights of ownership over our homes and so on are subject to many qualifications. This is of course not to assume without further argument that these limitations on ownership rights are somehow unjust or otherwise undesirable.

it is vague, not just epistemically but metaphysically, what numbers of people count as *few* or as *many* in this context: we cannot define this with precision any more than we can so define how many grains of sand constitute a heap. The second is that what counts as ownership by *few* and as ownership by *many* is also a relative matter: we would class a private company as being owned by few rather than many even if it has several thousand shareholders, while we would class a community park as being owned by many rather than a few even if the community has a population of only a few hundred. The third is that this distinction between private and common property does not of course exhaust all the distinctions we might want to draw between different types of ownership: we might also want to carve out such categories as *public* property, *social* property, and so on, and these do not seem coextensive with the categories of private and common property as defined here. Although I acknowledge these complexities, I will not address them here, simply because I will not need to do so to accomplish the specific purposes I have in view.

I will now turn from presenting my theory of ownership to defending the view. The aim will be to show that my theory does the three things I've talked about here: capturing the concept's multiplicity, but at the same time capturing its unity, while also avoiding counterexamples.

The first step I will need to take is to show that all the incidents on Honoré's list, or rather our simplified version of this list, do indeed count as ownership rights according to the definition I have stated here. The way I will do so is by giving a concrete example of each of the incidents

on the list and then showing that this incident is, in my terms, identical to or derivative of an aspect of authority over some object's sphere. To be more exact I will show that this is so in the cases where the incident in question intuitively constitutes an ownership right – as there are items on the list which count as such in some cases but not others. This entails that by my definitions these incidents come with such an aspect of authority, and thus that they are ownership rights, at least in the range of cases in question. While I will only discuss particular examples, I will make the plausible assumption that we can reach the same conclusion by the same reasoning in all similar instances, perhaps with a few changes here and there.

(i) *Possession, Use, and Management:*

(a) *The right to give to or keep from others the right to use the object:*

Let's suppose that you have the right to say who has and who lacks the right to drink from a certain stream. This is a right to change others' rights regarding the stream's use, and such a right is an instance of (a). Hence (a) is a power-right to either give out to others or else to keep back from them a privilege-right to interact with this object in a certain way, and thus (a) is identical to an aspect of authority over an object's sphere.

(b) *The right to use the object yourself:*

Assume you have the right to say who has the right to walk across a field; this right would be an instance of (a). Let's assume further that you then make use of this right by giving *yourself* the right to go for a walk there. From these two facts

what follows is that you do indeed have a privilege-right to interact with the object in this way; this right is an instance of (b). Thus (b) is derivative of aspect of authority (a) in cases like this one.[373]

(c) *The right against others' using the object:*

Assume you have the right to say who has the right to swim in some lake; this right is also an instance of (a). Assume that you do *not* make use of this right so as to give anyone else the right to go swimming in this lake. What follows from these facts is that you have a claim-right against anyone else's so interacting with the object; this right is an instance of (c). Hence (c) is derivative of aspect of authority (a) in such cases.[374][375]

(ii) *Income and Capital:*

(d) *The right to sell or rent or give the object to others:*

Consider a case where you have the right to take all the rights you have over a house and give them to others. Let's say you have the right to do so on any conditions you choose, such as that others pay you in return. This is a power-right to change the rights of others in an object's sphere, namely by giving them your rights; and such a right is an instance of (d). (d) is therefore identical to an aspect of authority over such a sphere.

[373] If you don't have this aspect of authority, then (b) is not an ownership right.
[374] Again, if you do not have the corresponding power-right, then this bare claim-right is not an ownership right.
[375] This assumes that the privilege-right is one in relation to you; if not, then it doesn't count as an ownership right on your part.

(e) *The right to sell or rent or give the object's fruits to others:*

Imagine a case where you have rights over some land, as well as to everything on this land, including the soil, the water the soil absorbs, the seeds which take root in the soil, and so on. Next imagine that you have the right to take all your rights over these things and then give them to others on any conditions you might choose; such a right is an instance of (d). Now given that you have rights over all these various things, then presumably you must have the same rights over what these things make up when they are all put together. But any crops which then grow from this land – that is to say, the fruits of the soil – are simply parts of all of these things brought together through biological processes to form plant life. This entails that you have a right to these fruits; this is an instance of (e). Hence (e) is an aspect of authority derivative of (d) in such cases.[376][377]

(f) *The right to keep the returns from such exchanges for yourself:*

Picture a case where you have rights over a factory, and moreover have the right to give these rights to others, which would be an instance of (d). Say that you then make a deal with someone else under whose terms you agree to give her your rights over the factory on the condition that she gives you some money in exchange. Say that the deal goes through and you do in fact give her your rights. This entails that she must have met the conditions you set, since had she not done

[376] You may object that this analysis doesn't fit all the things we call the fruits of a resource. For example, sometimes we refer to all income from a resource as its fruit. I would reply that while this analysis does indeed not fit such examples, the next analysis of right (f) does.

[377] If by contrast you do not have ownership rights over all these components, then you also presumably do not have rights over the fruits which they come together to compose.

so then the deal would not have taken effect, and you would not have given her your rights. Hence she must have given you the money that was her end of the deal, and what follows is that *you* are the one with rights over this money now. This right to the income from your exchange counts as an instance of (f). (f) is thus derivative of aspect of authority (d) in cases like this one.

(iii) *Security, Absence of Term, and Transmissibility:*

(g) *The right against others' taking your rights to the object against your will:*

Assume that you have some rights over an orchard, and assume also that you have a right to give these rights to others or keep them, which is an instance of rights like (a), (d), or (e). Assume lastly that these rights to give or keep rights are *unconditional*, which is to say that they are effective in all cases rather than only some. Now suppose that others have the power-right to take your rights over the orchard from you even when you do not choose to part with them. This would mean that your rights to give *or keep* your rights over the orchard are in fact ineffective in some cases;[378] but this clashes with our supposition that your rights are unconditional. What follows is that no one else has any power-right to take your rights, and so you have an immunity-right against such a loss, an instance of (g). Hence (g) is derivative of aspects of authority like (a) in such cases.

In sum, all the incidents on our list are either identical to or derivative of aspects of authority over an object's sphere. Hence they are rights which come with such aspects of authority,

[378] Namely, in the cases where you try to exercise your rights, but they've been taken away from you.

and hence they constitute ownership rights on our definition.

The first important conclusion we can draw from this demonstration is that my account can capture the multiplicity of ownership which many authors have stressed, insofar as the theory implies that ownership rights are *diverse*, *variable*, and *separable*.

My theory entails that ownership rights are *diverse* insofar as the rights which fulfill my definition are many and distinct. In form, they range from privilege-rights such as (b), to claim-rights like (c), to power-rights like (d), to immunity-rights like (g). In their contents, moreover, they range from the right to exclude others from a resource in (a), to the right to the fruits of a resource in (e), to the right to the income from a resource in (f). My account implies that all these rights are ownership rights, since they all come with aspects of authority in an object's sphere.

Also, my theory entails that ownership rights are *variable,* in that there are many distinct sets of these rights you can have which would make you an owner on my view. You may have them all at once; you may have only (d), (e), and (f), as a landlord might; you may have (a), (b), and (c) only at some points in time, as a timeshare owner might; and so on and so forth. In all such cases, however, you still at least partly own the object according to (PO), which again says that *any* set of ownership rights is sufficient for partial ownership.[379]

My theory entails that ownership rights are *separable* in that you and I can both have such rights, as I have defined them, over the very same object. If you and I are both own stock in a certain private firm, then ownership rights to the firm's income will be split up between the two of us, along with all the other shareholders. If you and I are both members of a community with common ownership over a certain park, then we will both have rights to use this park, and to vote in decisions about how it is to be used, and so on. My definition of ownership, and my

[379] This variability is not infinite, however. To fit the definition, you must always have aspects of authority in the object's sphere, and any further rights must be ones which come with these aspects of authority if they are to be ownership rights in your case.

analyses of the individual ownership rights, entails that this sort of dispersal of ownership rights across many people is entirely possible.

What all this means, more broadly, is that my theory captures the observations which have attracted so many authors to bundle theories of ownership. What those who favor to these theories have quite rightly perceived is that, when we take a close look, we will find that ownership breaks down into a mass of parts which vary a great deal in form and content, and which are often only loosely connected to each other, so much so that they can be taken apart and put back together in many different ways while still constituting ownership. Ownership therefore certainly is not the simple concept which many earlier authors seem to have believed it to be. What we have just seen is that my theory is not only consistent with, but in fact entails, that these sorts of observations are true.

The second important conclusion here is that my theory, at the same time, reveals the unity amidst the multiplicity of ownership which many other authors have sought, since the theory explains why all and only these rights would be ownership rights.

Again, one thing an apt theory of ownership must do is answer what I have called the why-question about the concept, or point out some feature common and unique to ownership rights which explains why they and only they count as such, rather than merely say the matter is arbitrary, at least insofar as this is possible at all. What's more, this answer to the why-question must itself be an apt one, which means in this case that the answer must give an explanation which is unified and cohesive.

My theory provides just such an answer. According to my theory, there is a single, unitary feature which both unifies and distinguishes all ownership rights together, despite all of the differences and disconnections between them. To wit, they are all rights which come with as-

pects of authority over an object's sphere – in other words, rights either identical to or derivative of power-rights to give to or take from others all the various rights which concern interactions with the object. Ownership is therefore not, contrary to what many authors have supposed, merely a myriad of heterogeneous rights we have forced together into one gerrymandered category whose boundaries we cannot explain by reference to any deeper commonality between them. There is indeed such a commonality, namely the one having to do with authority which we have specified here.

Hence, in short, what we have shown is that my definition avoids both of the most important problems which have been known to confront theories of ownership for some time now. The solution to these problems – which many previous authors have suggested at least in passing, but which none had worked out in full detail – is that ownership is about authority in relation to an object, and more specifically in relation to the rights which come with such authority. Such a definition explains the multiplicity of ownership while also preserving the unity of the concept. And this, I propose, justifies us in accepting this definition over the others on offer.

Our last task before moving on will be to define *acquisition*, which is to say what others call original or initial acquisition or appropriation. An acquisition takes place when someone comes to own a formerly unowned object. More precisely, this happens when a person takes on at least some ownership rights over an object, rights which no one held at least during the moment immediately prior to this. Now, a *unilateral* acquisition, in particular, occurs when someone assumes ownership rights in this way over a given object regardless of whether others have

consented to this.

There are of course many further questions to ask here about exactly what conditions a person must meet in turn for her to truly acquire an object – as opposed to merely illegitimately asserting control over something without actually gaining any genuine rights to the thing in question from a moral standpoint. These questions all have many different competing answers, differing for example in regards to whether acquisition requires consent – or in other words whether unilateral acquisition is possible from a moral standpoint – as well as about what the limits are on how much someone may acquire, and so on. We will deal with many of these questions at various points in this chapter and the next, and in this way we will put together a more specific account of acquisition; but for now what we've said will suffice as a general answer to the question as to what acquisition is in the first place.

4.2

Now that I'm done *defining* what ownership and acquisition are, including private ownership and unilateral acquisition, I will turn next to *defending* the principles that we all have a right to private ownership and a right to unilateral acquisition.

Let me start out by going over certain common arguments for the same conclusions to which my own defenses will be similar in some ways and dissimilar in others. Many authors have argued for private ownership by noting that realizing our ends is often infeasible unless we have the control over objects such ownership provides us.[380] Without food, we cannot even survive at all; without tools, we often cannot complete many basic tasks; without further

[380] See, for example, Locke's *Second Treatise*, ch. V; Lomasky's *Persons, Rights, and the Moral Community*, ch. 6; Mack's "The Natural Right of Property;" van der Vossen's "Imposing Duties and Original Appropriation;" and so on.

resources, we often cannot attain higher ends either. Private ownership secures such things for us, and this is what justifies such ownership. Many have also argued for unilateral acquisition by noting that acquiring private ownership would be largely infeasible unless we could do so without others' consent.[381] Getting such consent from all others would likely be so hard and cost so much that few to none would ever succeed in doing so, making ownership nearly unattainable for us. Unilateral acquisition avoids these issues, and this is what justifies such acquisition.

While these arguments are plausible, there is a certain problem they both have, namely that they assume things about what's feasible that are true in only some cases. Hypothetically, you could have access to ample resources which either no one owns, which others privately own but let you use, or which you own in common with others; and in such cases achieving your ends without any private property might be feasible. For example, if your aim is to raise livestock, there might be a field which everyone in your town owns in common which gives you all the space and grass you need to do so. Hypothetically, there might be fewer people, or they might communicate more easily, or else they might cooperate more readily, and in cases such as these obtaining consent from others to your acquiring private ownership might well be feasible for you. For example, if the only others around happen to be a few friends who live within earshot in the same small valley as you, gaining their consent might be no issue.[382][383]

The reason why this is a problem is that since these arguments rest on premises which are true in some cases but not in all, they seem as though they, accordingly, can only support rights

[381] See, for example, Locke's *Second Treatise*, ch. V; van der Vossen's "Imposing Duties and Original Appropriation;" Vallentyne's "Left-Libertarianism;" and so on.

[382] Might someone argue that without private property and unilateral acquisition, such things may be *possible*, but they will not be *reliable* or *stable*? Again, however, this seems contingent. In some cases your access to these resources may be somehow unstable and precarious, but this will not be so in others. For example, if there is no one around, and no one is likely to ever come around, then you don't really have to worry about your access to unowned resources.

[383] A consent requirement might say that what's needed is the consent of only some people, such as those around you, or it might say that what's needed is the consent of all people. For this counterexample to work against the latter requirement, we'd have to assume – as is surely hypothetically possible – that the people in your valley are the only people there are.

to private ownership and to unilateral acquisition in some cases, but not in all. Even assuming that you can justify private property in many cases on the grounds that attaining your ends will be infeasible without it, you cannot plausibly mount such a defense in the case where you already have all the means to your ends you need in the form of common property, or unowned resources. Likewise, even assuming you can justify unilateral acquisition in many cases on the basis that appropriation would be infeasible otherwise, you cannot say the same in the case where obtaining consent from everyone involved is easy and costless. You might perhaps appeal to the fact that these things are *usually* necessary in this way – but is far from clear why their being necessary only in *other* cases would justify them in *this* case.[384] Hence these arguments are inadequate if they are meant – as they usually seem to be – to show something more than that we merely *usually* and *contingently* have rights to private ownership and unilateral acquisition.

I should specify how my arguments will be like and unlike these other defenses. My arguments will be like theirs in that I will also say that, owing to a certain way in which we rely on objects in our actions, to lack rights to private ownership and unilateral acquisition would be to lack means to give effect to your values in a certain sense. However, my arguments will be unlike theirs, firstly, in that I will say that we rely on objects in our actions, not in the sense that without them *many* actions would be *infeasible* for us, but instead in the sense that without them *any* actions would be altogether *impossible*. My arguments for ownership rights will also be unlike these existing alternatives in that I will say that we must have these rights to give effect to our values, not in the sense that they are *instrumental to our realizing our ends*, but instead in the sense that they are *prerequisite for our right to sovereignty*. These differences allow my argument to do what in my view the other defenses do not, namely provide a basis for the rights

[384] This has some relation to the well-known general problem with theories which make use of this sort of move, such as rule utilitarianism or the interest theory of rights. Why should benefits which only arise in some cases, or even in many or most, give us rights or duties in the other cases where these benefits are absent?

at issue here which is universal and necessary.

Let me now set out my first argument, namely the one for the conclusion that we have rights to a sort of private ownership. The first premise in my argument here will be the conclusion of my argument in the last chapter, namely the following:

(i) We all have a natural right to sovereignty.

Again, the basis for this idea is in brief that the principles of justice applying to us must be ones we can all in reason accept, and that we can only thus accept a principle which grants us rights to sovereignty. My second premise will be as follows:

(ii) A right to sovereignty is a right to private ownership.

I will defend this premise by showing that sovereignty on the one hand and a sort of private ownership on the other turn out to be no different from one another. Since the two are in fact one and the same, a right to the one is a right to the other.

To grasp the connection between sovereignty and ownership, we'll first need to grasp the one between actions and objects. In particular, actions and objects are connected in such a way that any *action* must be an *interaction* with one or more objects. In other words, anything that you *do* must be something which you do *to*, *with*, *in*, *on*, or otherwise in relation to some object.

In some cases the objects you engage are external ones in the world around you: you interact with a chair when you sit, interact with a pen when you write, and so on. In other cases the objects are internal ones, meaning physical or mental parts of you: even in simply walking you use your legs; even in merely thinking you use your mind. What's more, in some cases the object will be tangible, such as the apple in your hand, while in others the object will be intangible, like the design you use to build a device. Whenever you perform an action, then, you interact with an object in doing so, though this may not always be clear at first.[385][386]

With this point and our definitions in mind, let's suppose for conditional proof that you are sovereign within some sphere, and consider what else would then be true. By my definition (S) this means you have full and supreme authority over what rights others have and lack concerning a set of actions which have some feature in common. What we have just seen however is that all actions are in fact interactions with objects: there is no way to *act* without *acting upon* something in doing so, often several things. Thus your authority as a sovereign over the rights of others concerning certain *actions* must also be an authority over their rights regarding *interactions* with certain objects. Now, this is just to say that what you have is authority within these objects' spheres, and by my definitions (OR), (PO), and (FO), this authority is what counts as ownership. Hence, in brief, the sovereignty you have over a sphere of action *just is* a sort of ownership you have over some space of objects; there is no difference between

[385] Broadly, I take inspiration for these ideas from Steiner ("The Natural Right to the Means of Production," *An Essay on Rights*). I differ from him in that I do not define interaction in physical or causal terms, and I believe it is important not to do so for the reasons relating to intellectual property I've mentioned earlier.

[386] Is this presupposing physicalism, or at least assuming that all actions involve causal, physical interactions with physical objects in space? And if so, how could it account for property over intangible things such as intellectual property, with which we have no such physical interchange? I do not presuppose here that everything is physical, or that all interaction is physical interaction. I do this precisely because this (in addition to being a metaphysical contention far stronger than any of my purposes require) would exclude intellectual property by fiat, which seems too hasty. How do I define interaction, if not in physical causal terms? As I've mentioned before, I don't define it; I leave that as an exercise for metaphysicians.

the two.[387][388]

Next, let's suppose for proof by contradiction that I have the same sort of ownership over the same objects as you do, and then consider why this could not be true.[389] Since again your ownership over these objects *just is* sovereignty over certain actions, this would have to mean I am sovereign in the same way as you over the same actions. Assuming we are both sovereign here, however, then you might choose to exercise your sovereignty in one way while I choose to exercise mine in some contrary way. Given that our two choices are incompatible, only one out of the two can be effective; but this would mean the one whose choice is ineffective isn't *sovereign* here after all. Thus there can be no one else who has the same sovereignty in this sphere as you do; and as sovereignty is a sort of ownership, no one else can have such ownership either. Since any ownership which you *alone* have counts as private by my definition (POR), this means that your sovereignty specifically constitutes a sort of private ownership.

To see what all this abstract reasoning is supposed to mean, let's go through the argument in relation to a concrete example. Imagine that you have a system of values according to which the best life for you is one you devote to a career as a sculptor. Now suppose that you are sovereign over some sphere of action, namely the set of actions which would further or hinder this end, or in other words the actions by yourself or by others which would either help you or hurt you in your creative undertakings.[390] What this means specifically is that you have full and

[387] Note that I do not say that this must be full ownership; it may be partial. This is because not all spheres are the spheres of objects – some spheres comprise a range of actions which do not all involve interaction with any one object. If you have sovereignty over such a sphere, this will not constitute full ownership over any one object, but instead partial ownership over several at once.

[388] They are no different in the sense that the same rights which constitute the one also constitute the other. Note that not just *any* sort of private ownership is sufficient for sovereignty on my view. In particular, many forms of merely partial ownership fall far short of sovereignty. This is the caveat I have in mind when I say that sovereignty is identical only to a certain sort of private ownership.

[389] By *the same sort of ownership*, I mean the same ownership rights.

[390] I do not mean to suggest that this sphere is representative of all spheres over which we might have sovereignty. A sphere can be defined by any feature actions might have in common, and thus need not be defined by a feature of this sort, namely relevance to a particular activity or project.

supreme authority over others' rights concerning this sphere of action, which is to say authority to give to or take from them or yourself rights regarding actions either conducive or obstructive to your aims. Thus for example you have the authority to give yourself the right to sculpt in accordance with your own personal artistic vision, as well as the authority to take from others the right to do anything which which would force you to refrain from doing so.

Consider, however, the point that all the actions within this sphere turn out to be interactions with objects in the world, just as we've noted is the case for any action. The actions which further your projects are the ones you take when you go to work on your sculptures, and these actions all involve engaging with objects: holding out the chisel, tapping with the hammer, hewing the marble, moving your body, and so on. The actions which hinder your projects are the ones which stop you from working on your sculptures, and all these actions again involve engaging with objects: snatching the chisel, breaking the hammer, wrecking the marble, maiming your body, and so on. Hence your authority over rights concerning actions which would further or hinder your work is also authority over rights concerning interactions with objects like these. Your authority as a *sovereign* over the sphere of actions which affect your ends is thus also the authority of an *owner* over a space of objects you engage in your work.

Now, imagine that *I* am sovereign also in the sphere where you are sovereign. Say that I then find your sculptures offensive, and thus proclaim as a sovereign that you no longer have a right to create them. You however could and presumably would proclaim as a sovereign yourself that you have the right to create whatever you please. Your decree might take effect here, or mine might, but they cannot both do so at once; and the one whose decree has no force therefore cannot in fact be *sovereign* here.[391] This means that your sovereignty over your sphere of action

[391] If your decree is ineffective, then your authority here is restricted, or in other words effective under only some circumstances; but recall that sovereignty must be unrestricted authority.

must be exclusive to you; and since your sovereignty is ownership, this ownership of yours must be exclusive.[392] Now, exclusive ownership is private ownership; and this means that the objects you own by virtue of your sovereignty are in particular objects which you *privately* own. The chisel, the hammer, the marble, the workshop – the objects connected with your sphere of sovereignty in this example – are thus objects under your private ownership.

To sum up what this example shows us, we might say that your sovereignty and your private ownership in this case are the same status seen from two different sides. Seen from one side, your rights are a sovereign's powers to make such laws as you will in the matters under your dominion – the ones relating to your artistic endeavors. Seen from the other, your rights are an owner's license to make any rules you might choose in an area which is your property – the one encompassing your workspace. The authority which constitutes both your sovereignty *and* your ownership gives you a space where you say what rights we have, and so where you can make sure that you have rights to bring about what you see as good and that others lack rights to stop you. Moreover, everything that we have said here applies not only to this case in particular but to all cases of sovereignty in general.[393]

To sum up, my first premise is that we all have a natural right to sovereignty, and my second premise is that this right to sovereignty is a right to private ownership. We can see then that the conclusion to which these premises lead us is the following:

(RPO) We all have a natural right to private ownership.

[392] More precisely, the specific ownership rights you have over the object must be unique to you. Others may have different ownership rights over the same object, or even ownership rights of the same broad sort – but not wholly identical rights.

[393] Does this apply even to spheres of action less obviously directly related to physical objects, such as the sphere of activity involved in a life you spend in silent and unmoving meditation? Yes, since these spheres of action still involve interactions with objects: even in meditation you engage your own mind and body.

We should note here the ways in which this argument improves upon the others which I have discussed. Recall that those other arguments defend private ownership by appealing to the premise that we must have exclusive control over objects for realizing our ends to be feasible. The problem with such arguments is again that this premise is a contingent truth which may be true in many cases but is still false in others. As a result, these arguments do not seem capable of supporting anything more than a similarly particular and contingent right to private ownership.

The argument I have just given avoids this issue. Rather than appealing to any contingent and empirical facts about how control over objects is instrumental to our ends, I appeal first to what I take to be the necessary and metaphysical truth that interaction with objects is constitutive of all action. My argument also then appeals to the similarly necessary truth that sovereignty in relation to actions is therefore constitutive of authority in relation to interactions with objects – which is to say ownership. Hence this argument can support a right to private ownership which is not limited in scope in the ways that the rights supported by the other arguments are.

Let me now put forth my second argument, namely the one for the conclusion that we have rights to unilateral acquisition. Once again the first premise in my argument will be the conclusion of the last chapter:

(i) We all have a natural right to sovereignty.

Again, the defense for this is the same as before. My second premise will be:

(ii) A right to sovereignty is a right to unilaterally acquire private ownership.

I will defend this premise by arguing that the right to sovereignty is a right to *assume* sovereignty within a given sphere, and since sovereignty is a sort of ownership, the right to assume sovereignty is a right to acquire such ownership – unilaterally so.

To grasp the connection between sovereignty and acquisition, we will first need to grasp a few points about rights as such. Recall that rights are Hohfeldian incidents, and that there are four types of incidents: privileges, claims, powers, and immunities.[394] Recall also that at least on the theory of rights which I have defended, incidents of any one of these four types can count as a right. Now, the rights of all four Hohfeldian types must always be rights either *to*, or *against*, or otherwise *concerning* something. All rights which are of the same type concern the same sort of thing; some rights of different types concern different sorts of things. A privilege-right must always be a right for you to take some action, and a claim-right a right against others' taking an action. Moreover, a power-right must always be a right on your part to either give to or take from either others or yourself some right, while lastly an immunity-right must instead always be a right on your part against others' taking some right away from you.

Along with all these various facts about rights in general, let's consider a few about the right to sovereignty in particular. As is plain, this is a right *to* something, namely to sovereignty, or in other words to the rights of full and supreme authority. Also plainly, this right must in some sense *impart*, *afford*, or *provide* to you the full and supreme authority this right concerns.[395] There are a few things this tells us about what type of right in Hohfeldian terms the right to

[394] To be more exact, they are sets of one or more such incidents. I ignore this for simplicity's sake.

