

G.A. Cohen (1986)

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↳ Frank S. Lucas (ed.)

[5]

Self-Ownership, World-Ownership, and Equality

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The first man who, having enclosed a piece of land, took it into his head to say, "This is mine," and found people simple enough to believe him, was the true founder of civil society. The human race would have been spared endless crimes, wars, murders, and horrors if someone had pulled up the stakes or filled in the ditch and cried out to his fellow men, "Do not listen to this impostor! You are lost if you forget that the fruits of the earth belong to everyone, and the earth to no one!"

—Jean-Jacques Rousseau,
Discourse on Inequality

... the original "appropriation" of opportunities by private owners involves investment in exploration, in detailed investigation and appraisal by trial and error of the findings, in development work of many kinds necessary to secure and market a product—besides the cost of buying off or killing or driving off previous claimants.

—Frank H. Knight, "Some Fallacies
in the Interpretation of Social Cost"

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I. Introduction

1. In Part I of this paper I describe the range and motivation of a research project on which I am currently engaged. In Part II I offer a relatively finished version of its first installment.

The themes of the project are suggested by the title of the paper. I embarked on the project in an attempt to cope with the disturbance to my then dogmatic socialist convictions produced, in 1974, by a reading of Robert Nozick's *Anarchy, State, and Utopia*.

Nozick's political philosophy gains much of its polemical power from the attractive thought that, so it seems to me, constitutes its foundation. That thought is that each person is the morally rightful owner of himself. He possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way such a slaveholder is entitled, legally speaking, to dispose over his slave. Such a slaveholder may not direct his slave to harm other people, but he is not legally obliged to place him at their disposal to the slightest degree: he owes none of his slave's service to anyone else. So, analogously, if I am the moral owner of myself, and therefore of this right arm, then, while others are entitled to prevent it from hitting people, no one is entitled, without my consent, to press it into their own or anybody's else's service, even when my failure to lend it voluntarily to others would be morally wrong.

This last point is important, and it vitiates a certain amount of indignant criticism of Nozick. He does not encourage people not to help one another. Nor does he think that they should not be blamed if they never do so. He merely forbids constrained helping, such as is involved—or so Nozick thinks—in redistributive taxation.¹ He insists that no one enjoys an enforceable noncontractual claim on anyone else's service; or, equivalently, that any enforceable claim on another's service derives from an agreement that binds to the provision of that service. But he does not forbid, or even, Ayn Rand-like, discourage, mutual aid.

Note that the thesis of self-ownership does not say that all that is owned is a self, where "self" is used to denote some particularly intimate, or essential, part of the person. The slaveholder's ownership is not restricted to the self, so construed, of the slave, and the moral self-owner is, similarly, possessed of himself entire, and not of his self alone. The term "self" in the name of the thesis of self-ownership has a purely reflexive significance. It signifies that what owns and what is owned are one and the same, namely, the whole person. There is, consequently, no need to establish that my arm or my power to play basketball well is a proper part of my self, in order for me to claim sovereignty over it under the thesis of self-ownership.

The philosophy I am describing also holds that persons can become, with equally strong moral right, sovereign owners of unequal shares of natural resources, as a result of proper exercises of their own and/or others' personal powers; and that, when private property in natural resources is rightly generated, its morally privileged origin insulates it against expropriation or limitation. Now a union of self-ownership and unequal distribution of worldly resources readily leads to indefinitely great inequality of private property in external goods of all kinds, and hence to inequality of condition, on any view of what would constitute equality of condition.² It follows that inequality of condition is, when properly generated, morally protected, and that the attempt to promote equality of condition at the expense of private property is an unacceptable violation of people's rights. Removing someone's legitimately acquired private property may not be as outrageous as removing his arm, but it is an outrage of the same kind. It is wrong for substantially the same reason.

Now a common left response to Nozick is to recoil from the inequality his view allows, to affirm some sort of equality of condition as a fundamental value, and to reject (at least unqualified) self-ownership

2. By "equality of condition" I intend a disjunctive notion, two disjuncts of which are subjected to exceptionally careful study by Ronald Dworkin in "Equality of Welfare" and "Equality of Resources," which appeared in the Summer and Fall issues (respectively) of *Philosophy and Public Affairs*, 1981. As Dworkin notes ("Equality of Welfare," p. 188), other conceptions of equality of condition are possible, but any conception meriting that name is surely incompatible with great inequality of private property in external goods.

1. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 169.

because of the inequality of condition it supposedly generates. The conclusion is that people lack the exclusive right to their own powers that goes with self-ownership, and that force may be applied against naturally well-endowed people not only to prevent them from harming others but also to ensure that they help them, so that equality of condition (or not too much inequality of condition) will be secured.

But this line of response to Nozick, in which some sort of equality of condition is affirmed and a denial of self-ownership is derived from it, suffers from two related disadvantages. It has, first, the polemical disadvantage that it is powerless against those who occupy Nozick's position, since they have not failed to notice that their view contradicts (what Nozick would call) the end-state egalitarianism here pressed against it. And the other disadvantage of the stated strategy is that the thesis of self-