[395] You might wonder whether here I am presupposing that the right to sovereignty must be a right to give yourself sovereignty. This is not the case; I make no assumptions here about what counts as imparting sovereignty to you.

sovereignty could and could not be. This tells us first that the right to sovereignty is not a privilege-right or a claim-right, since while once again these types of rights are rights *to an act* by yourself or others, the right to sovereignty is a right *to a right*, or rather to several rights at the same time. Second, what this also tells us is that the right to sovereignty is not an immunity-right, since while again rights of this type are only rights *against* others' taking your rights, the right to sovereignty is a right *to* an authority this right somehow imparts to you.[396]

This means that there is just one type of right out of Hohfeld's four the right to sovereignty could be, namely a power-right. Now, the right to sovereignty cannot be a right to take sovereignty from anyone, nor a right to give this status to someone else. After all, neither one of these two sorts of rights would impart any sovereignty to *you*, as I have said the right to sovereignty must. This means the right to sovereignty must be a power-right to give yourself sovereignty, to *make yourself sovereign* in a sphere. Let's next recall that according to my argument sovereignty over actions just is a certain sort of private ownership over objects. Recall also that according to my definition acquisition occurs when you come to own something which was formerly ownerless. Hence a power to assume sovereignty over any sphere of acts must be a power to acquire ownership over some space of things.[397] What follows from all of this is that the right to sovereignty must be a power-right to acquire private ownership over objects.

Next, let's suppose your right to sovereignty is a right to become sovereign only when others choose to let you to do as much. Imagine however that others around you are so against your values that they choose not to let you have a sphere of sovereignty. Since you have a right to assert sovereignty only with their consent, you thus have no way to make yourself sovereign in any sphere. Hence such a right to sovereignty does not in the end impart any sovereignty to

[396] Wouldn't we expect sovereigns to have such rights? Yes, but only as rights which follow from their sovereignty (along with facts about how they've exercised it), not as their sovereignty itself.

[397] To be exact, over a space of things which weren't owned at the time the acquisition took place.

you or to anyone else in the same position. However, the right to sovereignty *must* impart sovereignty to all who have this right, even those whose values clash with others'. Thus this right cannot be one you may use only with others' leave; you can't be *dependent* on others for your very *independence*. Now, the right to sovereignty is a power to acquire ownership, and a power to do as much in cases like these is a *unilateral* one. What this means for us is that the right to sovereignty must be a power to acquire private ownership over objects *unilaterally*.

To illustrate what I have in mind here, let me again go through this general argument with reference to a specific example. Imagine once more that you have a system of values according to which the best life for you is one you spend as a sculptor. Suppose that you have a right to sovereignty, to a sphere where your values hold sway, in this case your artistic and creative values. This is a right to certain further rights, namely the rights which make up full and supreme authority in some sphere of action. This right couldn't be a privilege or a claim, since you can have privileges or claims *to acts*, such as privileges to carve your sculptures or claims to my not breaking them, but you cannot have privileges or claims *to rights*, including the rights of sovereignty. This right also could not be an immunity, since you might have immunities *against losing rights*, such as immunities to my taking your rights to sculpt certain subjects, but you cannot have immunities *to rights*, again including the rights of sovereignty.[398]

Thus the right to sovereignty is a power; and we may assume that this isn't just some power to take sovereignty from anyone, or to give sovereignty to someone else, since to call either of these a right on your part to sovereignty wouldn't make sense. This leaves open just one last alternative, namely that the right to sovereignty is in the end a right to give sovereignty to yourself, to assume the rights of a sovereign within some sphere of action, and assert full and

[398] Aren't these immunities at least a part of the right to sovereignty? Again, they may follow from this right, but they are not constitutive of it.

supreme authority here over these actions. Again, the sphere you thus annex might for example be the set of actions which either further or hinder your projects as an artist, giving yourself the right to decide on the basis of your own values what rights you and others have concerning such actions. Again, also, sovereignty over these actions is private ownership over certain objects, namely the instruments, materials, and so on with which you engage when you work; and thus a power to assert this sovereignty is a power to acquire such ownership here.

Imagine, now, that the others around you do not share your system of values, and disapprove of your art on religious, cultural, or aesthetic grounds, as might well occur. In fact, their opposition is so strong that, assuming the decision were theirs to make, they would not allow you to have *any* sphere where your artistic values are in force. For someone in a position such as yours, a right to sovereignty conditional upon the consent of others would impart no sovereignty to you at all. But this limitation would go against the very nature of the right to sovereignty. This right is supposed to give you a sphere where you may give force to your own values – in this instance, your artistic ambitions – despite the fact that others around you can and often will have different value-systems, and perhaps ones which clash radically with yours. If we stipulate that these same others may effectively veto your obtaining such a sphere – perhaps motivated by this very sort of clash between their values and yours – then in a clear sense we defeat the very purpose of the right to sovereignty. Hence the right you have must be a right to assume sovereignty in a sphere even if others do not consent. And since to assume sovereignty is to acquire private ownership, this means that you have a right to make such an acquisition *unilaterally*. Again, one way in which you might exercise this power is by assuming sovereignty over the sphere of actions which either further or hinder your artistic projects, with or without the consent of others – and in doing so you would unilaterally acquire private ownership over the

associated objects: the associated tools, materials, workspace, and so on.

We might again sum all this up by saying that the right to sovereignty and a certain sort of right of acquisition are the very same right seen from two different sides. Seen from one side, this right is a power to attain the rights of sovereignty in a sphere, a right to crown yourself a monarch in miniature over a particular domain of action, such as the set of actions which serve to further or hinder your artistic undertakings. Seen from the other side, the very same right is a power to stake a claim to objects, to establish a title for yourself as the owner of a certain set of objects, such as the objects with which you interact in the course of your work as a sculptor. And either way, the right in question is one which you can exercise whether or not you have consent from others around you do so. You do not need the approval of others to establish a space within which you, as sovereign and as owner, have the right to set whatever rules you choose, in accordance with whatever values you happen to accept.

From the premise that we all have a natural right to sovereignty, along with the further premise that the right to sovereignty is a right to unilateral acquisition, what follows is the conclusion:

(RUA) We all have a natural right to unilateral acquisition.

As before, we should note how this argument improves upon other, similar defenses in the literature. Recall that those other defenses appeal to the point that under normal circumstances it would be completely infeasible to obtain consent from everyone to your acquiring private ownership. The problem with this approach is again that this point is only a contingent fact which under other circumstances might not obtain – say, if communication and

cooperation came more easily to us. Thus the argument seems only to support a contingent right to unilateral acquisition.

By contrast, my argument here appeals only to a fact which obtains under all circumstances – namely, that the right to sovereignty, by its nature, must impart sovereignty to all those who have this right. This excludes the possibility that it might fail to impart sovereignty to some of us – such as those whose values are controversial enough that others would not consent to their having any sphere where these values hold sway. And this in turn means that the right to sovereignty must be a right we can exercise without the consent of others. Thus the argument supports a unilateral right to sovereignty – and thus a right of unilateral acquisition – which is not merely contingent and particular in scope.

Let me now turn to defending principles (RPO) and (RUA) against objections that have been made against the legitimacy of private property and unilateral acquisition.

While there have been countless objections to private ownership, I want to focus here on the two objections which in my view are the most powerful and the most representative. The first is the objection that such ownership is inimical to *equality*, and the second is the objection that such ownership is inimical to *liberty*.

I view these two challenges as the most powerful not only because they appeal to ideals which are attractive in themselves, but also because those ideals are ones which have force even according to my own theory. I view these two challenges as the most representative ones insofar as many of the other myriad objections to private ownership at least arguably overlap with these

two criticisms, and in the end may amount to alternative ways of expressing them, at least to some extent. For example, another common objection to private property is that it is associated with economic exploitation; but some contributors to the discussions about this objection have persuasively argued that this comes down in the end to an objection from equality, while others have argued that it is ultimately an objection from liberty.[399] I suspect that the same is true of many other criticisms as well, such as the objection from community: the part of this objection which is compelling is the part which is reducible to an objection from equality; anything else in it which is not reducible to this concern is not terribly compelling, at least from the standpoint of justice.[400]

The objection that private ownership is inimical to *equality* is the one recent authors have raised perhaps most often, and which many past figures have raised also. Private proprietors have rights to keep for themselves and not share with others various benefits from the resources they own, like the benefits of use, fruits, and income. Under systems where property is private, inequalities in property and thus the associated benefits can and commonly do arise, often owing to factors beyond our control. For example, if we all own our own labor, and some of us have greater natural abilities to perform labor with a high market value, then they may receive far more money for their labor and enjoy greater benefits, which they may withhold for themselves alone. Supposing you accept the plausible idea that inequalities and especially ones arising from luck rather than choice are unjust, you might well also insist that private ownership as an

[399] The definitive statement of the nature of exploitation is of course Marx's *Capital*, although this text does not develop any normative criticism of exploitation. Roemer ("Socialism Revised") has argued that the normative objection to exploitation is ultimately an objection to inequality; Vrousalis ("Socialism Unrevised") has argued that it is instead an objection to unfreedom.

[400] Cohen's *Why Not Socialism?* gives a recent restatement of this objection. It is, however, perhaps the very oldest and most common objection to private property, going all the way back to Plato's *Republic*, and appearing constantly since then in texts from authors with many different sorts of political viewpoints, from secular communists to religious traditionalists. Cohen suggests that community may not be a requirement of justice *per se*, and I think this is true – which puts it beyond the scope of the theory of justice and rights I am presenting here.

institution which tends to give rise to such inequalities is illegitimate.[401]

The first thing I should note in response here is that I agree that this objection is decisive against certain sorts of natural rights theories. The clearest examples would be the right-libertarian views of authors such as Nozick. Such theories say that agents may justly accumulate vast amounts of resources as their private property, leaving others with little if any chance to gain similar resources for themselves. These theories then say not only that such a situation is entirely consistent with justice, and that the rights of these private proprietors are legitimate from a moral standpoint, but that taking virtually any steps to redistribute these holdings in a more egalitarian way would be unjust. To be sure, these theories often suggest that private owners must share some of the benefits of their resources with others, but they typically require only a very limited degree of such sharing, and they are explicit that this sharing may often take the form merely of selling these benefits to others, or paying for their labor, rather than giving them any property of their own.[402] I agree that these sorts of inequalities are unacceptable in a far wider range of cases than right-libertarians would admit.

Yet I also want to stress that my theory, although also a form of natural rights liberalism, is not inegalitarian in the way that these right-libertarian views are. To clarify why this is so, let me describe what sorts of private property arrangements I plan to defend in my theory. I will first distinguish between two parts of the value of a resource: the first part being what I will call the added value of the resource, the value the resource has owing to features we ourselves have

---

[401] For recent examples, see Cohen's *Self-Ownership, Freedom, and Equality*; Roemer's "Socialism Revised;" and Wright's *Envisioning Real Utopias.* Of course, this objection is much older than these authors, going at least back to the Utopian Socialists and to Babeuf. As also hardly needs saying, there have been many other authors who respond to broadly similar concerns about inequality not by rejecting private property as such but by accepting only limited and qualified forms of it.

[402] Nozick's theory in *Anarchy, State, and Utopia* would meet all these descriptions, as well as van der Vossen's account in "As Good as 'Enough and as Good'," at least insofar as its details are specified. Other right-libertarians, such as Feser ("There Is No Such Thing as an Unjust Original Acquisition") hold that there are no sharing requirements at all.

given it; and the second part being the unadded value, the value it has owing to the features we haven't given it. I will then say that at the outset everyone has a right to acquire a share of private property, one whose value is equal to a per capita share of the unadded value of all resources. I will also say that after this starting-point, should some among us come to have property with an unadded value greater than this per capita share, then they must relinquish resources with a value equal to the surplus. The result will be that newcomers will have available for their unilateral and private appropriation just the same egalitarian share of resources that was available to those who came before them.

I would argue that this sort of system – unlike the ones right-libertarians propose – rules out the sorts of inequalities which are truly intolerable from the point of view of natural justice. What such justice abhors, I would contend, are extreme inequalities in opportunity over the scale of a whole lifetime due to certain sorts of factors which are matters of luck rather than choice. One especially drastic example would be the inequality between someone born into a propertyless class, doomed to a life of want with no chance at anything better no matter how they might try, and someone born into a propertied class with vast landed wealth, whose members are destined for a life of plenty whether or not they ever do anything to earn this. Right-libertarian theories largely countenance such inequalities, but my theory does not: I will defend a system under which everyone is in effect born an heir to property, and moreover enough property to place everyone at an equal baseline; and those who obtain property whose value exceeds this baseline in a certain way will owe a debt in the amount of the excess.[403] This arrangement thus eliminates inequalities in opportunity at the lifetime scale due to disparities in access to the unadded value of resources.

Now, you may well object here that these arrangements would not rule out *all*

[403] Specifically, what's subject to redistribution is the excess of unadded value, not added value.

inequalities, or even all inequalities deriving from luck. After we start out with equal private property, economic fluctuations which we cannot foresee or control might well ensue and leave some with more and others with less.[404] Depending on how we define the notion, in some cases the difference in the value of the resources we own may count as unadded value, which will then be subject to redistribution – but in others it seems possible that it will consist of value which counts as added by some standard, which will not be up for reallocation in the same way. What's more, it is unclear at best whether the benefits of the unadded value of resources are the only ones which are attributable to sheer luck – though again, this will depend on how the notion is defined – and insofar as there are others, they do not seem up for reallocation under this system either.

In response, I would admit that this is certainly possible, but still insist that the inequalities which then might arise are not the ones which are truly intolerable from the standpoint of natural justice. In a world where we have gone so far as to eliminate these inequalities – where we have allowed no one to come into the world without property making up an equal share of the world's unadded value, and where we have permitted no one to reap the lucky advantages of possessing any greater share of such value – I contend that we have done all that natural justice demands that we do for one another in this regard. I agree that inequalities, including ones arising from luck, may still arise even after we have done this, and I also agree with the idea that we often have duties to address these remaining inequalities. However, I insist that these inequalities are not the ones contrary to natural justice, and that the duties we have to mitigate them are not duties of natural justice. They may instead be duties of beneficence, or

[404] It is difficult to come up with a straightforward example here, since many of the most common cases that spring to mind turn out to involve inequalities in unadded value. We can't point to Nozick's Wilt Chamberlain case, for example, since much of his income presumably stems from his natural endowment of being extremely tall. One suitable example would be this: we own resources of different sorts, which we have improved, and which have equal value at first; but then someone else invents a new technology which makes use of my resource in its improved form, but not yours; and this greatly increases the added value of my resource far beyond that of yours.

perhaps duties of civil rather than natural justice – duties we have taken on as part of our membership in a particular society, rather than duties we owe independently of any such membership.

The objection that private ownership is inimical to *liberty* is one which perhaps fewer recent authors have emphasized, but which many past figures have stressed. Proponents have often underscored that private property grants us a certain freedom, giving us rights to do as we choose with our property and against others' stopping us. Objectors have argued however that private property also *takes* freedom from others, namely everyone apart from the proprietor. While positive freedom is what many objectors have in mind here, some contend that property restricts negative freedom also. When you use a resource someone else privately owns without asking her leave first, you can expect her or others to use force to at least make you stop and kick you out. Those without property of their own thus live in a world of things they want and need but which others make them unfree to use. Supposing you view such infringements on liberty as unjust, you might reject private ownership as illegitimate for this reason.[405]

In response I want to note first that I agree that objections of this sort are decisive against certain forms of natural rights liberalism which are distinct from my own. In particular, I have in mind once again the theories of many right-libertarians. It is characteristic of such theories to argue that we have rights to freedom of one sort or another, and also that private ownership is

[405] For recent examples, see Cohen, "Freedom and Money;" Vrousalis, "Socialism Unrevised;" and Spafford, "Social Anarchism and the Rejection of Private Property." Of course, this objection is once again a very old one, going back to such authors as the left-anarchists Proudhon and Berkman, although of course it has taken many different forms across its many appearances.

somehow indispensable for such freedom, and then conclude from this that we have rights to private ownership. But these theories also characteristically add that in spite of this it is no issue from the standpoint of justice if some people are left without any property at all, even though this necessarily means they will be bereft of the freedom property is supposed to give us. Thus for example while these authors grant that we all have a right to make original acquisitions of unowned resources, they construe this as a right to make such acquisitions *only in cases where* unowned resources happen to be available – which means that there is no problem with a situation where we cannot exercise this right because others have already appropriated everything there is.[406]

I would agree that theories such as these are unacceptable for reasons broadly in line with the ones the objection suggests. My view is that we all have a right to at least one particular sort of freedom, namely the sort of freedom which sovereignty and authority more broadly confer upon us: the liberty to make the rules within some domain according to our own values. Given the connection between authority and ownership, a person who does not have ownership over any space of objects cannot have authority over any sphere of action, and thus *cannot* have the sort of liberty to which I hold that we all have a right. She has no domain where her values hold force; she can be related to authority only as a subject, namely when she enters into the domain of another person, and is then bound to comply with the will of this person, regardless of whether this comports with her own values. In my view, any theory which supposes that such a situation can be consistent with our rights to liberty is one which simply does not take liberty seriously enough – which does not affirm rights to liberty of the proper sort and of the proper strength – no matter how insistent its proponents might be about calling themselves libertarians. To say that

[406] The theory of Mack ("The Natural Right of Property") would meet this description, for example, as would that of van der Vossen ("As Good as 'Enough and as Good'").

we have a right to appropriate objects, and gain the associated freedom, in cases where unowned objects happen to be available for appropriation, does not at all resolve the concern: when this right is one you can only *hypothetically* but not *actually* exercise, then the right gives you only *hypothetical* and no *actual* freedom.[407]

My theory however is not like these others. By contrast, my theory says that *everyone* has a right to sovereignty, and my theory insists that this right must impart sovereignty to *everyone* with who has right. This means that the right to sovereignty must enable *all of us* to attain sovereignty – and thus it cannot be a right which we can exercise only in certain cases, since this would mean that it imparts sovereignty only to those of us who happen to be in such cases, but not to anyone else. And since, as I have argued, sovereignty constitutes a form of ownership, we thus all have a right to ownership also – again, not merely hypothetically, but actually. And this sphere of sovereignty and ownership provides you the sort of liberty to which I have said we all have a right – the liberty involved in being the one who decides what rights you and others do and do not have within a sphere based upon your own system of values. Thus under the system I will defend justice gives everyone an effective right to unilaterally acquire private property, and thus does not deny anyone the form of liberty to which we have a right.

You might object that there are forms of freedom this system would not give us. For example, this system would not give us rights against all limits on negative liberty, since property rights must be enforceable, and enforcement limits negative freedom.[408] I would reply that we have no such right against all restraints on our negative liberty. One reason why among many

[407] Van der Vossen ("As Good as 'Enough and as Good'") takes the position that newcomers to a world where all resources have been appropriated still have the opportunity to acquire property by selling their labor for wages. This, however, is not an opportunity to make an *acquisition* in the sense in which I or the other authors I have discussed use the term, namely specifically in reference to coming to own things which were formerly unowned. Properly speaking, wages are an example of transfer rather than acquisition.

[408] Here I assume a descriptive definition of negative liberty in terms of the absence of interference, itself defined descriptively, for example as physical constraint, rather than normatively, for example as the violation of your rights. The latter construal of negative liberty fares even worse here.

others is that not just ownership rights in particular but all rights in general must be enforceable; they're rules we may *make* others respect. To say that we all have rights against all restraints on our negative liberty would thus mean to begin with that we have no right to enforce any of our rights against others. Indeed, this would lead to a contradiction, since this would mean in turn that our rights are not in fact enforceable after all, even though they must by definition be so. Hence in short while there are some rights to liberty we would lack under this system, these turn out to be rights to liberty which we cannot defensibly suppose we have.

4.3

Now that I have given the argument for our rights to private ownership and unilateral acquisition, I want to turn to laying out my view about exactly how these subjects relate to the broader subject of justice and rights.

In particular, what I will argue is that the subjects of ownership and acquisition have a certain sort of *primacy* in relation to the subject of justice as a whole. In particular, they have such primacy in the sense that from a certain set of premises about the acquisition of ownership, along with some other information, we can deduce all the rights we have. These premises would include, in the first place, ones which state the conditions under which we come to acquire ownership rights, as well as the conditions under which we can gain and lose ownership rights by means other than acquisition. They would also include premises which lay out the facts about who has or has not satisfied these conditions for gaining and losing rights and when, along with facts about how they have exercised these rights after obtaining them. Thus all the rights we have derive, in this sense, from these facts – including rights we have in areas which might seem to

have nothing at all to do with ownership. This is what I will call the *primacy principle*.

Before I go on, I should explain why any of this matters. In the following chapter, I will seek to give a still more specific answer to the question of what rights we have. The response I give will be one which focuses in large part on the conditions for originally acquiring private ownership over objects. This sort of approach to responding to the question may be somewhat familiar, because it is the approach which many other prominent natural rights liberals take. Locke and Nozick for example both answer the question of what rights we have by in large part answering the question of how we come to gain or lose ownership rights, especially by means of acquisition. Despite being somewhat conventional within certain corners of political philosophy, however, this approach may seem mystifying upon examination. It seems that we have many different sorts of rights and that there are many different standards of justice – and while some of them bear a clear relation to ownership and acquisition, many and perhaps most others do not. How, then, could an account dealing with the narrow subjects of ownership and acquisition possibly suffice as an answer to a question about the apparently much broader subject of justice and rights?

What the primacy principle is supposed to do, in short, is answer this question in advance. It establishes that if we have the conditions for acquiring ownership rights, along with various other sorts of information, we can deduce from this all the rights we have. This explains the otherwise mystifying approach of giving an account heavily emphasizing these two subjects and then treating this account as though it suffices for a theory of justice and rights more broadly.

Let me now give the argument for the primacy principle.

The first step in this argument will be what I will call the *lineal thesis*, or (LT) for short. What this thesis says is that the ownership rights which I have now are all and only those which I have at some time gained in certain ways and have not at any time since lost in certain ways. In particular, the ways of gaining ownership rights in question are acquisition, which I have already discussed, in addition to what I will refer to as transfer and redress. The relevant ways of losing rights, on the other hand, are transfer, redress, and what I will call relinquishment.

Stated more abstractly, the idea here is that the ownership rights which any given person has in the present are determined by a set of facts about the past. These are facts about who has gained and lost ownership rights in certain ways – who has acquired such rights, who has transferred them to whom, and so on – and about the times at which they have done so. (These facts in turn are determined first by normative facts about what the conditions for gaining and losing rights in these ways are – the criteria for initial acquisition, say – and secondly by descriptive facts about who has met these conditions.)

To make clear exactly what I have in mind here, I should compare my point here to its most obvious inspiration, namely Nozick's historical entitlement principle of distributive justice. In his discussion of distributive justice, Nozick lays out three principles of justice in holdings, namely those of justice in acquisition, justice in transfer, and of the rectification of injustice in holdings. He then says that the holdings to which we are entitled in the present are those we have obtained through one or more applications of these three principles – that is to say, through some sequence of just acquisitions, transfers, and rectifications. Nozick sums all this up by saying that his theory of distributive justice is "historical," insofar as his theory says that the ownership rights which you *now hold* in the present are just those which you have *come to hold* in certain

ways through past actions.[409]

There are a number of other examples of figures in the earlier and later natural rights tradition with similar views. To name an earlier example, Locke also focuses on conditions for acquisition, transfer, and redress, namely when he discusses how we gain or lose rights by appropriation, contract, and punishment, respectively; and he seems to take this account of how we gain rights to suffice as an account of what rights we have.[410] To name a later example, Steiner says that the ownership rights you now hold are just those which have a particular "pedigree," or in other words those which you have come to hold in certain specific ways, namely through "appropriation, production, voluntary transfer, and redress" in some sequence or other.[411]

As is plain, my lineal thesis is very similar to Nozick's historical entitlement principle in its content, although I have added a few nuances which I see as necessary, and I have taken away a few others which I see as unnecessary. For example, on the one hand, my thesis references not just ways of gaining but also ways of losing rights, since the latter are in fact just as relevant to determining the ownership rights we have now. On the other hand, my thesis makes no use of the recursive structure of Nozick's principle, which for pedantic reasons would be superfluous in my formulation.[412]

The more significant differences have to do, in the first place, with the ways in which we justify our respective points. Nozick says little in support of his historical entitlement principle,

---

[409] Nozick, *Anarchy, State, and Utopia*, ch. 7.

[410] Locke, *Second Treatise*, ch. V, among others.

[411] Steiner, *An Essay on Rights*, p. 104, p. 266; see also "The Natural Right to the Means of Production," p. 43, and "The Structure of a Set of Compossible Rights," p. 775.

[412] So far as I can tell, Nozick makes use of a recursive criterion in order to ensure that his theory entails that you are not entitled to holdings whose history includes an unrectified injustice in transfer or acquisition – property stolen without due restitution or compensation, for example. However, on my theory, I define transfers, acquisitions, and so on in terms of *gaining* and *losing* ownership rights. This means that any *supposed* transfer or acquisition which is unjust is not in fact a *genuine* transfer or acquisition at all – since it confers no rights. Hence it follows from my definitions alone that the beneficiaries of supposed, but in fact spurious, transfers and acquisitions do not in fact have any actual ownership rights at all – nor does anyone further down the line in the holding's history.

except in suggesting that it captures various intuitions to the effect that past events can influence present distributions – intuitions which many would find much less compelling than Nozick seems to assume they are. Interpreters have tried to reconstruct an argument on his behalf, but they have struggled to identify a convincing one. One suggestion for example is that the historical entitlement principle is supposed to follow from self-ownership – but it is difficult to make out why this conclusion would follow from such a premise.[413] In contrast to this, I will give an explicit argument for my lineal thesis, and in my view a rather secure one; I take the lineal thesis to be derivable from premises which should be fairly uncontroversial, indeed to the point where they might otherwise seem totally uninteresting.

Another and perhaps more important difference has to do with what further conclusions we take our respective points to justify. Nozick famously regards his historical entitlement principle as entailing sweeping conclusions about distributive justice, and in particular as refuting a vast range of theories on the subject, including in his terms all patterned principles of distributive justice, a category which apparently subsumes all egalitarian principles.

I take no such conclusions to follow from my lineal thesis – indeed, I will be counting on the assumption that they do not, since I will in the end affirm egalitarian standards of distributive justice. Moreover, I do not see how they could follow, either from Nozick's principle or from my thesis. What these propositions both say is simply that the present distribution of ownership rights is determined by certain past events, including acquisitions, transfers, and so on. To say this, however, is not yet to say anything about *what the conditions are* under which acquisition, transfer, and so forth occur – or, as Nozick would say, the conditions under which they are just.

[413] See Mack, "The Natural Right of Property," p. 75. We might vaguely grasp how self-ownership might entail something like the historical entitlement principle in regards to your holdings in your own body and labor; but even if this works, it is hard to see how self-ownership could entail anything similar about holdings in external things.

And thus it does not at all rule out the possibility that the conditions for such changes in the distribution of ownership rights *include ones which make reference to patterns, even egalitarian ones*. It is consistent for example with the idea, most closely associated today with left-libertarianism, that the conditions for acquisition include some sort of egalitarian constraint. There might even hypothetically be such conditions attached to transfer, redress, or relinquishment as well.

With these clarifications out of the way, we can now turn to the justification of the lineal thesis.

Let's start out with a general principle concerning objects, features, and times. This is a principle which holds for just about any feature of just about any object – with a few odd exceptions, to be sure, but none which matter here.[414] The principle is that an object has a feature when and only when this feature is one the object has at some time gained and has not any time since lost. To understand this, consider some examples. Ask me which piano pieces I can play, and I might give the odd but still undeniably true answer that they're the ones I've learned and haven't yet forgotten. Ask me what words are on a page, and I might reply, evasively but still accurately, that they're the ones someone has written there and no one has since erased. We can go on naming examples as long as we like: flowers in gardens, boxes in traincars, dishes on tables, and so on. Instead, let's apply the principle to one specific sort of object, namely ourselves, and one specific sort of feature, namely our rights. Here's the result:

[414] For example, some features of abstract objects wouldn't count, such as the evenness of the number two. This object has always been there, and has always had this feature, and so there's no time at which the former gained the latter. Since I'm not talking about things like numbers, however, this creates no problems for my argument here.

(i) I have an ownership right when and only when this right is one I have at some time gained and have not at any time since lost.

We should see next whether we can deduce anything more specific from this rather generic principle. A first step we can take towards doing so is to draw some distinctions between the rights we've gained, based on the question: "*From whom*, if anyone, have we gained these rights?" Here, we can distinguish between on one hand rights we've gained *from someone else*, and on the other rights we've gained *from no one else*. In other words, there are rights another person held just before our gaining them, and rights no other person held just before our gaining them. A second step we can take is to draw further distinctions between the rights we've gained from others, based on the question: "*How* have we gained these rights from them?" Namely, we can distinguish rights we've gained from others *with their agreement* from ones we've gained *without their agreement*. That is to say, among the rights others have lost to us, there may be some they've lost voluntarily, and others they've lost involuntarily.

This means that there are three possibilities in regards to whom we've gained our rights from, and how we've done so. We can gain rights from others with their agreement; or from others without their agreement; or, finally, from no one else.

When we look at these three alternatives, we'll find that they line up with three sorts of occurrences already familiar to us. When you gain rights from others who agreed for you to have them, this constitutes *transfer*. As an illustration, you might gain rights in this way when you purchase commodities from me on the market, or when I offer them to you as gifts. When you gain rights from others who *didn't* agree for you to have them, this constitutes rectification, or

redress. You might gain rights in this way when, for example, a court orders me to pay damages for destroying your property or breaching a contract. Lastly, when you gain rights from no one else, this constitutes original *acquisition*. You might gain rights in this way when you stake a claim to some formerly unowned land, or when you obtain a formerly unheld patent for some new machine. When we put together all the distinctions and definitions we've just set out, we can deduce the following principle about gaining rights:

(ii) I have gained an ownership right when and only when I have gained this right through transfer, redress, or acquisition.

We will now turn from the rights we've gained and toward the rights we've lost. Here, we can apply much the same reasoning as before, and accordingly we'll come to much the same conclusion. Broadly speaking, there are two ways in which we can lose rights, namely either *to someone else*, or *to no one else*. Moreover, there are two broad ways in which we can lose rights to others, namely either *with our agreement* or *without*. Now, when you lose your rights to others voluntarily, this again constitutes *transfer*, which occurs when for example you yourself sell or gift goods to someone else. When you lose your rights to others involuntarily, this constitutes *redress*, which occurs when you're the one paying damages to another person, for instance. Lastly, when you lose your rights, but not to anyone else, this constitutes *relinquishment*, which occurs when you abandon property, for example, or die without heirs. When we put all these points together, we can deduce a certain principle about losing rights:

(iii) I have lost an ownership right when and only when I have lost this right through

transfer, redress, or relinquishment.

We'll now take (ii) and (iii), which specify the various ways in which we can gain and lose rights, and put them back into (i), which specifies that the rights we have are those we've gained and haven't since lost. What results when we do so is the following:

(LT) I have an ownership right when and only when this right is one I have at some time gained through transfer, redress, or acquisition, and have not at any time since lost through transfer, redress, or relinquishment.

Again, I will call this the *lineal thesis*, since what follows from this is in effect that the ownership rights you have are all and only those which have a particular sort of lineage. If this right is truly *yours*, and someone else possessed this right just before you came to do so, then you must have gained this right from her through legitimate transfer or redress. If still another person held this right just before *she* did, then she in turn must have gained this right from this person through such transfer or redress – and so on and so forth. Together, these people form what we might refer to as the right's *lineage*, which we can trace back through all the various generations, so to speak, through which the right has passed. All such lineages must start with someone who gained this right at a time prior to which the right was unheld, meaning someone who obtained the right through legitimate acquisition. Thus you have a given ownership right when and only when you are the very last person in this right's lineage.

I now turn to the second step in my argument for the primacy principle, namely what I will call the *ownership thesis*, or (OT) for short. This principle will say that all the rights we have follow from our ownership rights, in conjunction with certain other facts – specifically, facts about the ways in which we or others have exercised these ownership rights, such as by choosing to waive or transfer them.

Let me try to clarify just what I am saying here by comparing this thesis to a principle which we find in Locke. To wit, this is the principle, which is even stronger than (OT), that all rights just *are* ownership rights. "Where there is no property," Locke declares, "there is no injustice," which can only mean that all rights count as property rights – for otherwise, we would be able to violate rights, and so commit injustices, in property's absence.[415] In line with this, Locke's view is that our rights to our "lives [and] liberties," no less than to our "estates," are rights of ownership.[416] This is so even for our rights over ourselves: "every man has a property in his own person," as well as in "the labour of his body."[417] This is what explains something about Locke which must strike many readers of Locke as deeply bizarre, namely the fact that he seems to identify even our most fundamental rights to personal and political freedom with property rights: from Locke's point of view, *there simply are no other categories of rights*.

There are many other examples of authors besides Locke with similar views, both in the earlier and in the later tradition. Earlier figures include the various medieval and early modern natural rights theorists, such as Gerson and Summenhart, who go so far as to equate *ius*, or right, with *dominium*, or property – thereby excluding rights other than ownership rights.[418] Later fig-

[415] Locke, *Essay*, vol. 2, bk. IV, ch. III, sec. 18.
[416] Locke, *Second Treatise*, ch. IX.
[417] Locke, *Second Treatise*, ch. V.
[418] Tierney, "Dominion of Self and Natural Rights Before Locke and After."

ures include the natural rights libertarians of the last few decades, both left and right; Narveson, for instance, is clear that he views "all rights as property rights,"[419] and Steiner likewise says that "[a]ll rights are essentially property rights."[420] Both the earlier and the later authors, moreover, affirm the implication that even our rights over ourselves constitute ownership rights.

There is significant overlap between the idea that all rights are ownership rights and the ownership thesis I will defend here. The former principle of course entails the latter: if all rights are ownership rights, then since logically speaking everything follows from itself, this implies that all our rights follow from ownership rights. Both theses ascribe ownership the sort of logical priority which they possess within theories like Locke's, but not in theories of most other sorts, such as those like authors such as Mill or Rawls. Both ideas entail that distributive justice – the subject of who rightfully owns what, in what respects, and in what amounts – is not merely one particular sub-topic among others within the broader topic of justice as a whole. Instead, it is a central and fundamental topic, indeed one which in a sense subsumes all the others a theory of justice can discuss – incredible as this may sound.

However, there is also an important difference. Locke and the others say that all rights *just are* ownership rights; I say instead only that all our rights *follow* from ownership rights. The reason why I differ in this way is quite simply that the former proposition has overly counterintuitive implications (even from the standpoint of someone who can accept the latter) which Locke and the others in some cases do not seem to see, and in other cases see but simply accept – wrongfully, in my view.

To grasp what these counterexamples are, let's first recall something about ownership rights as I have defined them. To wit, all ownership rights are either identical to or derivative of

[419] Narveson, *The Libertarian Idea*, p. 71.
[420] Steiner, *An Essay on Rights*, p. 93.

aspects of authority over an object. This means by our definitions that any ownership right must either be a power-right concerning rights to interact with an object, or a right which follows from such a power-right which you possess. But my account of rights allows that there may be many rights which do not meet either condition. For example, if someone invites you over for dinner, then you have a Hohfeldian privilege to enter her home (on her terms), and in my view this sort of privilege counts as a right. But this by no means gives you any sort of power-right in connection with this privilege-right – and for this reason even if for no other we certainly would not call this privilege-right an *ownership right* on your part over your friend's house, or over anything else.[421]

Thus, as counterexamples like these show, we cannot say that all rights are ownership rights, at least without assuming an overly restrictive account of what rights are. But as this very counterexample also suggests, there is indeed room for us to say that all rights *follow* from ownership rights (in conjunction, implicitly, with a few other auxiliary facts). For of course, your power-right to enter your friend's home follows from the fact that she has a power-right to give you such a privilege-right, and that she has exercised this power-right. When I argue in defense of (OT), I will be arguing that all rights turn out to be logically connected to ownership rights, although in many cases the only connection will be this sort of indirect one.

Let me now give the justification of the ownership thesis. Our starting point here will once again have to do with the natural right to sovereignty. As I have said in my defense of this

[421] Another set of counterexamples would have to do with the rights of animals. As I've said, I think that animals have rights, though I do not attempt to account for such rights here. It seems much more far-fetched to say that animals have *ownership* rights, however.

natural right, I regard it not merely as one right among others, but instead as the foundation for all the other rights which I affirm in my theory. This would mean that for any other areas we might pick – no matter how far-flung and remote they might seem at first, both from one another and from the right to sovereignty – all the rights which we in fact have in those areas will be ones which follow from from the natural right to sovereignty. What I mean by this in more precise terms is that the natural right to sovereignty logically entails all the rights we have, at least in conjunction with certain other auxiliary facts. In particular, these auxiliary facts would be ones concerning how we have exercised the right to sovereignty, as well as how we have exercised the further rights this has given us, and so on and so forth. In short, the first step in my argument here is:

(i) All our rights follow from our natural right to sovereignty.

What we should proceed to observe next is that the natural right to sovereignty is itself an ownership right. Recall that the right to sovereignty is, as we have seen, a right to become sovereign within a sphere of action, and thus to become an owner over a space of objects. Now, to become the owner of certain objects is a right to change the rights which others have within these objects' spheres. For example, if I become the owner of a formerly unowned plot of land, then you may lose certain rights in relation to this land, such as your right to walk across it without my permission. Hence the right to acquire ownership over an object is a right to change the rights of others within an object's sphere. By our definitions, such a right is what constitutes an aspect of authority within this sphere – and such an aspect of authority in turn constitutes an ownership right. Thus the right to sovereignty is itself an ownership right, namely a right over the objects

which we can acquire as our private property through the exercise of this right. (As we will see in the next chapter, in more precise terms what the right to sovereignty gives us at first is a right of *partial* and *common* ownership over the world, which we may then exercise so as to acquire *private* and *full* ownership over parts of the world.) Thus:

(ii) Our natural right to sovereignty is an ownership right.

It is easy to see what follows here: all our rights follow from ownership rights. Hence a conclusion which we might otherwise have seen as incredible turns out in the end to be inescapably true provided we grant all that I have argued thus far. I have said that the right to sovereignty is the foundation of all of our rights – a variation on the broad idea, accepted by many, that certain sorts of rights to personal liberty are fundamental from the standpoint of justice. But I have then gone on to show that the right to sovereignty is an ownership right – and beyond this that the further rights which we obtain by exercising the right to sovereignty are ownership rights as well. And what this entails is that all our rights do indeed follow from ownership rights – no matter how remote their subject-matter seems to be from the issue of ownership.

Now, let's put (i) and (ii) together, and see where they lead. (i) says that our ownership rights are those we've gained by acquisition, transfer, or redress, and haven't since lost by transfer, redress, or relinquishment. What this tells us is that if we know the conditions for acquisition, along with transfer, redress, and relinquishment – along with the facts about who has met

these conditions and when – then we can deduce from this all the ownership rights we have. Now, (ii) says furthermore that all our rights follow from our ownership rights along with some additional information. What this tells us is that if we know what ownership rights we have – again, along with further facts, namely ones about how we have exercised these ownership rights – then we can deduce from this what all our rights are.

Thus, in short: from the conditions for acquisition among other facts we can get our ownership rights, and from our ownership rights among other facts we can get all our rights. Transitively, this means that from the conditions for acquisition among other facts we can get all our rights. This is exactly what the primacy principle says, more formally:

(P) All our rights follow from the conditions for acquisition, along with the other ways of gaining and losing ownership rights, along with auxiliary facts.

The auxiliary facts in question are facts about who has met the conditions for gaining and losing ownership rights in these ways and when, along with facts about how these ownership rights have been exercised once we've gained them.

Again, what's important about this is that it justifies a certain approach to answering the broader question of what rights we have. To wit, this approach is to do so in large part by giving an account of how we originally acquire ownership rights, along with accounts of how we gain and lose them by transfer and so on. This will turn out to be the very approach which I will follow in the rest of my project.

———————

Let me now address some of the objections you might have to the primacy principle.

There are two ways in which you might doubt the significance which the primacy principle ascribes to ownership and acquisition. In the first place you might doubt whether these things really have the *inferential* significance I have attributed them. That is to say, you might question whether it is really possibly to infer an answer, or at any rate a remotely satisfying answer, to many sorts of questions about what is just and what our rights are from premises about ownership and acquisition.

How, in the first place, could we validly go from premises about ownership to any sort of remotely substantive conclusions regarding, say, basic civil and political rights, or standards of corrective or criminal justice, or justice in war and other forms of military intervention, and so on? (And it would not be enough to respond here by pointing out that, for example, the basic civil rights include certain property rights, such as ones against certain sorts of property confiscation. This would still leave us with no account of the other basic civil rights which do not so obviously relate to property, such as freedom of worship and the like. Something similar applies to the other areas.) In short, isn't property simply much too far removed from many topics within the purview of justice to be the basis for an account of all of them? Can an effort to even so much as conceptualize most other political questions in terms of property possibly be anything but deeply strained and awkward at best?

Things may look even worse for acquisition. Many readers, upon coming across the lengthy discussions by many natural rights liberal authors of the first acquisition of private property from an initial condition of common ownership, no doubt react with sheer bafflement. The time at which most things in the real world were originally appropriated can only have been in

the far distant past, indeed often in a quite literally prehistoric era. We cannot possibly hope to know anything about these original appropriators and their actions, nor can we hope to trace the full subsequent lineage of owners of almost any given resources spanning from their time for ours. And in any case, it would be utterly incredible if these bygone events had any bearing at all upon what distributive justice requires of us in the present. When we are faced with questions of who should have what and how much, why should we care about the past, especially the distant and obscure past, rather than care about what would realize equality, sufficiency, or other similarly important political ideals here and now?[422]

In addition to doubting the *inferential* significance of ownership and acquisition, you might also doubt whether they have the *evaluative* significance my principles ascribe to them. For it is natural to assume that when a theory of justice treats certain principles as foundational in inferential terms, the theory also supposes that the subject matter of these principles are in some evaluative sense of the foremost importance. Thus many theories concern at their most basic levels ideals like equality or liberty or utility; and it is easy enough to understand why these things would be thought worthy enough to deserve a place at the heart of a theory of justice.

But a theory like mine or like Locke's assigns primacy instead to *property* and *acquisition* – and it is far harder to understand how this could ever make sense in the same way. At best, ownership may come off at best as a wholly mundane, prosaic matter; it might seem as bizarre to see it held up as basis of all justice as it would be to see such equal banalities as public utilities or traffic laws exalted in the same light. At worst, even if we do not deny ownership's legitimacy as such, we may still associate it with many things which we see as undesirable – possessiveness, commodification, materialism (in the non-metaphysical sense), and so on – which may make an emphasis on ownership in a theory of justice feel as off-putting as an emphasis on selfishness or

[422] For one exemplary statement of this objection, see Waldron's *The Right to Private Property*, p. 258-9.

competition would. The same goes for acquisition as well.

I would suggest that these sorts of objections make the most sense from the standpoint of someone with certain assumptions about ownership – ones which are very common and very intuitive, but in the end false in ways that bear importantly on what's at issue here. When we think of ownership, what this brings to mind before anything else for most of us is a certain sort of relationship between a person on the one hand and a mere object on the other. The object in question is one which the person uses as a means or a tool for the satisfaction of her ends. Often the ends in question are mundane needs for things like food, water, shelter, and transportation, or worldly desires for things like entertainment and luxury. Usually, there is nothing else about the object worth caring about except its suitability as a means to these ends; there is no further way in which it matters to us in and of itself. Thus we have no reluctance to dispose of it as a mere commodity to be traded for other things which we see as having equal or greater value of just the same sort.

These sorts of assumptions make sense in a certain way, because of course most of the time this really is just the sort of relationship we bear to most of the things we would describe as our property. And if we make these assumptions, then it is indeed only natural to be baffled by the suggestion that ownership – let alone its acquisition in the distant past – could possibly be of any central significance in political philosophy. Certainly, we ought not *ignore* the subject in this context, because one's access to these sorts of means has consequences for one's access to many other sorts of goods and advantages which matter a great deal, and so the distribution of property and economic arrangements more broadly also matter from the standpoint of justice. But it is nevertheless not a matter to be addressed at a theory's most basic and fundamental levels. It is instead a prosaic and practical issue, and like all such issues is to be dealt with at something more

like the level of applied philosophy – if it is even a subject for philosophy at all, rather than perhaps economics and jurisprudence.

However, if what I have argued about ownership in this chapter is true, then these assumptions about ownership are false, and thus the skeptical conclusions drawn from them are unfounded. Ownership, I have proposed, is a matter of having the rights which come with authority over interactions with an object – and this definition is not just my arbitrary stipulation, but an account for which I have argued at length and in detail. This definition allows that ownership *can* be, but it neither asserts nor entails that ownership *must be*, a relation which you bear to a mere thing you use to satisfy your mundane and worldly wants and needs, and which has no more worth in your eyes than this sort of instrumental and fungible value. Instead, this definition says that to have property in an object is to be the one who can make the rules, at least in some respect, about who has the right to interact with the object and how. For all we've said, the object in question might be of any sort – it might be a mere thing in the external world, but it might also be your own body or mind, or perhaps your ideas or designs. The ends you promote when you exercise this authority in relation to the object can also be of any sort – they might be the basic practical ends of answering your worldly wants and needs, but they might also be loftier ends, such as the artist's creative ambitions, or a spiritual person's religious convictions. The value you place upon the object, if any, may also be of whatever sort – the object may only have worth as an instrument and a commodity to you, but you might also have some far stronger attachment to it as personally meaningful. A proper understanding of the nature of ownership, in short, shows that it is or at least can be something much broader and deeper than we might assume when we take as our model of ownership the sort of relation you bear to your hammer or your armchair.

And we have seen that ownership's significance from a normative perspective is far

greater than we might otherwise have assumed. Ownership does not simply matter in an indirect way as something which happens to determine access to goods and advantages which matter in themselves. Instead, ownership has importance in and of itself. As we have seen, sovereignty is just a certain sort of ownership: since all actions are interactions with objects, the authority over actions which constitutes sovereignty is an authority over interactions which constitutes ownership. Private ownership thus does for us what sovereignty does for us: it gives us a space where we may make the rules based upon our own values. And thus the natural right to sovereignty which is our most central and fundamental value is a right to private ownership and unilateral acquisition.

Thus, in short, once we dispense with our unreflective assumptions about what ownership is and why ownership matters (if at all), and instead properly understand ownership's true nature and justification – and in particular, once we grasp the identity of a certain sort of ownership with the sovereignty which is the object of our most basic natural right – it should come as no surprise to see ownership and acquisition given a foundational role within a theory of justice.

CHAPTER 5:

OWNERSHIP AND EQUALITY

In the last chapter, I considered the question of what rights we have in regards to property and acquisition. There, I put forward the answer that we have rights to own resources privately, and also to unilaterally acquire property. In this chapter, I will now consider the further questions of *what* things in the world, and *how much* of the world, we can thus acquire and own through the exercise of these rights. I will present and defend an answer with two parts, with the first being that we have full rights of ownership over ourselves: we all have the right to claim the whole of the value of our own bodies and minds, our own labor and talents. The second part of my answer will be that we have equal rights of ownership over the world: we all have the right to claim all of the value which we add to external resources, and also to claim an equal share of the value of such resources which no one has added. This is just to say that, here, I will present and defend the principles of full self-ownership and equal world-ownership, and this means in turn that I will be defending the propositions which define left-libertarianism and distinguish it from other branches of the natural rights tradition.

I will defend these conclusions by means of two arguments. The first is what I will refer to as the argument from proportionality. In this argument, I begin from the point that we can add value to resources, namely by giving them valuable features which they would not have if not for us, such as by improving or cultivating them. I then go on to set out the principle that the share of the value of a resource which we have the right to claim is proportionate to the value we have added to that resource. In particular, the difference between the value I have the right to claim, and the value you have the right to claim, is equal to the difference between the value I have

added and the value you have added. This principle, along with certain other minimal premises, implies that we all have the right to claim the value of resources which we ourselves have added. However, I next observe that resources also oftentimes have a certain unadded value, a worth which they possess by virtue of features which they would have even if we were not around, such as the value they have due to their natural, unaltered features. I argue that the very same proportionality principle which implies that we have a right to claim all the value we have added also implies that we all have the right to claim an equal portion of this unadded value. Ultimately, I contend that what follows from all of these considerations, together with several subsidiary premises, is that we have the right to claim all of the value of ourselves, and also the right to claim a certain egalitarian share of the value of external resources.

The second of my two arguments will be what I will call the argument from equality. I proceed in this argument from the point that we can, by acquiring resources, take away from the value which others can acquire for themselves, namely by appropriating resources which would have available for others to appropriate if not for us. With this fact in mind, I then propose the principle that no one has a greater right than anyone else to take away from the value which others have the right to claim in this manner; everyone's rights are equal in this respect. Next, however, I note that there is such a thing as value which we can claim for ourselves without at the same time taking this value from others: namely, the value we have added to objects, which if not for us would not be there for others to appropriate in the first place. What follows from these ideas, in conjunction with certain minor premises, is the same conclusion as the one which emerges from the argument from proportionality: we have the right to claim all the value we have added to resources, plus an equal portion of the value which no one has added to them. And several further steps bring us to the same final implication: we have the right to claim all of our

own value, and also to claim an egalitarian share of the value of external resources.

Once again, I consider these questions, and defend these answers, with several reasons in mind. As before, one reason is simply that these subjects matter for their own sakes. One of the most important subjects in political philosophy is the area of distributive justice, and one of the most significant issues in distributive justice is the question of whether justice requires material equality, and if so then in what form. And some of the most significant divides between theories of justice over the last century, both within political philosophy in general and within natural rights liberalism and libertarianism in particular, have been disagreements about this question of distributive equality. Thus it is worthwhile for me in and of itself to explain what my theory has to say regarding issues of distributive justice surrounding material equality, and also to situate this perspective in relation to those of other accounts of justice on offer, such as egalitarianism in the vein of Rawls and right-libertarianism in the spirit of Nozick.

Also as before, I will also discuss these issues with a view to addressing a criticism of views like mine. As I have discussed, the left-libertarian conjunction of the principles of full self-ownership and equal world-ownership has elicited criticisms both from right-libertarians and from other egalitarians. Right-libertarians have contended that their left-libertarian opponents cannot provide any justification for the principle of equal world-ownership other than ones which begin from ideals of distributive equality which are not themselves justified in terms of any prior notions. Such justifications, they argue, beg the question against right-libertarian interlocutors, who will not grant any ideal of distributive equality as a premise without any further justification. Other egalitarians, on the other hand, have asserted that left-libertarians have not provided any foundations for the principle of full self-ownership which would be both consistent and coherent with the foundations for the principle of equal world-ownership. The lack of such

foundations, they have said, suggests that the strongest arguments in favor of each principle in terms of more abstract ideas may be mutually contradictory, such that the principle of full self-ownership can only be supported by appeal to considerations which are in conflict with those which support the principle of equal world-ownership.

To meet the challenge from right-libertarians, a left-libertarian would need to give an argument for the principle of equal world-ownership which does not beg the question by assuming one of the most fundamental points they would dispute with right-libertarians, namely that justice requires distributive equality in some form. This is what I aim to do with the argument from proportionality, which is a justification of the principle of equal world-ownership which rests on something other than an ideal of material equality with no independent justification. To meet the challenge from other egalitarians, a left-libertarian would need to give an argument for the principle of full self-ownership based upon considerations which are not only compatible with but are also in some deeper sense unified with the considerations which support the principle of equal world-ownership. This is what I aim to do with the argument from equality, which is a justification of the principle of equal world-ownership which also derives the principle of full self-ownership from the very same basic premises.

5.1

Let me begin with the argument from proportionality. The argument I will present in what follows has to do with certain normative ideas which often come up in political discourse, and even in ordinary life as well, namely ones we might call proportionality principles. What such principles assert is that the relative shares of some benefit individuals receive should be

proportionate to the relative shares of some benefit they have provided. The fundamental idea here is that when some people create more value than others, perhaps through harder work, perhaps through superior skill, they ought accordingly to be able to keep more for themselves as their reward. On the other hand, however, when there are people who add less, either because they are less willing, or else because they are less able, they as a result cannot fairly claim as much for their own. All else equal, the diligent and the talented should have a larger share, and the indolent and incapable a smaller one, insofar as the former are more productive and the latter less so.

Today, we encounter proportionality principles in political contexts perhaps most often when we hear figures on the right invoke them as a means for defending economic inequalities. Since those who have contributed more are entitled to more, they suggest, justice not only permits but even requires disparities between the former and the latter. To equalize their circumstances through redistribution would be to grant the more fruitful less and the less fruitful more than is their due. This idea often seems to underlie, for example, the familiar right-wing notion that the rich have earned their plenty owing to their industriousness as workers or brilliance as entrepreneurs, while the poor have earned nothing better than their deprivation owing to their laziness or incompetence. We might even associate such ideas with right-libertarians in particular, given that several figures prominent among them have made arguments along these lines, sometimes in infamously extreme terms.

My aim in what follows is to show that proportionality, in at least one form which might be plausible even to a right-libertarian, yields implications about distributive justice thoroughly contrary to those inegalitarians standardly draw. The reason why is that there is ample value in the world that is not anyone's creation: in particular, all the value that belongs to fully natural re-

sources, and some that belongs to partly artificial yet partly natural resources. Since these by definition are things which are wholly or partly unaltered by us, they would often be much the same as they are now, and so would have much if not all the same value they have now, even in the absence of any particular one of us. Given a proportionality principle to the effect that one person has a claim to more of a resource's value than another only insofar as the former has added more to this value than the latter, among other premises, what follows is that everyone has equal claims to this unadded value.

In this way, I want to meet the challenge from the right to the principle of equal world-ownership, showing that there are indeed reasons from a libertarian standpoint to accept such equality. As we go along, bear in mind what I have said about which aims I am pursuing and which I am not. I intend to address an interlocutor who is committed to right-libertarian values in general, but is not yet committed to a fully specific account of what those values entail. I want to justify my argument's premises to such an interlocutor, and thus the conclusions as well, largely by showing that they capture and explain certain intuitions I would expect her to have. Thus, if my argument does not appeal to right-libertarians who already have wholly firm and clear views about how to interpret their values, I will not necessarily have failed; the same goes for the prospect that my argument may not appeal to egalitarians. For the moment, they are not the ones with whom I mean to engage.

Here's how I will proceed. I'll start by giving evidence that proportionality does indeed hold appeal for many right-libertarians. I will then look at some cases in which left-libertarians have tried to defend their views by invoking notions similar to proportionality, and talk about why I regard their attempts as unsuccessful. Next, I will define my argument's most central concepts and present the most central premises, including my own variation on the proportionality

criterion. I will go on to draw out the argument's distributive implications, first for all resources, and then for cultivated and uncultivated resources in particular. Finally, I will sum up my argument's conclusions.

What I want to observe first about proportionality principles is that right-libertarians are often drawn to them in one form or another. I will support this observation by citing several influential right-libertarian authors who have taken favorable stances towards such principles, ranging from explicit affirmation to implicit approval. I will suppose, as seems fair enough, that these authors' attitudes are representative of those which many other right-libertarians would hold in regards to the topic.

One example of a right-libertarian who affirms a proportionality principle would be Ayn Rand.[423] In *Atlas Shrugged*, Rand stresses that the ones who provide the greatest benefit to society are a distinguished few, namely courageous and brilliant capitalist-entrepreneurs, and not the many, who are far beneath them in creativity and industriousness. She asserts that these few should be allowed to enjoy all the money and status they can accumulate by exercising their superior capabilities, while the many should get nothing more than the little they can obtain given their limitations. "When you strain your energy to its utmost in order to produce the best," she has one of her protagonists ask another, "are you convinced that you should have been rewarded for it?"[424] The latter answers with a yes, presumably speaking for Rand as well as himself. As for

423

To be clear, I cite Rand not because I hold her arguments in high esteem philosophically – even many who are sympathetic to her ultimate conclusions do not – but because she's influential among right-libertarians. Indeed, by some assessments, she exerts such influence to a far greater extent than other figures, including Nozick, whom many would see as much more reputable. For testimony to this effect, see Fried (2005), p. 221.

424 *Atlas Shrugged*, pt. 2, ch. 3.

the others, the "whining rotters who never rouse themselves to any effort, who do not possess the ability of a filing clerk" – Rand scorns, through her character, the notion that they merit "the income of a company president."[425] What underlies the reasoning here is evidently a proportionality principle: those who create greater benefits, as Rand's enterprising business leaders do, should enjoy greater benefits, while those who create less should enjoy less.

Another example would be Friedrich Hayek. In *The Constitution of Liberty*, Hayek addresses the criticism that markets give rise to material inequalities which do not reflect any distinctions in "merit" between the agents involved, and which are thus unjust. Merit, he specifies, consists in the degree of effort someone expends in trying to produce things of value for others.[426] In reply, Hayek argues that we should not try to reward individuals according to merit, since doing so would require us to know more than we can about others' mental states. He does say, however, that justice demands that agents obtain rewards in proportion to the value they provide, as distinct from their efforts to provide value. "We are doing justice," he says, if in our dealings "we recompense value rendered with equal value."[427] What follows is that justice demands that those who offer greater benefits receive greater benefits in turn – meaning that Hayek commits himself here to a proportionality principle. He then contends that markets fulfill this standard, since they "will generally offer for services of any kind the value they will have for those who benefit from them."[428] The inequalities to which they lead are therefore just, since they correspond to differences in value provided, even if they do not line up with any differences in merit.

Still another example would be Nozick. To be clear, Nozick does not assert any propor-

[425] Ibid.
[426] *The Constitution of Liberty*, p. 160.
[427] Ibid., p. 161.
[428] Ibid., p. 160.

tionality principles outright, and in fact he makes other assertions which would contradict some such principles. Nevertheless, at several points, he makes comments which suggest an approving stance towards proportionality as an ideal, even if this stance is something less than full affirmation. Nozick emphatically denies all views of distributive justice according to which the allocation of holdings must conform to any pattern, such as an egalitarian one. In one passage, he acknowledges that someone might challenge this by pointing out that his principles would allow everyone to transfer their property in arbitrary and irrational ways, resulting in a distribution which is utterly unintelligible. He answers by citing Hayek's claim that, under capitalism, because agents will obtain their holdings through exchanges of value for equal value, they will tend to receive benefits in proportion as they have benefited others. From this, he concludes that market outcomes will be "largely reasonable and intelligible."[429]

While Nozick would reject Hayek's notion that proportionality is a condition for distributive justice, he nevertheless seems here to regard a principle along such lines as holding some normative force. When he invokes proportionality between benefits provided and benefits received, he is not merely positing an empirical generalization concerning the motivations that are often behind individual economic transfers. To do so would not be enough for his purposes, since his aim is to show not only that market exchanges tend to follow a certain descriptive regularity, but also that they are evaluatively "reasonable" rather than "arbitrary." To pick an analogy at random, proving that markets tend to allocate resources according to height would not refute the charge that the outcomes they generate are unreasonable, since what we should have is of course unrelated to how tall we are. If Nozick takes distribution according to benefit to be reasonable, any more so than distribution according to height, he must view proportionality as having some normative appeal, even assuming he would not go so far as to identify the criterion as a

[429] *Anarchy, State, and Utopia*, p. 159.

principle of distributive justice.

Nozick shows himself to be receptive to proportionality at other points as well. In one passage, he imagines a scenario in which agents are choosing how to split up a "social pie," to which none seem at first to any more of a claim than the others.[430] He then supposes they find out the pie's size will depend on how they divide the pieces, in that giving some agents a bigger piece than others than others will result in a larger pie overall. Doesn't this suggest, Nozick asks, that those who could give more if given more do in fact have more of a claim to the pie than the rest? Shouldn't their "differential contribution," in his words, "lead to some differential entitlement?"[431] The suggestion, apparently, is that the answer is yes. Elsewhere, when discussing the relationship between envy and egalitarianism, Nozick reflects on the displeasure many experience at seeing others who have more than themselves. He asks whether the source of this displeasure is the feeling that others' advantages are unearned, or instead that the feeling they have indeed earned such advantages through their greater accomplishments.[432] Nozick does not say that the latter feeling is often well-founded, but for him to be insinuating much would not be out of character. In both of these passages, Nozick seems to express approbation towards outcomes in which those who provide greater benefits receive greater benefits in consequence – which means precisely that he expresses an affinity towards proportionality.

Some clarifications are in order. I've said there is a tendency among right-libertarians to be amenable to proportionality as an ideal, and I've pointed as evidence to the foregoing authors' comments surrounding the topic. I have not said that all right-libertarians affirm proportionality principles, let alone that there is any one such principle that they all affirm, let alone that they all affirm the very same one I will use as a premise in my own argument. My aim has only been to

[430] Ibid., p. 198.
[431] Ibid.
[432] Ibid., p. 241.

show that proportionality is recurrently among the general values right-libertarians accept, such that I can realistically expect there to be interlocutors of the sort I intend to address. Again, these would be right-libertarians who are committed to proportionality as a general value, without yet being committed to a fully specific interpretation of this value.

If right-libertarians are indeed amenable to proportionality principles, then a certain opportunity exists for left-libertarians. Specifically, the latter might find a way to defend their position by appeal to premises acceptable to the former, namely by coming up with an argument starting out from some criterion of proportionality, and ending up at the views which constitute left-libertarianism, particularly equal world-ownership. There could be, in other words, a path leading from the notion, to which right-libertarians seem attracted, that those who produce more benefits should receive more benefits, to the notion that everyone should share the benefits that come from nature on an equal basis, possibly among other left-libertarian commitments.

In the literature, we can find several instances in which the view's proponents begin to trace such a path, but often only briefly and vaguely, as little more than an aside with no role in the arguments for left-libertarianism on which they lay the most stress. "Man," Paine remarks at one point in his argument for equal world-ownership, "did not make the earth."[433] George asks, while setting forth his own case for the same principle, whether nature is something "we made," and he lets the answer go without saying.[434] Vallentyne similarly observes that "no human agent created natural resources," and concludes soon afterwards that we should allocate them in an

[433] *Agrarian Justice,* p. 8.
[434] *Progress and Poverty,* p. 339.

egalitarian manner.[435] All three authors, in short, put forward the descriptive premise that natural resources do not come from us, and then suggest that this premise supports the normative conclusion that such resources belong equally to everyone.

First, let's ask if the descriptive premise is true. Plainly enough, the answer is yes. Natural resources, by necessity, were not the fruits of anyone's labor, were not made by the sweat of anyone's brow. No one can claim, in relation to them, the sort of credit that Rand's characters claim for their various achievements. On the contrary, such resources would be around even if we had never produced anything, indeed even if we had never existed at all. Land, oil, gold, and so on – these things have not literally fallen from heaven like manna, but in a way they all might as well have done so, insofar as they are here before us without our having done any work to make them. To be sure, we typically have to work to make them useful to us, such as by cultivating land, purifying water, excavating minerals, and so on. Still, the land must be around before we do any cultivating, the water before we do any purifying, the minerals before we do any excavating, and so on. No one can claim authorship of them, any more than the rest can – nor the value they have in their unaltered states.

Next, let's consider whether the inference to the normative conclusion is valid. If we assume that the claim about the origins of natural resources is the argument's only premise, the answer must be no. From this descriptive proposition, taken by itself, we cannot deduce any normative proposition of significance. A more charitable interpretation, however, would be that the argument has further premises given which the conclusion sought does indeed follow. What are the premises in question, though? Strikingly, Paine and Vallentyne do not say. After commenting that we did not make natural resources, they resume giving largely unrelated arguments for their stances, with Paine appealing to theological beliefs, and Vallentyne to egalitarian ideals. They

[435] "Left-Libertarianism," p. 19.

provide no direct explanation, in other words, as to why the fact that nature is not of our making would support the left-libertarian view.

George, by contrast, does give an explanation – but his is an inadequate one. His strongest argument begins from the principle that "no one can be rightfully entitled to the ownership of anything which is not the produce of his labor."[436] He then points out that natural resources "do not embody labor."[437] Thus, he reasons, no one is entitled to such resources, and so "property in land is a wrong."[438] Now, to George's credit, these premises do indeed imply equal world-ownership in one particular form. The issue, however, is that they entail that we all have equal ownership of nature only insofar as they entail that *no one* has *any* ownership over nature whatsoever. This implication manifestly does not reflect what the view's proponents, including George himself, take themselves to be affirming when they say that nature belongs equally to us all. Their stance, rightly stated, is surely not that no one owns nature, but that *everyone* does, and equally so. George, then, adduces principles given which we can infer a version of equal world-ownership as a conclusion from the premise that we did not create natural resources, yet the version in question not only differs from but contradicts the one which he and this principle's other proponents standardly accept.[439]

Although Paine and Vallentyne suggest only incomplete arguments, while George provides an argument that is complete yet flawed in other respects, there is still something intuitive about the fundamental idea they all raise. In many cases, those who argue that they have a greater claim than anyone else to some object do so by contending that they did more than any-

[436] *Progress and Poverty*, p. 336.
[437] Ibid., p. 337.
[438] Ibid., p. 336.
[439] George might reply that he does not mean to deny all ownership over land, but only ownership of a specific sort, namely that which is in his terms "private," "individual," or "exclusive" in character. Nevertheless, what he gives is still only an argument *against* private ownership, however defined, and not one *for* ownership in any alternative form he might favor.

one else to create the object, or at least to improve the object, through their own efforts and talents. If authors like Rand are any indication, then right-libertarians are often receptive to such appeals. Given, however, that none of us made natural resources – which exist independently of us, of our efforts and talents – why would some of us have more of a claim to them than others? This question has enough force to impart the sense that there might be some truth to arguments like the ones I've discussed. That is, we might find some premises we could use to make a valid inference from the fact that we did not make nature to the conclusion that we should share the benefits nature affords on equal terms. If the premises in question have to do with proportionality, moreover, then they might even be plausible to right-libertarians, and thus demonstrate to them that there are indeed reasons to accept equal world-ownership. In what follows, this is just what I will try to do.

My premises and my conclusions here will both pertain to the question of how great or small a part of the value of objects in the world an agent may claim for herself. I will therefore start out by defining several things, such as what the value of an object is, and what claiming a part of an object's value involves.

Agents receive benefits from having control over objects in the world. Let's say that the whole of the *value* of an object consists in the sum of all these benefits put together. Some of these benefits are direct, such as the ones you enjoy when you use an object for your own consumption – for example, when you drink water from a well. Some of these benefits are indirect, such as the ones you enjoy when you trade the object for other beneficial things – for example,

when you charge others money to use the well. We can split this whole into parts in various ways, such as based on their sources. One part of an apple's value, for instance, might come from the benefits eating it affords, and another from the benefits selling it affords.

Any set of rights over an object allows the holder to access some of the benefits the object provides, and also denies such access to other agents, unless they receive the holder's permission. Thus, when we acquire rights over objects, we in effect *claim* their value for ourselves, in part or in full. You might have rights over a river, say, permitting you to cross whenever you choose, but forbidding others to do the same unless you choose to let them. The benefits of being able to cross – and of being able to keep others from crossing unless they give you something in return – are therefore at your disposal.[440] Hence, in acquiring rights over the river, you have claimed these benefits, and thus the part of the river's value they comprise, for yourself.

Let's say that someone *may claim* a particular part of an object's value just when she has the capacity to initially acquire a set of rights to the object with a value of the particular amount in question. The set she acquires could hypothetically include any rights over the thing she might choose – such as rights of use, exclusion, transfer, redress, income, and any other rights ownership involves. The only restriction is that the value these rights possess as a set must be no greater than the portion of the object's value she may claim. If this part is less than the whole of the value of the object, then she must limit the rights she so acquires in such a way as to leave the remaining value available for others to claim.

With these definitions in hand, we can now state our argument's first premise:

[440] Of course, someone who holds ownership rights over an object can exercise them in such a way as to make the benefits from the object available to others. Even when the owner dispenses the benefits in this way, however, she still retains authority over them in an important sense. They are accessible for others only by her leave, which she may offer on whatever terms she chooses, or withhold and perhaps even withdraw as she sees fit. Whether or not others *enjoy* the benefits, then, they still *belong* to the owner in a way they do not belong to others.

(M) The sum of the parts of an object's value which you and I and everyone else may claim must be equal to the whole of the object's value.

In other words, all our claims to an object's value, when put together, must exhaust, and must not exceed, the object's whole value. For example, if some resource is worth one hundred dollars, and you and I are the only agents to take into account, then my claim and yours should add up to one hundred dollars. Whether you and I each get fifty, or you get seventy-five and I get twenty-five, or you get one hundred and I get zero, the sum should always equal the whole. Call this the *Maximality Premise*.

I want to support (M) by showing that the principle follows from an even more fundamental constraint, namely one of Pareto optimality in one specific form. Again, there are various ways of dividing up the value of an object amongst agents, with each division giving each agent a larger or smaller part of this value. Let's say that a division is optimal when there is no other possible division which would give some agent a larger share of value and no agent a smaller share. A plausible assumption is that the way in which an object's value is divided up amongst agents must be optimal in this sense. After all, an allocation which is not optimal is in effect one which denies someone a gain which would not entail a loss for anyone else. But allocations of value must be as they are for a reason, and there is no apparent reason to withhold a benefit for some which would not be detrimental to others.

Now, under any optimal division, the parts of an object's value agents may claim will add up to no less than the whole of this value. To understand why, let's first suppose the opposite, namely that these portions amount to less than the object's overall worth. There must, then, be some further portion of value to which no agent has any claim – a share reserved, in effect, for

no one at all. If this is the case, however, then an alternative division must exist, namely one giving this unreserved share to someone but changing nothing else. Under this alternative, some agent would have a larger portion of value, and no agent would have a smaller portion. Hence the original division cannot have been optimal – and the same holds for any other division in which agents' cumulative claims are less than the object's cumulative value.

Under any possible division, moreover, the parts of an object's value agents may claim will add up to no more than the whole of this value. Again, suppose the opposite, namely that I have a claim to a certain portion of an object's value – but the sum of my claim and yours, together with those of everyone else, is greater than the overall value. Assume, next, that you and all the rest claim your respective portions of this value in full before I do so. Then imagine that I try to collect my own share. I cannot, however, claim any part of the object's value which already belongs to others; nor can I claim any part greater than what remains unclaimed. Thus the only part of the object's value left for me is smaller than the portion to which, by hypothesis, I have a claim. This, however, is a contradiction – entailing that there is in fact no possible division under which cumulative claims are greater than cumulative value.

Thus the only divisions which are both optimal and possible are ones which are maximal – that is, those under which the sum of agents' claims to an object's value is no smaller and no larger than the object's whole value. This is just what (M) says.

(M) is a proposition I would expect to have a broad appeal, if only because the premise is derivable from the a variation on the Pareto criterion, which enjoys widespread acceptance. Authors in economics and decision theory standardly invoke Pareto optimality as a distributive constraint, and there are few challenges to this tendency. Deference to Pareto optimality does not seem to be contingent upon political orientation: both those on the left and those on the right typ-

ically accept the rule. If anything, rightists are particularly favorable towards the constraint, given certain results in economics showing that competitive markets tend towards optimal allocations. To name one rather stark example, the right-libertarian Narveson's devotion is such that he proclaims his faith in what he calls "the Gospel according to St. Pareto."[441] Those who accept the Pareto constraint, whether or not they do so with quite the same zeal, ought to be receptive towards (M), which is a necessary consequence of requiring that the distribution of claims to value fulfill this standard of efficiency.

Now, in many cases, agents do not merely claim parts of an object's value for themselves; they can also *add*, in part, to this value. To illustrate, suppose I come across some silver veins in nature, and then I extract and refine the ore, increasing the metal's value in doing so. Assume that the ore would have gone unextracted and unrefined if not for me, and so would not be any more valuable than it was beforehand. In such a case, there is a clear sense in which I have added to the silver's value.

We can capture this notion with the following definition:

(V) The part of an object's value I've added is equal to the difference between the whole value the object has given my presence and the whole value the object would have given my absence.

[441] Narveson, in fact, treats Pareto optimality as foundational to his theory, saying that even the "right to liberty is itself derived from a Paretian argument" (1988, p. 198). Other right-libertarians take similar stances; Richard Epstein, for instance, seems to accord the Pareto criterion a comparable status (1995, p. 30).

In other words, the value I add is that which wouldn't be there if not for me. This idea allows us to draw another distinction between two further parts of an object's value. Objects may have, in the first place, an *added value*, consisting in the sum of all the value added by you and I and everyone else. They may also have, secondly, an *unadded value*, consisting in the difference between the whole value and the added value. As an example, consider a plot of land with two features, one being that there is a sturdy cabin on the plot, and the other being that the plot is on a hill with a scenic view of a river. The plot's value might come in part from the cabin; and this value counts as added, since there is a particular person, namely the builder, in whose absence the cabin wouldn't exist, and so without whom this value wouldn't be there. The plot's value might also come in part from the view; and this value counts as unadded, since the hill and the river as natural formations would still exist as they are even if any particular person were absent, and so the view would have no less value.

A disclaimer is in order before we go further. I've just defined adding value in counterfactual terms. As will be familiar to many, counterfactuals are troublesome creatures, which cause problems for nearly any theory which invokes them – and mine will be no exception. In particular, the definition I have just put forward will face issues in cases where an object's value depends counterfactually on multiple people at once, individually or collectively. To deal with these issues, we will have to craft a more complex account of adding value, one with the many further nuances required to address the many puzzles that will emerge. I will not attempt this task yet, however. I would prefer to start by conveying as clearly and simply as I can what the basic idea behind my argument is and why this idea would be appealing, which I cannot do while also sorting out all the relevant complexities. For now, I will use a definition that is adequate for a limited range of cases, namely those in which the issues I have in mind are absent; later on, I will

formulate one that is adequate for all cases.

We are now in a position to state our second premise:

(P) The difference between the part of an object's value I may claim and the part you may claim is equal to the difference between the part I've added and the part you've added.[442]

This is a normative proposition of the sort I described earlier, namely proportionality principles. Recall that such principles characteristically assert that those who provide more of some benefit should receive more of some benefit in return. What (P) does is apply such a criterion to one particular sort of benefit provided and one particular sort of benefit received: to wit, the value I have added and the value I may claim, respectively. If I *give* more of the former than you do, I should *get* more of the latter than you do. Call this the *Proportionality Premise*.

I want to justify (P) to my right-libertarian interlocutor by showing that the premise entails and explains intuitions she might well share, which would imply in turn that she has abductive grounds for accepting the premise. Imagine, for example, that we come across a field of unplanted barley. I clear and replant the field, and then tend and harvest the crop. You, on the other hand, do nothing. Owing to my efforts, the land yields sixty bushels more barley each year. Given your idleness, however, you do not add anything to the field's outturn. (P) implies that, since the part of the field's value I have added is greater than you have added, the part I may claim is also greater than yours, namely by sixty bushels' worth. Alternatively, suppose we find a wild

[442] An important point to note is that proportionality concerns what must be the case for someone's claims to a resource to be *greater* than others'. This is crucially distinct from what must be the case for someone to have *any* claims to a resource *whatsoever*. Proportionality is compatible, then, with a scenario in which those who have added no value to a resource may still have some claims to the resource's value. Indeed, I will conclude that they often do have such claims in fact.

blackberry bush. You and I both tend to the bush, pruning the branches, fertilizing the soil, and picking the fruit when the time comes. However, I am better at the job than you are, and so I raise the bush's produce by twelve clusters, while you raise the same by only three. (P) implies that the part of the bush's value I may claim exceeds yours by as much as the part I've added exceeds the part you've added, namely to an extent equal to the worth of the nine additional clusters I have supplied.[443]

Those who are favorable towards proportionality principles, as right-libertarians often are, may well be drawn to the judgments indicated in regards to these cases. What they are apt to find appealing about such judgments is precisely that they reflect the idea that the benefits agents receive should be proportionate to the benefits they provide. They do so by asserting that, in the context of initial acquisition, agents who have added a greater portion to an object's value may then claim a greater portion for themselves in turn. Specifically, they affirm that the degree to which one agent's claimable value surpasses another's must be equal to the degree to which the former's added value surpasses the latter's. An interlocutor who finds claims along these lines plausible should find (P), which simply generalizes them, just as plausible.[444]

---

[443] There are certain further conditions that must obtain in these cases in order for the judgments indicated in each scenario to follow. One is that there must be no agreement in place between us, explicit or implicit, as to how we will divide the results of our labor. If there were, our claims would have to be allotted according to our contract, rather than according to our additions to the object's value. Another is that we must both refrain from initially acquiring rights over the resource while the task is still underway. If one of us were to do so, the other's continued work would amount to an invasion of the other's property, and thus would generate no claims. The foregoing conditions may be improbable, but they are not impossible, and they should not affect responses to the judgments (P) implies.

[444] You might object that this standard is implausible under conditions where resources are not scarce. In a situation where there's plenty to go around for everyone, who cares whether someone claims disproportionate value? In answer, I would appeal to something resembling the Humean and Rawlsian notion that justice has no application, in a sense, where there is no scarcity. (See Hume 1739, bk. III, pt. II, sec. II, and Rawls 1971, ch. III, section 22.) Very loosely speaking, justice tells us what we ought to do when interests conflict, such that what would be in one person's interests would be against another's. When everyone has as much as they could ever want, however, there can be no occasion for such conflicts, or at least very little, and so there will be no need for justice. To spell out what this means in more exact terms, I might even advise interpreting every proposition I assert about distributive justice as a tacit conditional with the antecedent: "Unless circumstances are such as to render justice irrelevant, for instance due to the absence of scarcity..."

From premises (M) and (P), we can now draw a conclusion:

(L) The part of an object's value I may claim for myself is equal to the sum of the part I have added, together with the quotient of the part no one has added over the number of agents.

Again, we can divide the value of a resource into an added portion, which has come from agents, and an unadded portion, which has not. (L) asserts that, of the former portion, I may claim as much as I have added myself; and of the latter portion, I may claim the most I can have while leaving just as much for everyone else. Let's call this *Paine's Law* in homage to the similar proposition, in Paine's *Agrarian Justice*, that while the "value of the improvement" belongs solely to the improver, "the value of the natural earth" belongs to everyone equally.

Let me sketch how (L) follows from (M) and (P) by showing what they imply in a straightforward case. Suppose the two of us find some wild apple trees, which we then work together to cultivate. In their natural state, the trees yield four barrels of apples; my efforts then add five barrels, while yours add three, making twelve in all.

Consider what (M) and (P) entail about how much of the trees' value we may each claim for ourselves here, assuming for simplicity that their value comes wholly from their produce. (M) says our claims must sum up to all the value the trees have, while (P) says that our claims must differ by as much as the value we've added. What follows in this case is that our claims must total twelve barrels' worth, and that my claim must be greater than yours by two barrels' worth. A

little math will show that there is just one way to split up the value of the trees that fits both constraints. This would be a division under which I have a claim to a share of value equal to that of seven barrels, while you have a claim to a share equal to the value of five.

Now, note how our claims under such an allocation relate to the amounts of value we have each added, as well as to the resource's unadded value. My claim is equal to the sum of the value I've added – five barrels' worth – along with the quotient of the four barrels' worth of unadded value over our number, namely two. Likewise, your claim is equal to the value of the three barrels you've added, plus your half of the value of the four barrels no one has added. This means that (L) holds true here. The same result, moreover, will emerge in all other cases, no matter what resources are involved, no matter how much agents have added to the resources' value, and no matter how many agents there are. Wherever (M) and (P) hold, so will (L).

We can understand (L) as a variation on the Lockean proviso which appears in one form or another in many libertarian theories of distributive justice. Again, in Locke's original formulation, the proviso says that we appropriate resources legitimately only if we leave "enough, and as good" for everyone else. (L) stipulates that we must leave "as good" for others in the sense that we may not claim so great a part of the unadded value of any resource as to keep other agents from claiming equal parts for their own. Trivially, (L) also stipulates that we must leave "enough" for others if and only if a maximum-equal portion of the unadded value counts as enough.

We should now examine what specific implications (L) yields in regards to the extent of agents' claims to objects of various sorts. To do so, let's start by splitting the world three ways, sorting all the physical objects that exist into the following kinds. First, there are uncultivated external objects, meaning resources which we have not created and have not changed. Such things

include crude oil, untilled earth, unprocessed coal, and so on. Second, there are cultivated external objects, meaning resources which in fact we have created or have changed. Some examples would be developed land, treated water, and purified gold, and the like. Third, there are agents themselves, the ones who do the cultivating, and the bodies and minds which comprise them. Let's now consider objects of the first two of these three kinds in turn, reflecting on the extent to which their value depends upon specific agents.

With respect to uncultivated external objects, the whole of their value would still be present in the absence of any particular agent. After all, these are fully natural resources, as opposed to even partly artificial ones; again, they are not the fruits of anyone's labor, nor made by the sweat of anyone's brow, nor dependent upon us in any other way. Thus they would exist precisely as they are now, and so with precisely as much value as they have now, even supposing any particular one of us were nonexistent. Consider, for example, crude oil still pooled in a natural reservoir: such resources can and often do have significant value, but since by necessity we have not done anything to such resources, none of this value is contingent upon any specific one of us. This entails that all the value they possess is unadded in our sense. Given (L), we can therefore deduce the following conclusion:

(N) The part of the value of an uncultivated external object I may claim for myself is equal to the quotient of the whole of the object's value over the number of agents.

Now, with respect to cultivated external objects, there can be a part of their value which would not be present in the absence of some particular agent, but there can also be another part which would. Specifically, owing to the cultivator's actions in creating or changing these objects,

they may have more value than they would possess without her around. Even when this is the case, however, there can be at least some value which they would indeed possess supposing she did not exist. To return to the same example, imagine someone extracts and distills the crude oil in the reservoir. The resulting gasoline can and presumably will have more value than the unprocessed petroleum would possess. However, as we've already noted, this petroleum would still be valuable even if left unaltered. Hence, the value of resources like these is partly added and partly unadded. (L) therefore entails another conclusion:

(F) The part of a cultivated external object's value I may claim for myself is equal to the sum of the part I have added, together with the quotient of the part no one has added over the number of agents.

Note, then, that what we've said applies not just to wholly natural resources, but also to resources which are partly natural and partly artificial. Bear in mind, moreover, that *everything* in the world is at least partly natural. After all, we can't create something from nothing. We can make objects only from other objects; if the latter are also ones we've made, then we'll have made them from still other objects in turn; and the regress will keep going until we reach objects which we haven't made at all, namely ones existing in nature. No matter how thoroughly we've changed and shaped and crafted something, the material which constitutes the thing in question must ultimately be natural, as opposed to being our creation. Thus the cultivated external objects to which (F) applies will include in principle everything we produce, including structures and machines and all the rest.

I should next explain more specifically what these conclusions mean, and in particular what they entail about the initial acquisition of ownership rights. Recall our definitions, according to which sets of rights over objects have a certain worth, and that to claim a particular part of an object's value is to initially acquire over the object a set of rights with this particular amount of value. Thus what our principles assert is that I can initially acquire any set of thus far unheld rights over a given object, so long as their value does not exceed the constraints specified for an object of the relevant sort.[445] Again, if the object's whole value is greater than the portion to which I have a claim, then I cannot acquire full rights over the object, but must leave unacquired some set of rights with a value equivalent to the difference between the two. In doing so, I allow others to claim the value that remains.

Here's what this entails in concrete terms. Suppose I find an uncultivated external resource which I then improve, adding value atop the unadded value the object already has. In accordance with (F), I may then assume a set of rights over the object with a value equal to that which I've added, plus my share of that which no one has added. These rights might include almost everything associated with full ownership, including rights of use, exclusion, and so forth. However, since the object has some unadded value, others have claims to their own shares of this value, according to (F); and as a result I cannot acquire full rights over the resource. I can, though, do something close, namely claim all ownership rights over the resource *except* ones to a

[445] Why shouldn't we just say that adding value to a resource gives you claims to the value you've added, rather than to the resource itself? To my mind, there is no such distinction: the only way to have claims to something's value is to have claims to the thing itself. Perhaps the underlying question is why adding value wouldn't just give you rights to the further income arising from your improvements, rather than allowing you to claim any other rights you wish over the resource, as I suppose. I see no reason, however, to impose any limitations here. If I'd prefer to redeem my claims over an object, so to speak, not by acquiring rights to income, but instead by acquiring rights to use the object, there are in my view no grounds for denying that I may do so.

portion of the income commensurate to the unadded value, less my share. The rights to the rest of the income would then be available for others to acquire.

Thus we can infer that the following holds, at least in many cases:

(A) If I add value to an object, I can then acquire nearly all ownership rights over the object, so long as I leave for everyone else rights to a portion of the income corresponding to their equal shares of the object's unadded value.[446]

Our conclusions imply more than this, however. Imagine that I have done as (A) describes, adding value to a object which has some unadded value, then acquiring all rights to the object save ones to the relevant portion of the income. Suppose that you had no role in the process, and more broadly you haven't added any value to the object at all. Despite this, (F) still implies that you have certain claims here as well. In particular, you have a claim to as great a share of the object's unadded value as you can have while leaving just as great a share for everyone else. Since I have already acquired all other rights over the resource, the ones still open for you to acquire are those to some of the income. Although you have not added value to the object yourself, then, you can acquire rights to a share of this income all the same.

In sum, we can also deduce, again at least in many cases:

[446] In what cases, you might ask, does (A) not hold? These would be ones where someone's acquiring all other rights to the resource would be inconsistent with (L) even if they left rights to the specified portion of the income for everyone else. An example of such a case might be one involving a plot of land which is naturally beautiful, but in no way profitable – for whatever reasons, you can't grow or build anything there, and so on. Rights to the income from such land would have no value. Instead, all the value would be in the rights to access the plot, namely by going there and enjoying the scenery; and this would be value that no one has added. Under these sorts of circumstances, the only arrangement compatible with (L) might be for everyone to acquire limited rights to use the land, say for recreational purposes, on equal terms with everyone else. (Perhaps what we have here is a case for public lands.) The notion that equal world-ownership might sometimes require us to share, not just partial income rights over resources, but potentially other rights as well, even including partial access-rights, has ample precedent in the left-libertarian tradition. In fact, this tradition turns out to be traceable historically to early modern arguments to the effect that we all have rights to use resources others own in cases of emergency. See, for example, Grotius (1625), bk. II, ch. II, sec. VI.

(U) Even if you've added no value to an object, and I've acquired all rights over the object except ones to some of the income, you can still acquire rights to a part of this income corresponding to your share of the unadded value.

Let's now spell out further what this implies about redistributive economic arrangements. If others have acquired rights to the remaining income from this object, then justice permits taking this income from me to give to them. In particular, the state may justly do this by taxing me an appropriate amount and then using this revenue to benefit others. (I take no stand, for the moment, on precisely which benefits the state should offer.) If I refuse to part with this income, then I am violating others' rights, and the state may justly respond to this violation with proportionate force. Thus taxation by the state for redistributive purposes, at least when exacted from the proper sources and in the proper amounts, is wholly consistent with justice, contrary to what many other libertarians have contended.

Even though our principles have to do with initial acquisition, they have consequences for all generations, rather than only for some past group of original appropriators. Those who are first to acquire ownership rights over a resource in accordance with (A) may later transfer them to others, through sale, bequest, and so on; but the acquirers can only pass on the rights they themselves hold. Since the first owner's rights are limited in such a way as to leave for others a portion of the income matching the object's unadded value, all subsequent owners' rights will be limited in the same manner.[447] (U) implies, in addition, that all those who come into the world at

[447] There would be an exception, I suppose, if the person who holds what we might call the primary rights over the resource, namely those of use and exclusion and so on, somehow obtains others' income rights through transfer – or, still more fancifully, through redress.

some later point will have their own claims to an equal share of this unadded value.[448] The criteria for initial acquisition, then, shape the distributive rights people have at all times.[449] Barring certain unlikely collective choices, then, the arrangements we've described will not be peculiar to any one era, but will stay in place across generations.[450]

We have thus ultimately arrived at much the same the view that left-libertarianism's proponents have most often defended, even if they have stated the idea in different ways. These proponents standardly draw distinctions like my own between resources' added and unadded value, and then say that we may keep the former for ourselves as long as we share the latter with others on an equal basis. They then specify that what this means in practice is that we should let others enjoy nearly full ownership rights over resources, with the exception that we should tax them based on the resources' unadded value and use the revenue in egalitarian ways. In this regard, my central conclusions are little different in substance from those drawn by many other left-libertarians, notwithstanding divergences in wording.[451]

---

[448] We might think of this, as other left-libertarians sometimes have, as a sort of compensation to later generations for their comparative lack of opportunity to appropriate unowned resources. Owing to (U), those born later will still have a share in the benefits such resources afford through their partial income rights. They might also potentially use that income to purchase other rights over resources as well, such as those of use and exclusion.

[449] With time, the object's added and unadded value may both change. What happens to our rights over the object when this occurs? The answer is simple enough for the unadded value. If this changes, then the payments people receive in fulfillment of the income rights they've acquired in accordance with (U) will simply increase or decrease. Things are more complex with respect to the added value, especially when this value declines. If I've acquired, in accordance with (A), nearly full rights over an object based on value I've added, yet this value decreases over time, what happens to my rights? I'm less sure about what my theory entails here. The strangest possibility would be that I must then forfeit some corresponding share of the rights I've acquired. Even this possibility wouldn't be without precedent in the libertarian tradition, though. Nozick acknowledges that even his weak proviso may require proprietors to give up certain rights when shifting circumstances create drastic changes, albeit in the other direction, in the value of the resources they own. He says, for instance, that someone who appropriates a water hole in a desert loses the right to charge others as much as he wants for a drink if all the other water holes happen to dry up (1974, p. 180).

[450] This wouldn't be the case if, for example, there were a unanimous collective choice at some time to share everything as common property. I assume this sort of event is unlikely.

[451] Compare Steiner (2009, p. 6): "... in a fully appropriated world, each person is entitled to an equal portion of the value of... nature. That is, all owners of natural resources must pool the value of what they own in a fund - ultimately a global fund - to an equal portion of which everyone everywhere has a moral right." Alternatively, compare Vallentyne (2009, p. 23-24): "... one has the power to use or appropriate natural resources as long as one pays for the competitive value of the use or rights in excess of one's equality of opportunity for wellbeing share." A few left-libertarians have favored different arrangements; Otsuka, for example, envisions allocating each person nearly full ownership rights over some natural resources, rather than income rights alone over all

In sum, we are now in a position to appreciate that authors like Paine, George, and Vallentyne are ultimately right when they suggest that the premise that we did not create natural resources supports the conclusion that each of us has as much of a claim to these resources as any other. Although we cannot deduce such a conclusion from such a premise without introducing further principles connecting the two, and although the authors in question do not offer plausible accounts of what these principles might be, we have now found two suitable for the purpose. The relevant principles are, first, that one agent has a greater claim to an object than another only insofar as the former has added more to the object's value than the latter; and second, that agents have, between them, claims to the whole of an object's value. Given the first principle, since no one has added the value natural resources have, everyone's claims to their value are equally great; and given the second, our claims are as great as they can be consistently with such equality. We can argue for an egalitarian conclusion with respect to natural resources, then, from premises which are not themselves egalitarian, but instead are of a sort which even rightists often accept – and without relying on tenuous claims about God's actions towards humanity. We can now see, then, that the observation that humanity did not make the earth, first appearing in Paine's writings as an aside which he brings up and leaves behind in the course of a single sentence, can in fact serve to justify – perhaps even to the right-libertarian – the idea that the earth, in a sense, belongs equally to us all.

5.2

natural resources, on an egalitarian basis (2003, pt. 1, ch. 1, sec. IV). I diverge from such approaches.

Next, I will set forth the second of my two arguments for left-libertarianism. This will be the argument addressed to fellow egalitarians, deriving full self-ownership and equal world-ownership from a principle of equality. My secondary purpose here will be to defend left-libertarianism against egalitarians who have challenged the view as incoherent, the conjunction of two separate principles whose underlying justifications are mutually opposed. On the contrary, I will argue that the two are in fact derivable from a unified ideal of equality.

Other left-libertarians have at times set forth arguments for their position on the basis of versions of the broader ideal of equality. This is most obviously the case for one half of the left-libertarian position, namely the principle of equal world-ownership, which various recent authors have defended by appeal to luck egalitarian considerations. Yet in other instances, left-libertarians have sought to defend the principle of self-ownership, also, by appeal to equality – or, at least, have assumed that self-ownership follows from some form of the ideal of equality. Examples along these lines would include Spencer among historical figures and Steiner among contemporary ones.[452] Unfortunately, the left-libertarians who have tried to invoke equality to vindicate their position have not successfully explained why, if at all, their egalitarian foundations would support self-ownership as a conclusion.

Spencer seems to hold that full self-ownership is derivable from his principle that all individuals have a right to as much freedom as they can have compatibly with the equal freedom of others, but he does not provide any account of what precisely the derivation would be. Steiner also contends that self-ownership is derivable from his own variation on the law of equal liberty, but also by contrast does seek to provide an explanation of how this principle is to be derived – yet the explanation he offers does not appear to succeed. In particular, Steiner posits that the bun-

[452] See Spencer (1851) and Steiner (1994).

dles of rights which agents initially have must be equal, and then he adds that there can be no equality between one agent whose bundle includes ownership over herself, and another whose bundle does not include this. Steiner moves too quickly here, however. For one thing, he does not adequately specify the dimension of equality he has in mind – he does not give any precise answer to the question of *by what measure* initial bundles of rights must be equal. This is important, especially given that some plausible measures for comparing bundles would importantly contradict his conclusions. For example, if we suppose bundles are equal when they have the same *value*, then it is clear that the inclusion of full self-ownership in everyone's bundle is not needed for equality, and in fact is *incompatible* with equality in many cases. If, for example, my labor is in much higher demand and lower supply than yours, then my rights rights over myself will presumably have much more value than your rights over yourself. Knowing Steiner, he would probably say that bundles are to be equal in the *freedom* they afford, and he would insist that freedom in the relevant sense is unrelated to value. He still, however, does not explain how to quantify this freedom in enough detail for us to confirm his idea that agents' rights-bundles must all include full self-ownership if all are to have equal freedom. We're still in the dark, then, about how to get from equality to self-ownership.

Still, the basic idea behind these arguments is promising. There might be some plausible interpretation of equality – and not merely a formal one – given which we must all fully own ourselves for all of us to be equal to one another. There is something intuitive about the thought that if we are all to be equal to one another, there cannot be some who own themselves in full, and others who own themselves not at all or only in part. (And perhaps the notion that none of us own ourselves at all is also incompatible with any attractive version of the ideal of equality.) This notion makes enough sense to provide reason for us to expect we might find a workable

standard of equality which, at least in conjunction with other premises, will turn out to require full self-ownership for all agents. And this is just what I will try to do: I will identify a standard of equality, one to which egalitarians might be receptive, which turns out to support full self-ownership in this way. The hope is that in doing so I will accomplish the purpose I've set for myself, namely trying to show that premises to which egalitarians might be receptive can provide a coherent basis for full self-ownership as well as equal world-ownership.

The argument from equality will reuse several elements of the argument from proportionality. This argument, like the last, will be concerned with value, claiming value, and adding value. I will define all of these things here just as I have defined them in the foregoing. I will also be reusing the premise (M), which should work as well for my present purposes as it did for my previous ones, given its foundation in a certain interpretation of Pareto optimality, which I expect would hold appeal for egalitarians no less than libertarians. However, there are of course new elements as well, of which the first I'll discuss is the concept of what I'll call taking value. Let me take a moment to explain in detail what this means and why it would be true.

We can look at the rights of unilateral acquisition and private ownership we've discussed here from two distinct standpoints, from which these rights come across in two different ways. So far, we've been looking at them from the perspective I occupy when I am the one who possesses and exercises them, which is to say when I am the one doing the acquiring and owning. These rights give me a power to assume full and supreme authority in a sphere, where I may make the rules, based on my own view of the good, and do not need leave from anyone else

to do so. From this standpoint, then, rights of acquisition and ownership may look crucial to my liberty to realize my ends, and to my independence from others whose aims may clash with my own.

But we also can and should look at the rights of acquisition and ownership from another perspective, namely the one you occupy when you are someone *other* than the acquirer and owner. From your viewpoint, when I exercise these rights, I unilaterally assume the status of owner and sovereign over part of the world, where I now have enforceable authority over you and others. Since sovereignty is exclusive, you now cannot acquire sovereignty over the same sphere as I have, and in many cases less will now be available on the whole for you to acquire for yourself. From your standpoint, these rights may look like impositions on your freedom and independence no less flagrant than a natural right on my part to declare myself your king by fiat would be.

Building on these observations, let's say that the value I take from you and the rest of us is equal to the value you and they cannot claim due to me. For example, suppose I exercise my rights of acquisition by asserting private ownership over some unowned and untouched woods. As the forest is now mine, due to me you cannot use your rights of unilateral acquisition to obtain this forest for yourself. Hence, due to me, the range of things which you can acquire is slimmer; the share of the world which you can so obtain is smaller. And as a result, once again due to me, there may well be less value on the whole left for you to claim by means of acquisition. The value which I take away from you is the value of which I deprive you in this way – in other words, the diminution ascribable to me in the value you can claim.

We ought to pause here before going on to reflect further on this concept, which may not seem to mean much at first, but in the end proves to mean a great deal. Again, when I take value

away from you, and hence leave you with less value to claim, I thereby in effect lessen the portion of the world which you can acquire as your own. What follows in turn is that when I take value from you in this way, I in a sense *limit*, *narrow*, or *weaken* your rights to unilaterally acquire private ownership over objects. Recall, however, that your right to acquisition is the same as your right to sovereignty, your right to independently assume full and supreme authority within some sphere. For me to take value away from you in this way is therefore for me to do nothing less than constrain your most basic and central right, namely your natural right to sovereignty. When I do as much, I in effect curtail your powers to make yourself a monarch in miniature within your own domain where you may realize your own view of the good.

Let's return to the earlier example, where I acquire a formerly unowned forest; you now cannot acquire this forest yourself, and the value of what you can still acquire is less than before; perhaps some worthless marshland is all that's left for you to have. This means that I have constrained your rights of acquisition: where once your powers might have been so extensive as to allow you to acquire both forest and marshland, now they are so circumscribed that they can afford you only the latter at the very most. Indeed, this means I've diminished your right to sovereignty: before my acquisition, you might have held the right to assert your sovereignty over a much wider dominion; afterward, you can have the right to establish rulership only over a more petty domain. In sum, to the extent that I have a right to take value from you, to this same degree I have a right and indeed a power over you to detract from what we have asserted is your most fundamental right to liberty, namely your natural right to sovereignty.

In a moment, we will sort out just why we would have reason to impose constraints on rights to do such a thing to others; yet even now, before any explanation, you will presumably have some broad sense of what these reasons may turn out to be. Your right to sovereignty is

meant to give you a sphere where you may make and live by your own rules based on your own values, even assuming I and the others around you do not share the values in question, and would have you live as *we* say instead. However, insofar as others can take this right away from you at whim, partly or fully, then any freedom or independence the right gives you is of an empty and paltry sort; in the most extreme case, having a right others can thus negate may hardly be better than having no right at all. Unless there is something to secure the right to sovereignty from such curtailment, some sort of immunity which constrains others from constraining our sovereignty, then there is a danger that this right may turn out to be similarly hollow.

With these considerations in mind, I will now turn to presenting and defending the premise at the heart of my second argument. This is what I will refer to as the *Equality Principle*, or (E) for short, which places limits on how much value one agent may take from others:

(E) The part of an object's value I may take away from you and others is equal to the part of the object's value you may take away from myself and others in turn.

I would support (E) by showing that the principle offers an explanation for the intuitions I would expect egalitarians to have in regards to several hypothetical scenarios. To see why this would be so, picture the following. Suppose we descend into a valley and find an untouched forest. The trees there are highly valuable as timber; anyone who acquires them would stand to gain a fortune by arranging for them to be cut and sold. Straight away, I appropriate the whole forest for myself, leaving nothing for you, and thus take away from you all the value the wood has – which might have been yours to claim, at least in part, if not for me. Or imagine that we reach the summit of a mountain no one has ever climbed, and there we come across a silver vein,

whose ore has tremendous value, promising enough wealth to last a lifetime for the possessor. I then acquire rights to over three quarters of the silver, consigning the remainder to you. In doing so, I take from you the better part of the metal's value, some of which you could potentially have claimed without me around. Or else envision us coming upon an oil seep while hiking in the wilderness, with a massive petroleum reservoir underneath whose worth would easily suffice to make us both rich. I immediately assert ownership rights over more than half the fuel we have discovered, letting you acquire the rest. I thereby take from you most of the value of this oil, more of which would have been available for you to claim in my absence.

Those who are partial to the ideal of equality may well have the intuition that appropriations like the ones in these cases are not legitimate. What they are liable to find objectionable, moreover, is precisely that such cases involve agents taking unequal portions of the benefits a resource affords for themselves and from others. Again, for one agent to take from another is for the one to diminish the value associated with a resource that is available for the other to claim. Egalitarians might insist that no one may take from someone else, in this sense, any more value than the latter may take from the former in turn. In other words, each individual must be equal to every other in regards to the value she has the standing to take for herself and from the rest as her right, and none have the power to seize a superior share. Any egalitarian who would affirm as much is committed to (E), which expresses this very notion.

To bring out the force of these sorts of intuitions, we can consider, in much the same way that a number of earlier left-libertarians have, the most extreme case, in which I have and exercise the right to unilaterally acquire the entire world for myself, leaving nothing at all for you and others to appropriate. If I were to have this right and wield it in this way, then I would make myself the owner and the sovereign of all the earth, asserting a truly boundless authority; I would

then be able to make the rules everywhere based on my own choices and my own view of the good. Again, however, sovereignty is exclusive; thus, as I would be sovereign in *every* sphere, you could not be sovereign in *any* sphere; and hence in turn you would lack any right to acquire ownership and assert sovereignty for yourself in so much as a single sphere. You could thus only be a subject of authority, and never the bearer of any authority; you would be bound by the rules I make, and would have no way to make your own, no matter how different your own choices and your own view of the good might be.

What this tells us, then, is that any principle saying that I can have the right to take all the value there is away from others would as a result have to be a principle which says you have *no* right to your own sphere of sovereignty in at least some cases. As we've noted at many points by now, however, a principle of justice which all of us can accept in reason must be one which says that we each have a right to sovereignty, and moreover that we each have such a right in *all* cases rather than merely in *some*. Hence we cannot accept in reason a principle like the one we have described here, on which there are no restraints on how much value any one of us has the right to take, or on the extent to which one of us has the right to lessen others' rights to sovereignty.

There must, then, be some upper limit on the amount of the world's resources which we have the right to acquire for ourselves through unilateral appropriation. If one person's right to sovereignty is to be compatible with all others' having the same right, then there must be some limit on how much of the world a person can legitimately declare his own sovereign domain. Now, recall that what we are considering here are specifically principles of *natural right*, which according to the definition we've given impute us the same rights in relation to one another universally and necessarily. Hence natural rights must belong to *everyone* supposing that they belong to *anyone*, and principles of natural right must give to all the rights they give to so much as

one. Thus, if there are constraints on the extent of any one person's rights to appropriation, then there must be identical constraints on the extent of any other person's appropriation. And if the constraints are identical across persons, then they must be equal across persons. Hence, the value which you have the right to take away from me and from the rest of us cannot be less than the value which I have the right to take away from you and from the rest of us in turn.

We have said that when one agent takes value for herself, she in many instances takes value away from others – but crucially, this is not always the case. In fact, we can often split the value of an object into two parts, one being a part no agent can claim without taking from others, but the other being a part agents can indeed claim without taking from anyone. To see how claiming without taking could possibly occur, imagine the following scenario. Suppose I happen upon an untouched field which I clear and plow, raising the land's value in the process. Assume that if not for me the field would otherwise have remained undeveloped, and so would have stayed as valuable as before. Now imagine I acquire certain rights over the field, namely ones to use the soil and stop others from doing likewise, and also to keep some of resulting fruits. But suppose I limit the share of these fruits over which I acquire rights, leaving rights to some of the field's produce for others to secure. By assuming only this limited set of rights to the land, I refrain from monopolizing all the benefits the soil provides. In other words, I claim for myself only a part of the value of the land, rather than the whole, while letting what remains go unappropriated. Suppose, moreover, that my acquisitions are limited in this way to such an extent that the part of the field's value I claim for myself is in fact no greater than the part that would not even exist

if not for me and the improvements I have made.

Plausibly, in a case like this, even though I have claimed something for myself through my acquisitions, I have not taken anything from others. If the value of an object is a stock from which agents draw when they acquire rights, then I have indeed laid hold of a share of this reserve – but a share no greater than the one I had already put into the supply. What I have kept as my own is just what I brought in the first place, and no more; therefore, intuitively, no taking occurs here. Our general principles confirm this particular intuition. Recall that, by our definition, the part of an object's value I take from others is the part which would still be there for others to claim if not for me. Recall also that in the cases at hand, there is a part of the object's value, namely the part arising from my improvements, which wouldn't be there at all if not for me. Recall, lastly, that the part of the object's value I claim here is no greater than the part which comes from my improvements. What follows is that even though I claim part of the object's value for myself, I still take nothing from others. The reason why is that the part I claim is one which would be absent, and so would not be present for others to obtain for themselves, supposing I myself were absent. Hence, more broadly, there is often a part of an object's value which I can claim without taking from others, and a part which I cannot claim without taking from others.

We are now in a position to draw out an implication the foregoing premises yield in regards to the extent of agents' claims to the value of objects. This implication is what I will call (L) for short:

(L) The part of an object's value I may claim for myself is equal to the sum of the part I can claim without taking, together with the quotient of the part no one can claim without taking over the number of agents.

To understand what (L) means, and how the principle is derivable from what I have said so far, picture the following as an informal illustration. Suppose I begin to acquire rights over some object, and then acquire more and more rights as time goes on, thus claiming a greater and greater part of the object's value as I do so. Should I continue with my acquisitions at a constant rate for long enough, I will reach a point at which I have claimed a part of the object's value equal to the share which would not be present supposing I were absent. Now, before I have passed this point, I will not have taken any value from others by acquiring rights over the object – since beforehand I will only have claimed value which wouldn't even be there if not for me, and so which wouldn't be there for others to claim if not for me. After I have passed this point, however, should I claim any further part of the object's value for myself, I will be taking just as great a part from others – since afterwards I will be claiming value which *would* be there, and thus would be there for others to claim, if not for me.

(E) entails that there are no limitations on the value I may claim prior to the specified point. During this first interval, no matter how much I claim, I take nothing at all, and thus I cannot possibly take a share greater than the one available for others. Yet (E) also entails that there is indeed a limit to the value I may claim beyond this point. During this second interval, all value I claim is value I take from others, and so I am subject to the restriction that the share I may claim can be no greater than anyone else's. Recall also that we have posited at least one other principle apart from (E), namely (M), according to which the parts of a resource's value which agents may claim, once added together, must be equal to the whole of this value. Given some auxiliary assumptions, what (M) implies here is that I may claim as much as I can consistently with (E). Thus we can derive a dual conclusion: of the value I can claim without taking from oth-

ers, I may claim as much as there is; and of the value no one can claim without taking from others, I may claim as much as I can while leaving just as much for the rest. This is just what (L) asserts.

I'll now turn to examining (L)'s implications for the extent of agents' claims to resources of various sorts. I will carry over from the previous argument the threefold division of things in the world into uncultivated external objects, cultivated external objects, and agents themselves, the cultivators. As before, let's examine what (L) entails about how much of the value of things of these sorts an agent may claim.

First, as we've said before, since uncultivated external objects have not been created or changed by us, they would exist just as they do now, and with just the same value as they have now, in the absence of any given agent. What follows from this, though, is that *any* part of their value an agent claims is a part which would have been around for others to claim but for her – meaning that any part she claims is a part she takes from others. Given that this is the case, (L) implies:

(N) The part of the value of an uncultivated external object I may claim for myself is equal to the quotient of the whole of the object's value over the number of agents.

Now, since cultivated external objects have been created or changed by us, they would be at least partly different, and so might be at least partly less valuable, if the agents who created or

changed them were absent. There may be a part of the value of these resources, then, that the relevant agents can claim without taking anything from others, namely the part that wouldn't even be there in the first place but for them. The rest, however, is value which no one can claim without taking. Hence (L) entails:

(F) The part of the value of a cultivated external object I may claim for myself is equal to the sum of the part I can claim without taking, together with the quotient of the part no one can claim without taking over the number of agents.

What all of this means is just that (L) entails the left-libertarian principle of equal world-ownership, understood in just the same way I've discussed in the last chapter. But recall that here we're trying to find a basis, not just for equal world-ownership, but for full self-ownership as well – a unified justification which coherently supports both aspects of left-libertarianism. We should see, then, what (L) entails, not just about cultivated and uncultivated objects, but the cultivators themselves – in other words, agents. Let's see what happens if we extend the same reasoning to our own bodies and minds, and more broadly everything else which constitutes us.

We should observe, to begin with, that agents can have the same sort of value that external resources possess. This notion is bound to come across as strange, but it's true all the same. Again, what gives external resources their value is that they afford certain benefits to someone who has rights over them. An orchard, for instance, might be valuable in part because the person who controls the grove's fruits can sell them and thus secure the benefits the resulting income provides. Likewise, insofar as you have the right to the fruits of your own labor, you have access to the benefits that come with the money others will pay you for what you produce. Thus you

have value in this regard, just as the orchard does. To be sure, as a person, you have other sorts of value a mere thing cannot possess: apart from utility, you also have dignity, a worth beyond the merely extrinsic. Nevertheless, rights over your own body and mind, your own abilities and attributes, still confer instrumental benefits on the one who holds them. Hence, as odd as the idea may seem to be at first, you can be valuable in just the same way that resources distinct from persons are, even if – as is surely true – you are valuable in other respects as well.

Next, let's ask, just as we have with respect to external objects, how much of the value of an agent would be present if she herself were absent. The answer, plainly enough, is *none*. Any value you have must come from the characteristics you possess – your mental capacities, your physical qualities, and so on. By necessity, such things would not exist if you did not exist; a world which does not contain *you* cannot be a world which contains features belonging to *you*. Moreover, supposing you were gone, and your characteristics with you, then surely any value you possess based upon your characteristics would itself be gone as well. The striking results that emerges, then, is that *all* the value you possess is value you can claim without taking. For what you take, let's recall, is what would be there for others to claim if not for you – yet your own value would not be around at all, and thus would not be around for anyone else to claim, if not for you. No matter how much of your own worth you claim, you will not *deprive* anyone else in doing so, since this will never result in there being someone else for whom there is less value available for the claiming given your existence. What this means is that from (L) we can conclude:

(S) I may claim for myself the whole of my own value.

You may, in other words, acquire complete rights over yourself – including rights to do

with yourself as you choose, to keep others from doing as they choose with you save with your consent, to the products and income resulting from your labor, and so on. All the benefits you have to offer owing to your own capacities and qualities are therefore yours to keep as a matter of right. We've found something unexpected here, then. (L), the very same principle which entails that all agents have partial claims to the value of natural resources which they must share equally with everyone else, also entails that all agents have full claims to their own bodies and minds which they need not share with anyone else. The suggestion that previous left-libertarians like Spencer and Steiner have ventured is ultimately correct: there is a substantive principle of equality, and a plausible one, which can serve as a foundation not just for egalitarian world-ownership but also for full self-ownership.

We have now given an answer, then, to the objection from several egalitarians that left-libertarianism is incoherent, and we have done so on egalitarians' own terms, namely by appeal to premises of a sort they might accept. Recall that their criticism is that the principles of full self-ownership and equal world-ownership are not jointly coherent, such that the strongest justification for the one will contradict the strongest justification for the other. What we have shown here is that, on the contrary, there is in fact a single, unified justification for both full self-ownership and equal world-ownership, one which involves no inconsistency or incoherence whatsoever. The justification rests, moreover, on a principle of equality in powers of initial acquisition, itself deriving from intuitions to which an egalitarian might be receptive, applied not merely to external objects, but also agents themselves.

5.3

In my argument, I've referred often to value, added value, and unadded value. These concepts should be easy enough to grasp at an intuitive level. Resources provide us with certain benefits, and these benefits constitute their value. On one hand, some of this value is due to us, such as the value external resources have owing to the alterations we've made to them, and this constitutes their added value. On the other hand, some of this value is not due to us, such as the value external resources have even before we've altered them in any way, and this constitutes their unadded value.

While these concepts are not hard to understand in a rough and loose way, they turn out to be tougher to define in precise detail. When we look at them more closely, they turn out to invite several important questions whose answers are by no means obvious. These questions are difficult enough, in fact, that they might even lead us to doubt that there is any way to adequately respond to them. This in turn might prompt us to reject the relevant concepts, and all theories based on them – such as my own.

Three concerns in particular deserve attention here. The first is that we might not be able even to define these notions intelligibly in the abstract. The second is that we might not be able to measure them feasibly and accurately enough for practical purposes. The third is that we might not be able to explain why we should ascribe them any normative importance. Let's call these the objections from *conceptual incoherence*, *practical inapplicability*, and *normative insignificance*, respectively.

My aim in what follows is thus to answer these questions, not only to make my ideas clearer, but also to show that the problems they raise are indeed resolvable, and do not give us reason to eschew the concepts at issue. I will start by defining value, added value, and unadded value, demonstrating that they are indeed coherent as concepts. I will then discuss how we can

and do measure them in practice, showing that they are indeed practically applicable. Lastly, I will both offer some reasons to accept, and rebut some putative reasons to reject, their normative significance.

Let's first consider the objection from conceptual incoherence to value in general. Value might seem like a problematic concept for many reasons. Value isn't unified, but is instead plural: there's moral value, aesthetic value, intellectual value, and many other kinds besides. Value isn't necessary, but contingent. Value doesn't stay the same over time, but increases and decreases, and indeed does so constantly. Value isn't self-standing, but dependent upon many factors, which are themselves ceaselessly changing. Value isn't intrinsic to a resource, but rather is extrinsic, essentially relational in character. Given these many complexities and vicissitudes, we might question whether value is even a determinate, intelligible concept in the first place.

In this section, I will show that value is indeed coherent. In particular, I will do as much by giving the concept a clear and exact definition. I'll start by making some distinctions in order to pick out which sort of value I have in mind from among the various alternatives. I will then set out an initial, provisional definition of such value, attempting to sketch what the concept involves in as simple and direct a way as I can. Next, however, I will explain that the provisional definition is in fact too crude, and faces problems in cases where certain complications are present. I will then put forward a final definition which is more complex and nuanced, but which deals with these complications in a way which avoids the associated problems.

We should start by distinguishing *economic* from *non-economic* value. Economic value has to do with the benefits which resources provide to us as consumers and suppliers of goods, ones which we can quantify in monetary terms. By contrast, other forms of value, such as moral, aesthetic, or intellectual value, often do not pertain to consuming and supplying goods, and often

are not measurable in terms of money. *Economic* value, rather than value of any other type, is what concerns me here. The value of a resource, in the sense I have in mind here, is always reducible without remainder to some appropriate amount of currency.

We'll need to clarify further, though, since economic value itself comes in multiple kinds. Economic value *in use* has to do with the benefits we can get from consuming or otherwise disposing of a resource ourselves. Economic value *in exchange*, however, has to do with the benefits others would give us in trade for a resource. The two are related, but can come apart: things with more value in use may have less value in exchange.[453] Economic value *in exchange*, rather than in use, is what I'll appeal to in my theory. My focus, in other words, is not so much on *what uses we can get out of a resource* as on *what we can get out of others* in trade for a resource.

Let's now consider how we might define such value. What comes to mind first is to simply say that a resource's value is the price for which we buy and sell the resource on the market. The approach here is to characterize value in exchange, quite naturally, with reference to what we *actually do* offer and accept in exchange for a thing. Despite how intuitive this may seem, some reflection will show that such a definition is not viable. The reason why is that there are many factors which can make a resource's *actual* price on the market diverge from what the resource is intuitively worth, even in strictly economic terms. Suppose consumers don't know how what goods are available, or what their prices are; or suppose there's only one supplier in the market, leaving consumers with no other choice; or suppose a consumer even threatens a supplier to sell her goods at a certain price or else. In such cases, what consumers actually pay and

453

I take the distinction between economic value in use and in exchange from Adam Smith's *Wealth of Nations* (1776). In Smith's famous illustration of how the two can diverge, he compares water and diamonds. Water has great value in use but little value in exchange, while diamonds have little value in use but great value in exchange. Marx (1876) makes the same distinction, but in his case as well these concepts are an inheritance from Smith, rather than an invention of his own.

what suppliers actually get in trade for a resource may vastly differ from what the resource's true economic value would appear to be.

We can deal with this issue by changing our definition to refer not to prices on an *actual* market, but to prices on a hypothetical market, and specifically a *competitive* one. We'll define competitive markets in the same way as economists, who have tended to converge upon the following as the central criteria for competitiveness. First, there must be many consumers and many suppliers, each one making up only a small part of the market. Second, consumers must buy a bundle of resources that maximizes their utility given the options available. Third, suppliers must sell a bundle of resources that maximizes their profits given the options available. In brief, a competitive market is one in which all agents are instrumentally rational, and which is large and diffuse enough to be insensitive to any one agent's choices.[454]

From these central criteria, we can then deduce versions of several other conditions which economists often bring up when defining competitive markets. To begin with, we can infer what price any given resource will have in such a market, namely the one given which supply and demand are equal.[455] A corollary is that agents will lack market power, since none would be able to sell the resource for more, or buy the resource for less, than this equilibrium price.[456] We can also

[454] Different economists define competitive markets in different ways; while they tend to converge on certain fundamentals in their accounts, they also tend to diverge on the particulars. They vary above all else in degree of specificity. At one extreme, we have accounts like that of Knight, who proposes a list of no less than eleven conditions for perfect competition, ranging from fairly generic criteria of instrumental rationality to oddly specific requirements such as that the parties have the dispositions typical of those who inhabit "a modern Western nation" (1921, p. 76-80). At the other extreme, we have accounts like that of Arrow and Debreu, who in their proof of the fundamental theorems of welfare economics assume only four conditions for a competitive equilibrium, which posit little more than that consumers must maximize their utility and suppliers their profits, and that prices must be such that markets will clear (1954, p. 268-272). The definition I give here follows the one offered by Khan (2008); the criteria he identifies are perhaps the ones which most commonly appear in definitions of the concept, and they seem to be the most fundamental, insofar as we can deduce from them several other conditions which also often appear in definitions of competitive markets.

[455] For an explanation as to why this would be the case, see just about any introductory microeconomics textbook; Perkin (2012, p. 67) states the reasoning well.

[456] In other words, the agents involved are what economists call price-takers. For more detail on precisely what this means, see Mas-Collel et al. (1995, p. 315).

conclude that the agents involved are not subject to certain influences which might prevent them from doing what maximizes their utility. Specifically, there can be no lack of information, nor any monopoly or monopsony, nor any coercive restrictions, which would lead the parties involved to choose options other than those which best fulfill their preferences.

As will turn out to be relevant later, economists have shown that the allocations which arise from competitive markets are mutually beneficial for the parties involved in several senses. Under such allocations, there is neither shortage nor overage: at the equilibrium price, since supply equals demand, there are no consumers who want to buy resources they can't get suppliers to sell, nor suppliers who want to sell resources they can't get consumers to buy. These allocations maximize economic surplus: a price lower than the one which equates supply and demand might increase consumer surplus, but would decrease supplier surplus by more; a higher price might increase supplier surplus, but would decrease consumer surplus by more.[457] Lastly, these allocations are also Pareto optimal: since all the consumers and suppliers involved are choosing what's best for themselves given their options, there can be no other feasible allocation under which someone is better off and no one is worse off.[458]

Here, then, is our final definition of value:

(V) A resource's value is the price for which consumers would buy and suppliers sell the resource on a competitive market.

We're now in a position to fully respond to the objection. Value is indeed coherent as a

[457] For a fuller explanation of this proposition, again, see just about any introductory microeconomics textbook; one example would be Parkin (2012, p. 112).

[458] For a fuller explanation of this proposition, which is the first fundamental theorem of welfare economics, see Mas-Collel et al. (1995, p. 549-550).

concept, despite what appearances might suggest. Even though value can take many forms, we can readily distinguish the sort that matters for our purposes, namely economic value in exchange, from all the others. We can then give this value a definition which is as precise as we can reasonably demand, namely one in terms of price on a competitive market. The conditions that make for a competitive market, moreover, are ones we can also specify in detail, and which allow us to deduce what a resource's price will turn out to be there – namely, the one at which supply and demand are equal. While we might have disputes about this definition, there is little doubt that the concept understood in this way is at least intelligible.

Value so defined is indeed contingent, changeable, dependent, and so on. A resource's value may fluctuate constantly based on shifting economic conditions. This doesn't mean we have reason to dismiss value as incoherent, however. These, after all, are qualities value shares with many other concepts which we would never consider rejecting on these grounds. In fact, nearly any concept with empirical application, all the way down to ones as basic as weight and color and location, will prove on examination to be similarly contingent, changeable, and dependent.[459] To regard as somehow suspect all concepts except those which are necessary and changeless and self-standing would be a curiously Platonic attitude, one which would commit the holder to rejecting not only value but also many of the concepts of common sense.

Let's now discuss the objection from incoherence to added and unadded value in particular. These notions might also seem problematic at a conceptual level. To begin with, you might

[459] The facts about how much I weigh, for example, are not necessary truths; they often change from day to day; and they depend upon my environment – because weight varies with gravity, I would weigh less on the moon than I do here.

doubt there is any such thing as *un*added value, since in some sense all value comes from us, given that everything's value depends on our demand. You may also wonder, in cases where several people work together to increase a resource's value, whether there is any way – even in principle, let alone in practice – to sort out how much of the increase is attributable to each one of them individually. This issue is particularly urgent given that nearly any form of productive activity in nearly any realistic scenario will involve such interdependent collaboration between many different people; if the theory can't deal with such cases, the theory fails.

In this section, I will show that added and unadded value are in fact coherent, specifically by providing definitions for these concepts which are both precise and responsive to the problems I've just mentioned. The approach will be much the same as the one I followed in the previous section. Again, I'll start with some distinctions, first to pick out the concept I have in mind from amongst others in the vicinity, and second to categorize the various parts of the value of a resource I'll be discussing, as well as clarify how they relate to one another. As before, I'll next give a provisional definition of added value which is straightforward and intuitive; I'll then explain that this definition is too rudimentary to deal with certain complications; and lastly, I'll give a final definition sophisticated enough to address these issues.

We should begin by distinguishing two senses in which some portion of a resource's value can count as having been added by us. Let's say that the value we've added to a resource in a *broad* sense is that which is ascribable to us in some way – any way whatsoever. All value is indeed added in this broad sense, since economic value in exchange is by definition a social relation, having to do with what we would offer and accept for a resource; and what's constituted by our relations is ascribable to us in a clear way. On the other hand, let's say that we've added some of a resource's value in a *narrow* sense when the resource has this value *owing to features of the*

resource which are themselves due to us. Not all value is added in this narrow sense, since in many cases much of the value of a resource owes in part or in full to features which are due not to us, but instead to external causes. What I am concerned with here is the value that we add in the narrow rather than the broad sense.

We ought to take a moment to reflect upon why this clarification is necessary. Consider the problems that would ensue if we were to instead construe added value in the broad sense. First, this would make the distinction between added and unadded value pointless, since all value would count as added. There would be still further oddities as well, however, for the reason that adding value in the broad sense can take many strange forms. I could add to the value of resources in this sense, for example, just by forming preferences for them, since this increases demand, and thereby makes them more valuable. Even more perversely, I could add to one resource's value by destroying other resources of the same kind, since this decreases supply, and so again raises their value. Clearly, however, these are not examples of adding value in any sense we should honor normatively. The most intuitive way to exclude these cases is by saying that adding value to a resource in the sense we care about involves having some connection to the *features* from which the resource's value arises.

With this point in mind, we can now redraw in more detail the distinctions between the value some agent has added to a resource, the value all agents have added, and the resource's unadded value. Resources derive their value from their features, and we can split their value as a whole into the various portions they derive from each feature in particular. For example, some part of the value of a given parcel of real estate may come from the parcel's location near the center of a thriving city. Now, some of these features may be ones the resource has due to some agent, such as those resulting from her improvements to the resource. The part of a resource's

value this agent has added, in the simplest case, is the value the resource has owing to features which are due to her.[460] To return to the example, if someone then constructs a building at this location, then the worth of this structure will count as value she's added to the parcel. The resource's added value, moreover, is equal to the sum of all the parts of the whole value of the resource which one agent or another has added. Lastly, the unadded value is just the difference between the whole value and the added value.

The question that arises next is that of what must be the case for some feature of a resource to be *due* to a given agent, and so for this feature's value to count as having been added by her. One straightforward way to define this relation would be to say that the features of some resource which are due to a certain agent are all and only those which counterfactually depend upon her. The suggestion here is that what's due to someone is just what wouldn't be there if not for her, that which would be absent supposing she herself were absent; and any value this has is the value she's added. Again, however, while this construal makes sense at an intuitive level, some reflection will show that the definition faces problems in cases where certain complexities are present. The cases in question are ones in which some valuable feature of a resource counterfactually depends upon more than one person at the same time, whether individually or collectively. In such cases, our straightforward definition entails consequences that are counterintuitive at best and outright contradictory at worst. There turn out to be precisely three forms these cases can take:

(i) Some are cases of *individual direct dependence*. Suppose I improve a resource – that is, give the resource some valuable feature – with your indispensable help. This im-

[460] The more complex cases are those in which a feature is due to more than one agent at once. I will address these scenarios shortly.

provement wouldn't have occurred without me. However, since you provided indispensable help, the improvement also wouldn't have occurred without you. (Suppose I stand on your shoulders while pruning a tree's branches. I wouldn't be able to reach high enough without you, but the branches would go uncut without me.) Thus the improvement directly depends on both of us. This means both of us count as having added the whole of the increased value, which seems absurd.

(ii) Some are cases of *individual indirect dependence*. Suppose I improve a resource without your help. If not for me, the improvement wouldn't have occurred. However, if not for you, then I wouldn't be around at all – and the improvement wouldn't have occurred then, either. (You might be one of my parents, or a doctor who's saved my life, or the one who introduced my great-grandparents, or what have you.) Thus the improvement depends, not just upon me, but also upon you through me, even though you didn't help in any direct way. This means both of us count as having added the whole of the increased value, which again seems absurd.

(iii) Some are cases of *collective dependence*. Suppose I improve a resource without your help, and would have done so even in your absence. However, if I had been absent, then you would have made the improvement in my place. Only if neither you nor I had been around would the improvement not have occurred. (Imagine, for instance, that I till a field without your help, but you were standing by ready to plow the field if I had not.) Thus the improvement depends on both of us collectively, but not on either one of us individually. This means neither one of us counts as having added any of

the increased value, which yet again seems absurd.

Let's now consider how we might alter our definition to address these cases. We'll first ask how we might deal with each type of case taken by itself, going from last to first. We'll then craft a single definition that deals with all three issues at once.

First, the solution for cases of collective dependence is *chaining*. For you to count as having added some value to a resource, we'll say that what's needed is that there be a counterfactual chain between yourself and an improvement. To be more exact, there must be a sequence of states of affairs, where each one counterfactually depends on the last, which starts with you and ends with the improvement.[461] The condition, in other words, is that the improvement has to *ultimately* depend upon you. Now, in cases like these, there will often be a counterfactual chain between one agent and the improvement, but no such chain for the other agent. To see why, let's return to the example of a field which I till without your help, but which you would have tilled without me around. Crucially, even though you would've plowed the field if I had been absent altogether, you presumably would not have tried to do so yourself *after* you'd seen that I was already present and at work. Thus a chain will exist here between myself and the improvement. If I hadn't brought out my plow, I wouldn't have started tilling; if I hadn't started, I wouldn't have finished; and if I hadn't finished – given that you wouldn't have attempted to complete the task yourself at this stage – the field would have gone uncultivated. No similar chain will exist between you and the improvement, however. Hence, by appeal to chaining, we can obtain the result that I have added the value associated with the improvement, while you have not.[462]

[461] I borrow these ideas from David Lewis, who in his work on counterfactual causation analyzes cases like these, which he refers to as ones of early preemption, and uses the notion of counterfactual chains to address them. See "Causation" (1973), along with further elaborations in *Philosophical Papers: Volume II* (1986). While I am not asserting or assuming any counterfactual theory of causation, the solution Lewis proposes is suitable for my distinct purposes as well.

[462] What if this presumption is false? What if you would have started even after I had already done so? This would

Second, the solution for cases of individual direct dependence is what we might call *chain-breaking*. Here, we'll again say that for you to count as having added value, there must be some counterfactual chain between yourself and an improvement. We'll then go further, namely by saying that the basic counterfactual chain connecting you to the improvement has to be one which does *not* have other people as links. We break the chain, so to speak, when we reach someone else, and don't give you credit for any value that appears further down the line. You can't add value vicariously; you have to do so *personally*. To illustrate, let's go back to the case where I improve a resource without your help, but I wouldn't exist at all if not for you – because you're my parent, say. In such a case, the fact may be that if you had never been around, then the improvement to the resource would never have taken place. Nevertheless, you bear a counterfactual relation to the improvement only because *I* myself bear such a relation to the improvement. The basic counterfactual chain between you and the feature in question is as follows: if you hadn't existed, then I wouldn't have existed either; and if I hadn't existed, the feature wouldn't have come about. This, however, is a chain which includes myself, a person distinct from you, as a link. With chain-breaking, then, we can ensure that only those directly related to an improvement, and not those merely indirectly related, are the ones who have added value under our definition.

Third, and lastly, the solution for cases of individual direct dependence is *splitting*. We've so far said that your adding value to a resource involves there being an improvement to the resource that ultimately and personally depends upon you. Let's now say that when there are

be a case of what's called late preemption in the literature. To my knowledge, there is no standard solution to such scenarios. In cases like the ones at issue here, however, late preemption may not present a serious problem. Suppose you and I both start improving a field, and neither one of us stops upon seeing the other engaged in the same activity. The result that seems bound to ensue is that I will end up improving part of the field, and you will end up improving another part. In such a scenario, we would both seem to have added value to distinct resources – you to your area, and I to mine. There would thus seem to be no question of how much value each one of us has added to any one discrete resource. The same outcome appears bound to eventuate in any other case of late preemption in the improvement of resources.

multiple people upon whom an improvement so depends, they each count as having added an identical portion of the improvement's value. Thus, in other words, we *divide the value equally* between all those who have contributed in the right way. Recall the example in which we work together to improve a tree by pruning the branches – you lift me up on your shoulders, and from there I do the shearing. We've supposed that the assistance we provide one another in this scenario is indispensable, such that the improvement wouldn't have taken place at all if either one of us were absent. The improvement thus counterfactually depends upon both of us at once, and moreover does so ultimately and personally in my case as well as yours. With splitting, then, given that two of us are involved in making the improvement, we would each count as having added half of the value which results.

Let's now put all three solutions together in a final definition of adding value:

(A) The part of a resource's value I add is that which the resource has owing to features which ultimately and personally depend upon me, divided equally with all others of whom the same is true.

In sum, we can in fact define added and unadded value in a way that avoids the conceptual problems I've discussed. First, by clarifying that the value we add is that which resources have owing to features which are due to us, we can avoid several odd implications, such as the notion that all value counts as added. Second, by reference to the definition of added value we've provided, we can explain how in principle to distinguish the respective parts of a resource's value added by multiple agents working together. Take the features that ultimately and personally depend upon a given agent. Take the value that the resource possesses owing to each of these fea-

tures. Divide this value by the number of agents so related to the feature at issue. The value the agent has added to the resource is the sum of these quotients. Now, to be sure, discovering the relevant contingent facts, for example ones about how much value a resource has owing to some feature, may sometimes be difficult in practice – although this is still doable, as I will explain in the next section. What we can conclude for the moment, however, is that we face no *conceptual* impossibilities here.

What this entails about any particular case we select for analysis will of course vary with the details. Some will be cases of collective dependence, some of individual indirect dependence, and some of individual direct dependence; and some cases will no doubt be more than one of these at once. There are few things we can say which will hold for all or even most of these scenarios. However, we make at least one observation which will often although not always apply. Specifically, of the three types of cases we've talked about, the only ones we'd be likely to identify in the first place as examples of agents working together to improve resources would be ones of individual direct dependence. In cases of collective dependence and of individual indirect dependence, there's only one agent who we would intuitively say is doing the work, so to speak; the others aren't working together with her, but instead merely bear some deviant counterfactual relation to the improvements she makes. Thus in most cases where the problem of sorting out who has added how much of some increase to the value of a resource even comes to mind for us at all, the solution will be the one appropriate to cases of individual direct dependence, namely an equal split.

We should now discuss the objection from practical inapplicability. Even if we can coherently define the concepts of value and added value in the abstract, we might question whether we can measure them in practice. One concern would be that we can only observe prices for resources which are now on the market. Since most resources are off the market much of the time, we may wonder how we could ever accurately estimate their value at such moments. Things look even more dire for added and unadded value, which consist in the value resources have owing to certain sorts of features they possess. The issue here is that only resources themselves can go on the market; there's no way to buy or sell any of their features taken in isolation. Hence, for specific features, there are no observable prices for us to consult at all – and given this, we might doubt that there is any way to reliably measure their value. If we cannot ascertain such facts, however, then there will be no way to apply in practice a theory of justice in which they have a central role – such as my own.

In this section, I will show that we can indeed feasibly and accurately measure value, added value, and unadded value in practice. I will do so, in particular, by explaining how we already *do* in fact make such measurements. I assume that once I've explained the way we perform such assessments, the adequacy of the methods described will be evident, and few doubts will remain as to whether they are sufficiently practical and reliable. Let me underscore that what follows are not merely speculations on my part about how we might *hypothetically* make such measurements, except where otherwise indicated, but instead descriptions of how real-world professionals and organizations *actually* perform them in the real world, as they commonly do. I should give some warning that the facts I will go over in what follows hold no philosophical interest in themselves; I relate them only because I take doing so to be necessary for decisively responding to the specific objection at issue here. Those who do not share the underlying concern will find

this information extremely tedious.

I'll start by explaining the measurement of value as such. Again, the challenge here is to estimate the value of a resource in cases where we cannot simply observe prices, because the resource is not now on the market, and so there is no amount that agents are presently asking and paying for the resource. Broadly speaking, there are three approaches to this task, each one based on a plausible premise about how buyers and sellers would behave within a competitive market:[463]

(i) The first is the *sales method*, which estimates a resource's value by seeing what the prices are for similar resources. For example, to figure out the value of a house, you might look at what others have paid for comparable homes. The premise in this case is that consumers wouldn't buy one resource for more than they would need to buy another with much the same features.

(ii) The second is the *cost method*, which measures the value of a resource by checking what the costs would be for producing a similar one. If you're trying to appraise a business' value, for instance, you could see how much starting a comparable firm would cost. Here, the premise is that consumers wouldn't pay more for a resource than they would need to create a new one.

(iii) The third is the *income method*, which appraises value by finding out how much money a resource will generate. To measure a farm's value, say, you might look at how

[463] I take my information on this subject from the guidebook of the International Valuation Standards Council (2017, p. 18-47), which as the name suggests is an organization devoted to articulating and regularizing appraisal practices, and which enjoys broad recognition within the field.

much you could earn from renting out the land or selling the produce. The premise behind this method is that suppliers wouldn't sell a resource for less than they could earn by holding on to the property.

Let's now turn to the measurement of added and unadded value. Our exposition here will have to follow a more complicated course. The reason why is that there is one particular sort of unadded value that has received far more attention than any of the others in policy and scholarship, namely the value of land as such, as opposed to the value of improvements. Accordingly, even though there is an extensive and developed literature in economics on approaches to the measurement of land values, there has been much less discussion of the estimation of unadded value of any other sort.[464] I will therefore start by going over the approaches to land value appraisal in particular. Afterwards, I will consider how we might naturally extend and adapt these methods to the appraisal of other types of unadded value.

The challenge here is to estimate the value of land in cases where we cannot simply observe any price for the plot, because the land goes on the market not by itself but only as part of a bundle along with improvements, such as structures we've built. Since the improvements are due to us, while the land is not, this is one instance of the problem of sorting out how much of the value of a resource is added and how much is unadded. Here, too, there are three broad approaches to the task:[465]

(i) The first is the *vacancy method*, which consists in seeing what the prices are for

[464] While some economists and some left-libertarians have historically used the term *land* to refer to all natural resources, the contributors to the contemporary literature on land value assessment use the term in a less inclusive sense, referring specifically to soil and sites. I follow the latter usage here.

[465] I take this information from several articles in the economics literature on land valuation, which both provide overviews of the various methodologies and also apply these methods to estimate land values in specific markets. See Case (2007), Diewert and Hendriks (2011), and Larson (2015).

parcels including similar plots of land without any improvements. Thus you might sort out how much value some bundle owes to the included land by seeing what people ask and pay for empty lots nearby. Here, our premise is that consumers wouldn't pay more for the land in the bundle than they would for bundles including only similar land but no improvements.

(ii) The second is the *residual method*, which involves checking what the prices would be for reproducing the improvements the bundle includes. You ask how much you'd need to pay to build structures similar to those on a certain plot, say, and then subtract this from the bundle's value. The premise is that consumers wouldn't pay more for the improvements in a bundle than they would need to pay to recreate similar improvements elsewhere.

(iii) The third is the *regression method*, which considers how prices for parcels vary with the features of the land they include. Here, you find land values using regression analysis, with the value of parcels as the regressand and the features of the land as regressors. The premise is that we can determine how much value comes from the land using the same techniques we use to determine relationships between variables in other areas of empirical study.

While these approaches pertain to land specifically, we can readily see how we might estimate the unadded value of other sorts of resources by similar means. We might extend the vacancy method by comparing prices for resources which have been improved with prices for the

same sort of resource in an unimproved state. For instance, we could measure how much of the value of petroleum comes from our refinements by referring to the price of crude oil. We might extend the residual method by asking what the cost would be for making similar improvements to an as yet unimproved resource, then subtracting this from overall value. So, for example, we might assess how much of the value of a faceted diamond comes from the way we've cut the gem by asking how much the cutting process costs. Lastly, we might extend the regression method by treating the value of a resource as a regressand and the features of the resource in an unimproved state as regressors. In this way, we might sort out how much of the value of coal is unadded by examining the statistical connections between refinements to the substance on the one hand and prices on the other.

We can also see how we might use similar approaches to measure the value of a resource owes to any specific feature of whatever type, which we'd need to do to sort out how much value some agent has added to a particular resource. The analogue for the vacancy method would be to look at prices for resources which are otherwise similar except in that they lack this feature. The analogue for the residual method would be to look at what the cost would be for reproducing this feature, where this is possible. The analogue for the regression method would be to determine the statistical relationship between value and the degree to which the resource exemplifies the feature.

Let's now sum up our response to the objection. We can't plausibly reject the measurement of value, added value, and unadded value as an impossibility when such measurements are already a reality, and indeed a rather routine and mundane one. They're performed in the real world on a regular basis for important practical purposes. Governments estimate the value of real estate when collecting property taxes; businesses estimate the value of other businesses when

considering acquisitions; consumers estimate the value of their assets when purchasing certain sorts of insurance. In many cases, these agents also estimate added value and unadded value separately. For example, this occurs under the various governments – such as that of Taiwan, along with certain jurisdictions in Australia and the United States[466] – which collect certain taxes on the value of land as distinct from the value of improvements. Indeed, there is an entire profession, accompanied by an extensive academic literature, devoted to performing measurements of value, namely that of appraisers. For all of their methods to turn out to be essentially flawed for some *a priori* philosophical reason would not be strictly impossible, but would still be utterly incredible.

If we take a step back, we'll see that the problem of sorting out how much of a resource comes from a given feature is just one instance of a more general type of problem which arises nearly everywhere. Empirical research in any field very often involves taking some output and asking which inputs have contributed to this result, as well as asking how much each input in particular has contributed. This is what we're doing whenever we study anything from the effects of coal power on lung cancer to the effects of income inequality on economic growth, to pick two issues at random. When we face these problems in other domains, we do not react by capitulating and declaring the questions unresolvable, and we ought not. Just so, we shouldn't respond in this way when the challenge is to determine how much of the value of a resource, taken as an output, comes from the resource's various features, taken as inputs. We've developed effective and sophisticated methods for dealing with problems of this type, and we can and should use them here. In short, while separating the value resources owe to some features from the value they owe to others may not be simple, the task is no more difficult than many others we would

[466] For further details on such taxation in Taiwan, see the *Guide to ROC Taxes* (2015, ch. XIV) from the nation's Ministry of Finance. For one jurisdiction in Australia, see the *Land Tax: Guide to Legislation* (2018) from the state government of New South Wales. For several jurisdictions in the United States, see Yang (2014), "The Effects of the Two-Rate Property Tax."

never regard as intractable.

To be sure, the methods I've described are not perfect. Each one requires data that may not always be feasible to obtain: for instance, the vacancy method is difficult to apply in areas where undeveloped land is scarce. Each one yields only probable estimates rather than settled certainties: there is always some risk that the figures the cost method relies upon, for example, may be wrong. What matters, however, is not whether we can assess resources' values with the greatest possible certainty, but whether we can appraise them with as much confidence as is necessary for responsible decision-making. Since we can never have complete and certain information about any practical matter, our obligation is only to base our decisions on premises that are sufficiently credible, rather than somehow absolutely indubitable. The methods I have described here can provide us with results that are trustworthy to the requisite degree; they make enough sense that enacting policies reliant upon them would not be by any means irresponsible. We can reasonably have about as much confidence in them as we can in our methods for ascertaining the information upon which many other distributive policies, such as other forms of taxation, are founded.

We now turn to our third objection. Value and added value, you might claim, are normatively insignificant. Again, they're both based on competitive market prices. You might naturally protest, however, that there's nothing special about such prices from a normative standpoint. They simply reflect supply and demand, which means they reflect the countless contingent and evanescent factors which affect these variables in turn. These factors do not matter in them-

selves; nor, you might reason, should anything based upon them. Accordingly, you might continue, the prices they determine need not and often do not reflect anything meaningful – any qualities that give a thing what we might call true worth. Indeed, in many cases, market prices seem to be inversely related to such worth, if they are related at all. Quite commonly, luxuries have higher prices than necessities; so too with mindless entertainments compared to sources of real fulfillment; so too with repulsive trinkets compared to masterful artworks; and so on. Thus we ought not suppose that adding value constitutes providing a benefit which counts for anything from a normative standpoint.

Let me first say more about precisely which issues this objection is raising, and thus about what I aim to do here in my response to the criticism. The theory I develop in what follows will centrally include several assertions concerning economic value in exchange, and in particular concerning who is entitled to such value, and how much. To be more specific, the theory will treat value as a *benefit* which can serve as both as the *basis* and as the *object* of entitlements – as a good, as something which can entitle you to a good, and as a good to which you can be entitled. In later chapters, I will address the important question as to why we should accept that value can be the basis of entitlements, or in other words why we should suppose that what we provide in the way of value would determine what we ought to receive in turn. For now, however, the objection I am considering is one which raises an even more fundamental question, namely that of whether value even constitutes a substantive benefit at all, a genuine good rather than a meaningless number. As a result, in answering this objection here, I do not mean to offer any demonstration that value is indeed apt as a basis for entitlements; instead, I mean only to defend the more basic presupposition that value is indeed a real benefit, and thus at least minimally eligible for such a role.

Now, we can in fact plausibly regard value as defined here as possessing this sort of normative significance. To see why, let's recall what constitutes such value. Economic value in exchange is the price for which consumers would agree to buy and suppliers would agree to sell a resource on a competitive market; and such a market is one where certain hypothetical conditions obtain. The conditions include ones to the effect that all the parties are maximizing their utility, and that their choices are not subject to certain distorting influences. In particular, the parties do not suffer from any ignorance or irrationality, nor are they under any pressures of coercion or market power, which would prevent them from choosing the option that best fulfills their preferences. Moreover, the agreements that we can deduce consumers and suppliers would make under these conditions are by several important standards mutually beneficial for the parties involved. Under these agreements, as we have noted, there is neither shortage nor overage; consumer and supplier surplus are both at their maximum; and the resulting allocation is optimal, such that there is no other feasible allocation under which someone is better off and no one worse off. In short, what defines value in this sense is an agreement which multiple parties would reach, were they choosing rationally and informedly, and free from certain forms of duress and manipulation – an agreement, moreover, which is to their benefit.

My contention is that we should regard the hypothetical choices which define economic value in exchange as normatively significant, much as we regard similar choices as significant elsewhere. In other philosophical contexts, many find intuitive the notion that the choices we would make under analogously idealized conditions matter from a normative perspective. In axiology, many are drawn to theories like the one Sidgwick proposes, according to which the good is what we would pursue, supposing we hypothetically knew and could imagine with sufficient vividness all the effects that the alternatives open to us would have.[467] In political philosophy,

[467] Sidgwick (1874), *The Methods of Ethics*, bk. I, ch. IX, sec. 3.

many are drawn to theories like the one Rawls defends, according to which the principles of justice are those which we would hypothetically choose together, assuming we were deciding freely and rationally from an initial position of equality.[468] In moral philosophy, some are open to theories on which what's moral is what conforms to the judgments a hypothetical ideal observer would make, as Smith argues.[469][470] Even those who disagree with these specific theories in the end, as I do myself, can recognize their plausibility.

One reason why many are receptive to such views is no doubt that they combine two appealing characteristics. The first is that they capture the attractive idea that what we desire and decide and so on matters normatively – that what is good, just, moral, or otherwise prescriptively important, has to do with what we will and choose. The second is that they then avert the problems this idea would otherwise face by focusing upon the choices we would make absent the various influences which most obviously lead our decisions astray. Observe, however, that my account of economic value in exchange as a normatively meaningful consideration also possesses these very same characteristics. This account reflects the intuition that choice matters by ascribing import to the agreements we choose to form, but then refines this intuition by excluding agreements we make under coercion, in ignorance, and so on. Hence, insofar as we find other theories appealing owing to these characteristics, we should also view my own position as having some intuitive force for the same reasons. My proposal is just that what people will offer and accept for a resource, when they are not acting rashly or being deceived or under constraint, or subject to various other pressures that might compromise their decisions in similar ways – in oth-

[468] Rawls (1971), *A Theory of Justice*, p. 10-11.
[469] Smith (1759), *The Theory of Moral Sentiments*, pt. III, ch. I.
[470] Of course, economists have presumably not intended, when formulating accounts of competitive markets, to develop concepts analogous to those to which authors like Smith and Sidgwick and Rawls appeal, let alone to employ the resulting concepts for similar normative purposes; I assume they have simply wished to abstract away from various contingent distortions which would complicate economic analysis. The fact that they did not have any such aim in mind, however, does not mean that we cannot use what they created for this alternative purpose.

er words, what price a resource would have on a competitive market – says something about what the resource is worth in a sense we should not dismiss as normatively trivial.

One crucial point the objection raises is that economic value in exchange merely reflects supply and demand, which do not matter normatively; and the inference is that such value must not matter, either. This criticism may seem compelling, but in the end is not decisive. Once we reflect on what supply and demand are, we'll see that they do in fact matter, odd as this may sound at first.[471] Let's start by considering demand, whose significance is easier to see. What determines the demand for a resource is how many agents have a preference for this resource and how strong their preferences are. Now, I contend that fulfilling preferences matters. Furnishing what we want and seek is something worth caring about from a normative point of view; that a thing answers to our desires is not a normatively inconsequential fact. As an illustration, imagine two cases. In both, I build a house on some land. Suppose that in the first case, the house I build is sturdy, comfortable, and has excellent amenities, and thus there is high demand for the home. By contrast, in the second case, suppose the house I build is flimsy, ugly, and poorly outfitted, and so there is little demand for the result. All else equal, I contend we cannot dismiss the difference between these two cases merely as a negligible descriptive contrast to which we can attribute no prescriptive import. The distinction between creating something for which many would intensely yearn and creating something for which a few would grudgingly settle – in other words, something in high as opposed to low demand – is a distinction in benefits provided which a theory of distributive justice can plausibly take into account.

Next, let's consider supply, whose relevance is much less obvious at the outset. Why should we care at all how many units of some resource are available? The answer has to do with

[471] Much of the inspiration for my replies here comes from David Miller (1989, 2014), who ascribes competitive prices a similar although not identical significance as part of an argument for market socialism, and defends the normative import of such prices in analogous ways.

the fact that we have reason to pay attention not just to the benefits a resource offers considered in isolation, but also and indeed even more so to the *marginal* benefits the resource offers given how many other things of the same kind we already have on hand. Now, what economists call the law of diminishing marginal utility tells us, roughly paraphrased, that marginal benefit increases as supply decreases, and vice versa. In plainer terms, as long as there is any demand for some resource, then each unit will count for much more when there are few units than when there are many, and the reverse is also true. This idea is one intuition readily confirms. To appreciate this, let's again imagine two cases. In both, you cultivate a field of wheat. In the first case, suppose wheat is plentiful, and that your farm is one among millions yielding the same crop in abundance. In the second, however, suppose wheat is scarce – let's even assume that yours is the only wheat farm in the entire world. Intuitively, what you've contributed matters a great deal more in the latter case than in the former, precisely because supply is so much lower in the latter. Surely there is a crucial difference, and one that intuitively warrants recognition from the standpoint of distributive justice, between on the one hand providing something so scarce as to make each unit highly precious, and on the other providing something so common as to make any given unit nearly superfluous – and this is just a difference in supply.

Market prices can indeed vary based upon factors are in a sense not intrinsically important; but they do so only insofar as these factors ultimately affect things which are in fact important. Prices can change when technological developments give a resource new usefulness, or when there are simply shifts in tastes which leave consumers less interested in some commodity. They can also change when a natural disaster destroys some reserve of a given resource, or when a trade agreement allows for the import of more goods of some particular type. We might view events like these as mere empirical occurrences which cannot possibly bear upon anything nor-

mative. However, what we've just discussed about supply and demand suggests that we shouldn't make any such assumption. These events affect demand, which means they affect how beneficial a resource is in terms of preference-satisfaction, and to how many of us; or else they affect supply, which means they affect the marginal benefit of this kind we derive from any one unit of a resource. This, in turn, affects what agreements we would freely, informedly, and rationally make to exchange the resource with one another for our mutual benefit. Again, these agreements hold significance.

Also correct is the point that competitive prices diverge from what the objection calls a thing's true worth – moral, intellectual, or aesthetic. This occurs, however, in two cases. One is the case in which demand is disproportionately low: in other words, where people simply don't tend to have preferences for things with the qualities that in our view confer true worth, or where the preferences they do have don't tend to be as strong as we believe they ought to be. The other is the case in which supply is disproportionately high, which implies that even supposing sufficiently many people have preferences of sufficient strength for things with the qualities in question, such things are already available in amounts so great that people won't be as interested as we believe they ought in obtaining further goods of the same sort. But upon reflection, there is in fact something intuitive about the idea that circumstances like these do indeed make a thing less beneficial, at least along one dimension we should take seriously. Again, lower demand entails that the thing provides lesser benefits, understood in terms of preference-satisfaction; and disproportionately high supply entails that the thing provides lesser marginal benefits, understood in the same way.

A few other points are worth briefly raising here in closing. The first is an observation which is rather simple, but which we should still not leave unsaid. Wealth, as few would ever

deny, is plainly a benefit, at least for the possessor. What defines wealth, though, is value: on a standard interpretation, your wealth is equal to the value of your assets minus the value of your liabilities. Now, if wealth is a benefit, and wealth is value, then value must be a benefit. Second, even though there are indeed cases where resources with less intrinsic worth than others have greater economic value in exchange, such resources will nevertheless have ample extrinsic worth, not despite but *owing* to this very fact. If, for example, there are pointless luxuries which have ten times as much value on the market as vital necessities, then what follows is that someone with the luxuries can simply exchange them for the necessities, and at a very favorable rate. Third, we should note that economic value in exchange has certain advantages over other quantities as a *distribuendum* for a theory of justice to treat as central. The major premise in the objection from practical inapplicability is wholly correct: such a *distribuendum* must be one we can measure reliably enough to informedly and responsibly apply the theory's principles in practice. As we have seen, value as we have defined the concept here is indeed so measurable. The same may not be true, however, for many other quantities we might be inclined to place in the same role; self-realization, aesthetic beauty, intellectual fulfillment, and so on, might strike us as more important than exchange-value, but empirically measuring them with any precision on a large scale would be far more difficult, if possible at all.

REFERENCES

Antiphon (1948). “On Truth.” Freeman, Kathleen & Diels, Hermann, Ancilla to the Pre-Socratic Philosophers: A Complete Translation of the Fragments in Diels, Fragmente Der Vorsokratiker. Cambridge: Harvard University Press.

Aquinas, Thomas (1920). Summa Theologica. Translated by the Fathers of the Dominican Province.

Aristotle (2010). Rhetoric. Translated by Edward Meredith Cope and John Edwin Sandys. Cambridge: Cambridge University Press.

Aristotle (2012). Aristotle: Politics: Translation Introduction and Glossary. Translated by Joe Sachs. Newburyport MA: Focus Pub.

Aristotle (2017). The Nicomachean Ethics. Translated by W.D. Ross. Los Angeles California: Enhanced Media Publishing.

Arneson, Richard J. (2010). Self-ownership and world ownership: Against left-libertarianism. Social Philosophy and Policy 27 (1):168-194.

Arrow, Kenneth, and Debreu, Gerald. (1954). "Existence of an Equilibrium for a Competitive Economy." Econometrica, 22(3), 265–290.

Atkins, Jed W. (2013). Cicero on Politics and the Limits of Reason: The Republic and Laws. Cambridge: Cambridge University Press.

Attas, Daniel (2006). “Fragmenting Property.” Law and Philosophy 25, no. 1: 119–49.

Augustine (2002). Eighty-Three Different Questions. Translated by David L. Mosher. Washington D.C: Catholic University of America Press.

Augustine (2015). The works of aurelius augustine bishop of hippo : a new translation. Translated by Marcus Dods et al. Forgotten Books.

Bastiat, Frédéric and Jacques de Guenin (2012). The Law the State and Other Political Writings 1843-1850. Indianapolis: Liberty Fund.

Bentham Jeremy Stephen G Engelmann and Philip Schofield (2011). Selected Writings. New Haven: Yale University Press.

Blackstone, William (2016). Oxford Edition of Blackstone : Commentaries on the Laws of England. Oxford University Press.

Bodie, Zvi, Alex Kane, and Alan J Marcus (2008). Essentials of Investments. 7th ed. Boston Mass: McGraw-Hill Higher Education.

Bodin Jean and Julian H Franklin (1992). On Sovereignty : Four Chapters from the Six Books of the Commonwealth. Cambridge England: Cambridge University Press.

Bogin, R. (1983). "Liberty Further Extended": A 1776 Antislavery Manuscript by Lemuel Haynes. The William and Mary Quarterly, 40(1), 85–105. https://doi.org/10.2307/1919529

Bonald Louis and Nicholas Davidson (2017). On Divorce. London: Taylor and Francis.

Bosanquet Bernard (2012). The Philosophical Theory of the State. Cambridge: Cambridge University Press.

Brennan, Samantha (1995). Thresholds for Rights. Southern Journal of Philosophy 33 (2):143-168.

Case, Karl (2007). The Value of Land in the United States: 1975-2005. In Land Policies and Their Outcomes, eds. Gregory Ingram and Yu-Hung Hong. Lincoln Institute of Land Policy.

Cicero (1998). Republic and the Laws. Translated by Niall Rudd. Oxford University Press.

Cicero and Benjamin Patrick Newton (2016). On Duties. Ithaca: Cornell University Press.

Cicero, Julia Annas, and Raphael Woolf (2001). On Moral Ends. Cambridge: Cambridge University Press.

Cohen, Felix (1935). "Transcendental Nonsense and the Functional Approach." Columbia Law Review, 35(6), 809–849.

Cohen, Felx (1954). "Dialogue on Private Property." Rutgers Law Review.

Cohen, G. A. (1995). Self-Ownership, Freedom, and Equality. Cambridge University Press.

Cohen, G. A. H. G. (2011). "Freedom and Money." In On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy. Princeton University Press. pp. 166-200.

Cohen, Gerald Allan (2009). Why Not Socialism? Princeton University Press.

Condorcet Jean-Antoine-Nicolas de Caritat Steven Lukes and Nadia Urbinati (2012). Condorcet : Political Writings. Cambridge UK: Cambridge University Press.

Crawley Richard (2020). History of the Peloponnesian War. New York NY: Open Road Integrated Media.

Cruft, Rowan (2013). Why is it Disrespectful to Violate Rights? Proceedings of the Aristotelian

Society. 113, 201-224.

Dewey John (2000). Liberalism and Social Action. Amherst N.Y: Prometheus Books.

Diderot, Denis, John Hope Mason, and Robert Wokler (1992). Diderot: Political Writings. Cambridge: Cambridge University Press.

Diewert, Walter Erwin, Jan de Haan, and Rens Hendriks, (2011). "The Decomposition of a House Price Index into Land and Structures Components: A Hedonic Regression Approach," The Valuation Journal, The National Association of Authorized Romanian Valuers, vol. 6(1), pages 58-105.

Dorfman, Avihay (2014). "Private Ownership and the Standing to Say So." The University of Toronto Law Journal, 64(3), 402–441.

Douglass Frederick John R McKivigan Julie Husband and Heather L Kaufman (2018). The Speeches of Frederick Douglass : A Critical Edition. New Haven: Yale University Press.

Dworkin, Ronald (2000). Sovereign Virtue. Harvard University Press.

Edelstein, Daniel. (2019). On the spirit of rights. University of Chicago Press.

Epstein, Allen. (1995). Simple Rules for a Complex World. Cambridge MA: Harvard University

Press.

Epstein, Richard (1985). Takings : Private Property and the Power of Eminent Domain. Cambridge Mass: Harvard University Press.

Epstein, Richard (2011). "Bundle-of-Rights Theory as a Bulwark Against Statist Conceptions of Property," 8(3) Econ Journal Watch 223.

Estlund, David M. (2008). Democratic Authority: A Philosophical Framework. Princeton University Press.

Fatton R. (2021). The guise of exceptionalism : unmasking the national narratives of Haiti and the United States. Rutgers University Press.

Feser, Edward (2005). There is no such thing as an unjust initial acquisition. Social Philosophy and Policy 22 (1):56-80.

Fichte Johann Gottlieb Frederick Neuhouser and Michael Baur. 2000. Foundations of Natural Right : According to the Principles of the Wissenschaftslehre. Cambridge UK: Cambridge University Press.

Filmer R. (2017). Patriarcha and other political works. Taylor and Francis.

Finnis, John. (2011). Natural law and natural rights (2nd ed.). Oxford University Press.

Finnis, John (1998). Aquinas: Moral, Political, and Legal Theory. Oxford University Press.

Fisher, Arabella (2015). “A left-libertarian proposal for egalitarian world ownership.” Critical Review of International Social and Political Philosophy 18 (6):599-619.

Fried Albert and Ronald Sanders. 1993. Socialist Thought : A Documentary History Rev. ed. New York: Columbia University Press.

Fried, Barbara H. (2004). Left-Libertarianism: A Review Essay. Philosophy and Public Affairs 32 (1):66-92.

Garrison William Lloyd and T. Moore's Lithography (1838). Declaration of Sentiments Adopted by the Peace Convention Held in Boston September 18 19 and 20 1838. Boston: New England Non-Resistance Society.

Gaus Gerald (2010). The Order of Public Reason : A Theory of Freedom and Morality in a Diverse and Bounded World. Cambridge: Cambridge University Press.

Gaus, Gerald (2012). 'Property', in David Estlund (ed.), The Oxford Handbook of Political Philosophy, Oxford Handbooks.

Gaus, Gerald F. (2016). The Tyranny of the Ideal: Justice in a Diverse Society. Princeton:

Princeton University Press.

Gaus, Gerald F. & Lomasky, Loren E. (1990). Are Property Rights Problematic? The Monist 73 (4):483-503.

George Henry Francis K Peddle and William Spangar Peirce (2017). Progress and Poverty. Lanham Maryland: Fairleigh Dickinson University Press.

Glackin, Shane Nicholas (2014). Back to bundles: Deflating property rights, again. Legal Theory 20 (1):1-24.

Godwin William and Mark Philp. (2020). An Enquiry Concerning Political Justice. Oxford: Oxford University Press.

Gratian (1993). The Treatise on Laws. Translated by Thompson James Gordley and Katherine Christensen. Washington D.C: Catholic University of America Press.

Green Thomas Hill Paul Harris and John Morrow (1986). T.h. Green : Lectures on the Principles of Political Obligation and Other Writings. Cambridge Cambridgeshire: Cambridge University Press.

Grey, Thomas (1980). "The Disintegration of Property." Nomos, 22, 69–85.

Grimké Angelina Emily (1838). Letters to Catherine E. Beecher in Reply to an Essay on Slavery and Abolitionism Addressed to A.e. Grimke Rev. Boston: Printed by I. Knapp.

Grotius, Hugo (2005). The rights of war and peace. Translated by Richard Tuck. Liberty Fund.

Hart, Herbert Lionel Adolphus (1955). Are There Any Natural Rights? The Philosophical Review. 64, 175-191.

Hart, Herbert Lionel Adolphus (1982). Essays on Bentham: studies in jurisprudence and political theory. Oxford, Clarendon Press.

Hayek, Friedrich von and Ronald Hamowy. (2011). The Constitution of Liberty : The Definitive Edition. Chicago: University of Chicago Press.

Hegel Georg Wilhelm Friedrich and P Wannenmann (2012). Lectures on Natural Right and Political Science : The First Philosophy of Right : Heidelberg 1817-1818 with Additions from the Lectures of 1818-1819. Oxford: Oxford University Press.

Hobbes, Thomas (1656). De Corpore. Translated by Henry Savile.

Hobbes, Thomas (2005). Leviathan. Edited by Rogers G. A. J. & Schuhmann K. Continuum.

Hohfeld, Wesley (1913). Some Fundamental Legal Conceptions as applied in Judicial

Reasoning. 23 Yale Law Journal 16.

Holbach Paul Henri Thiry (2019). The System of Nature. New York: Nova Science Publishers.

Honoré, Anthony (1961). "Ownership."In Oxford Essays in Jurisprudence. Ed. Guest, A. London: Oxford University Press. 107-47.

Huemer, Michael (2013). The Problem of Political Authority. New York: Palgrave Macmillan.

Hume David (2012). A Treatise of Human Nature : Being an Attempt to Introduce the Experimental Method of Reasoning into Moral Subjects. Garfield Heights Ohio: Duke Classics.

Hursthouse, Rosalind (2013). Moral Status. In The international encyclopedia of ethics. Malden, MA, Wiley-Blackwell.

International Valuation Standards Council (2017). International Valuation Standards. Norwich: Page Bros.

Isidore (2010). The Etymologies of Isidore of Seville. Translated by Stephen A. Barney. Paperback ed. New York: Cambridge University Press.

Jackson Robert (2013). Sovereignty : The Evolution of an Idea. Hoboken: Wiley.

Jaworska, Agnieszka (2007). Caring and Full Moral Standing. Ethics. 117, 460-497.

Jefferson Thomas Joyce Appleby and Terence Ball (1999). Thomas Jefferson Political Writings. New York: Cambridge University Press.

Justinian (1985). Institutes. Translated by Robert Moyle. Birmingham AL: Legal Classics Library.

Kalmo, Hent & Skinner, Quentin (eds.) (2010). Sovereignty in Fragments: The Past, Present and Future of a Contested Concept. Cambridge University Press.

Kamm, Frances (2007). Intricate ethics rights, responsibilities, and permissible harm. New York, N.Y., Oxford University Press.

Kant, Immanuel, and Reiss Hans. (1991). Kant : political writings (2nd enl.). Cambridge University Press.

Kant Immanuel Allen W Wood and George Di Giovanni. 2001. Religion and Rational Theology 1St pbk. ed. Cambridge: Cambridge University Press.

Kant Immanuel and H. B Nisbet. (2009). An Answer to the Question: 'What Is Enlightenment?'. London: Penguin Books.

Kant Immanuel Lara Denis and Mary J. Gregor (2017). The Metaphysics of Morals. Revised ed. Cambridge United Kingdom: Cambridge University Press.

Kant Immanuel Robert B Louden and Manfred Kuehn (2006). Anthropology from a Pragmatic Point of View. Cambridge UK: Cambridge University Press.

Katz, Larissa (2008). Exclusion and Exclusivity in Property Law. The University of Toronto Law Journal, 58(3), 275–315.

Knight Frank (2014). Risk Uncertainty and Profit. Mansfield Center CT: Martino Publishing.

Kramer, Matthew (2001). Rights, wrongs, and responsibilities. Houndmills, Basingstoke, Hampshire, Palgrave.

Kramer, Matthew, and Hillel Steiner (2007). “Theories of Rights: Is There a Third Way?” Oxford Journal of Legal Studies. 27, 281-310.

Kramer, Matthew, Nigel Simmonds, and Hillel Steiner (1998). A debate over rights: philosophical enquiries. Oxford, University Press.

Larissa Katz (2017). “Property’s Sovereignty.” 18 Theoretical Inquiries L. 299.

Larson, William (2015). "New Estimates of Value of Land of the United States." Bureau of

Economic Analysis.

Lewis, David (1973). “Causation.” Journal of Philosophy 70 (17):556-567.

Lewis, David (1986). Philosophical Papers, Volume II. Oxford University Press.

Locke J. (2015). An essay concerning human understanding : with the second treatise of government. Wordsworth Classics of World Literature.

Locke J. (2020). The first & second treatises of government. Pantianos Classics.

Locke J. & Goldie M. (1997). Locke : political essays. Cambridge University Press.

Locke J. & Goldie M. (2016). Second treatise of government ; and a letter concerning toleration (First). Oxford University Press.

Locke John Ruth W Grant and Nathan Tarcov. (1996). Some Thoughts Concerning Education ; and of the Conduct of the Understanding. Indianapolis: Hackett Pub.

MacCormick, Neil. (1976). Children's Rights: a Test-Case for Theories of Right. In Legal right and social democracy: essays in legal and political philosophy. Oxford, Clarendon Press.

MacIntyre Alasdair C. (2013). After Virtue : A Study in Moral Theory. London: Bloomsbury

Academic.

Macintyre, A. (2006). The Privatization of the Good. An Inaugural Lecture. Filozofia 61:489-501.

Mack Eric (2018). Libertarianism. Cambridge UK: Polity Press.

Mack, Eric (2009). What is left in left-libertarianism? In Stephen De Wijze, Matthew H. Kramer & Ian Carter (eds.), Hillel Steiner and the Anatomy of Justice: Themes and Challenges. Routledge.

Mack, Eric (2009). What is left in left-libertarianism? In Stephen De Wijze, Matthew H. Kramer & Ian Carter (eds.), Hillel Steiner and the Anatomy of Justice: Themes and Challenges. Routledge.

Mack, Eric (2010). “The natural right of property.” Social Philosophy and Policy 27 (1):53-78.

Macpherson C. B. & Cunningham F. (2011). The political theory of possessive individualism : Hobbes to Locke ([Wynford ed.]). Oxford University Press.

Marsilius (1928). The defensor pacis of marsilius of padua. Translated by M. Jean J. & Previté-Orton C. W. University Press.

Marx, Karl, Samuel Moore, and Edward Aveling (2011). Capital: A Critique of Political Economy. Mineola N.Y: Dover Publications.

Mas-Colell, Andreu et al. (1995) Microeconomic Theory. Oxford University Press, New York.

Merrill, Thomas (1998). "Property and the Right to Exclude." 77 Neb. L. Rev. 730.

Mill John Stuart (2009). The Basic Writings of John Stuart Mill : On Liberty the Subjection of Women and Utilitarianism. New York N.Y: Classic Books America.

Miller, Fred Dycus (1995). Nature, Justice, and Rights in Aristotle's Politics. Oxford University Press.

Minogue, Kenneth (1990). "The History of the Idea of Human Rights." In The Human Rights Reader, eds. Laqueur and Rubin. Rev. ed. New York: New American Library.

Mirabeau Victor de Riquetti and Quesnay François. 1764. Philosophie Rurale Ou Économie Generale Et Politique De L'agriculture : Reduite À L'ordre Immuable Des Loix Physiques & Morales Qui Assurent La Prospérité Des Empires. Amsterdam: Chez les Libraires associés.

Moore, Michael S. (1997). Placing Blame: A Theory of the Criminal Law. Oxford University Press.

Mossoff, Adam (2003). "What Is Property? Putting the Pieces Back Together." Arizona Law Review 45, 371

Munzer, Stephen (1990). A Theory of Property. Cambridge University Press.

Munzer, Stephen (2011). "A Bundle Theorist Holds On to His Collection of Sticks." Econ Journal Watch, Vol. 8, No. 3, pp. 265-73

Munzer, Stephen (2011). “A Bundle Theorist Holds On to his Collection of Sticks.” Econ Journal Watch, Vol. 8, No. 3, pp. 265-73.

Nagel, Thomas. Libertarianism without Foundations. The Yale Law Journal 85, no. 1 (1975): 136–49.

Narveson, Jan (1988). The Libertarian Idea. Temple University Press.

Narveson, Jan (1999). Property rights: Original acquisition and Lockean provisos. Public Affairs Quarterly 13 (3):205-227.

Nozick, Robert (1974). Anarchy, State, and Utopia. New York: Basic Books.

Nozick, Robert (1981). Philosophical Explanations. Harvard University Press.

Nozick, Robert (1989). The Examined Life: Philosophical Meditations. Simon & Schuster.

Oakley F. (2015). The watershed of modern politics : law virtue kingship and consent (1300-1650). Yale University Press.

Ockham, William (2001). Dialogus. Translated by John Kilcullen. Oxford University Press.

Otsuka Michael (2005). Libertarianism Without Inequality. Oxford New York: Clarendon ; Oxford University Press.

Paine, Thomas and Philip Foner (2019). Thomas Paine -- Collected Writings : Common Sense ; the Crisis ; Rights of Man ; the Age of Reason ; Agrarian Justice. Canada: Must Have Books.

Parkin, Michael (2012). Microeconomics. 10th ed. Harlow Essex: Pearson.

Paterson, Isabel (1993). The God of the Machine. New Brunswick N.J. U.S.A: Transaction.

Penner, J. E (2020). 'The ‘Bundle of Rights’ Picture of Property Revisited'. In Property Rights: A Re-Examination. Oxford Academic.

Philpott Daniel (2008). Revolutions in Sovereignty : How Ideas Shaped Modern International

Relations. Princeton: Princeton University Press.

Pierson Christopher (2013). Just Property : A History in the Latin West. Volume One Wealth Virtue and the Law. Oxford: Oxford University Press.

Plato (2009). Gorgias, Menexenus and Protagoras. Translated by Malcolm Schofield and Tom Griffith. Cambridge: Cambridge University Press.

Plato (2013). Republic. Translated by J. Emlyn-Jones and William Preddy. Cambridge Massachusetts: Harvard University Press.

Plato Malcolm Schofield and Tom Griffith (2016). Plato : Laws. Cambridge United Kingdom: Cambridge University Press.

Price Richard (1795). Observations on the Nature of Civil Liberty. London: Printed by order of the Society and sold by Joyce and Toone Eaton Lee Ballard.

Price Richard and D. D Raphael (1974). A Review of the Principal Questions in Morals. Oxford England: Clarendon Press.

Pufendorf, Samuel (2003). The Whole Duty of Man According to the Law of Nature. Liberty Fund.

Quesnay François (1747). Essai Physique Sur L'œconomie Animale Seconde ed. augmentée de deux volumes & de tables fort amples ed. A Paris: Chez Guillaume Cavelier pere.

Quong, Jonathan (2011). "Left-Libertarianism: Rawlsian Not Luck Egalitarian." Journal of Political Philosophy 19 (1): 64-89.

Ramsey Boniface (1997). Ambrose. London: Routledge.

Rand Ayn (2018). Atlas Shrugged New American Library hardcover edition. Deluxe ed. New York: New American Library.

Rawls John and Erin Kelly (2001). Justice As Fairness : A Restatement. Cambridge Mass: Harvard University Press.

Rawls, John (1999). A Theory of Justice: Revised Edition. Harvard University Press.

Raz, Joseph (1986). The authority of law: essays on law and morality. Oxford, Clarendon.

Risse, Mathias (2004). Does left-libertarianism have coherent foundations? Politics, Philosophy and Economics 3 (3):337-364.

Roark, Eric (2013). Removing the Commons: A Lockean Left-Libertarian Approach to the Just Use and Appropriation of Natural Resources. Lexington Books.

Roemer, John (2017). "Socialism Revised." Philosophy and Public Affairs 45, no. 3, 261-315.

Rosenblatt H. (2018). The lost history of liberalism : from ancient rome to the twenty-first century. Princeton University Press.

Rosenthal, Chelsea (2018). Why Desperate Times (But Only Desperate Times) Call for Consequentialism. In Mark Timmons (ed.), Oxford Studies in Normative Ethics, Vol. 8. New York, NY, USA: Oxford University Press. pp. 211-235.

Rothbard Murray N. (1978). For a New Liberty : The Libertarian Manifesto. Rev. ed. New York: Collier Books.

Rousseau, Jean-Jacques (1993). The Social Contract; and the Discourses. Translated by G. D. H. Cole. New York: A.A. Knopf : Distributed by Random House.

Sherlock W. (1684). The case of resistance of the supreme powers stated and resolved according to the doctrine of the holy scriptures. Printed for Fincham Gardiner.

Sidgwick, Henry (1962). The Methods of Ethics. Cambridge University Press.

Simmons, A. John (1992). The Lockean Theory of Rights. Princeton University Press.

Sitkoff Robert H and Jesse Dukeminier (2022). Wills Trusts and Estates Eleventh ed. New York: Wolters Kluwer.

Smith, Adam (2013). An Inquiry into the Nature and Causes of Wealth of Nations. Hertfordshire England: Wordsworth Editions.

Smith, Adam, Knud Haakonssen, Karl Ameriks, and Desmond M Clarke (2002). Adam Smith: The Theory of Moral Sentiments. Cambridge: Cambridge University Press.

Sophocles & Taplin O. (2020). Sophocles: Antigone and other tragedies (First). Oxford University Press.

Spafford, Jesse (2021). "Social Anarchism and the Rejection of Private Property." in The Routledge Handbook of Anarchy and Anarchist Thought, edited by Gary Chartier and Chad Van Schoelandt, Routledge.

Spencer Herbert William Henry Hudson David Duncan and Michael Taylor (1996). Herbert Spencer Collected Writings. London: Routledge/Thoemmes Press.

Spinoza Benedictus de Matthew J Kisner and Michael Silverthorne. 2018. Ethics : Proved in Geometrical Order. Cambridge: Cambridge University Press.

Spinoza, Benedictus de. (1895). Benedict de Spinoza: Tractatus Theologico-Politicus, Tractatus Politicus. G. Routledge & Sons.

Stanton, Elizabeth Cady (1848). The Seneca Falls Declaration. Champaign Ill: Project Gutenberg.

Steiner, Hillel (1974). The natural right to equal freedom. Mind 83 (330):194-210.

Steiner, Hillel (1977). The Natural Right to the Means of Production. The Philosophical Quarterly (1950-), 27(106), 41–49.

Steiner, Hillel (1994). An Essay on Rights. Oxford, UK; Blackwell.

Steiner, Hillel (2012). Human rights and the diversity of value. Critical Review of International Social and Political Philosophy 15 (4):395-406.

Steiner, Hillel. (1977). The Structure of a Set of Compossible Rights. The Journal of Philosophy, 74(12), 767–775.

Steiner, Hillel. (2009). Left Libertarianism and the Ownership of Natural Resources. Public Reason. 1.

Steiner, Vallentyne, and Otsuka (2005). “Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried.

Strauss Leo. (1953). Natural Right and History. Chicago: University of Chicago Press.

Suárez, Francisco (2015). Selections from three works : a treatise on laws and god the lawgiver ; a defence of the catholic and apostolic faith ; a work on the three theological virtues faith hope and charity. Translated by Pink T. Williams G. L. & Davis H. Liberty Fund.

Thucydides (1910), The Peloponnesian War. Translated by Richard Crawley. New York NY: Open Road Integrated Media.

Tierney B. (2001). The idea of natural rights : studies on natural rights natural law and church law 1150-1625. William B. Eerdmans.

Tierney, Brian. (2006). "Dominion of Self and Natural Rights Before Locke and After." In: MÄkinen, V., Korkman, P. (eds) Transformations in Medieval and Early-Modern Rights Discourse. The New Synthese Historical Library, vol 59. Springer, Dordrecht.

Tucker Robert C Karl Marx and Friedrich Engels (1978). The Marx-Engels Reader Second ed. New York: W. W. Norton & Company.

Vallentyne Peter and Hillel Steiner (2000). The Origins of Left-Libertarianism : An Anthology of Historical Writings. Houndmills: St. Martin's Press.

Vallentyne, Peter (2000). “Left-Libertarianism: A Primer.” In Left-Libertarianism and Its Critics:

The Contemporary Debate. Palgrave Publishers.

Vallentyne, Peter (2009). Left-Libertarianism and Liberty. In Thomas Christiano & John Christman (eds.), Debates in Political Philosophy. Blackwell. pp. 17--137.

vallentyne, Peter (2009). Left-Libertarianism as a Promising Form of Liberal Egalitarianism. Philosophical Exchange:56-71.

van der Vossen, Bas (2015). “Imposing Duties and Original Appropriation.” Journal of Political Philosophy, vol. 23, no. 1, pp. 64-85.

van der Vossen, Bas (2021). As Good As ‘Enough and As Good’. Philosophical Quarterly 71 (1):183-203.

van Gelderen, Martin. (1992). The political thought of the dutch revolt 1555-1590. Cambridge University Press.

Villey, Michel (1977). Leçons D'histoire De La Philosophie Du Droit. Nouv. éd ed. Paris: Dalloz.

Vlastos, Gregory (1995). Studies in Greek Philosophy, Volume Ii: Socrates, Plato, and Their Tradition. Princeton University Press.

Voltaire and David Williams (1994). Political Writings. Cambridge England: Cambridge University Press.

Vrousalis, Nicholas (2021). Socialism Unrevised: A Reply to Roemer on Marx, Exploitation, Solidarity, Worker Control. Philosophy and Public Affairs 49 (1):78-109.

Waldron, Jeremy (1987). Nonsense Upon Stilts : Bentham, Burke and Marx on the Rights of Man. Routledge.

Waldron, Jeremy (1988). The Right to Private Property. Oxford New York: Clarendon Press ; Oxford University Press.

Waldron, Jeremy (2002). God, Locke, and Equality: Christian Foundations in Locke's Political Thought. Cambridge University Press.

Wellman, Carl (1985). A theory of rights: persons under laws, institutions, and morals. Totowa, Rowman and Allanheld.

Wellman, Carl (1995). Real rights. New York, Oxford University Press.

Wenar, Leif (2005). The Nature of Rights. Philosophy & Public Affairs. 33, 223-252.

Wenar, Leif (2013). The nature of claim-rights. Ethics. 123, 202-229.

Wolff, Robert Paul (ed.) (1970). In Defense of Anarchism. University of California Press.

Wollstonecraft, Mary and Deidre Lynch. 2009. A Vindication of the Rights of Woman : An Authoritative Text Backgrounds and Contexts Criticism Third ed. New York: W.W. Norton.

Wright Erik Olin. 2010. Envisioning Real Utopias. London: Verso.

Zhang, You (2014). "The Effects of the Two-Rate Property Tax." Lincoln Institute of Land Policy.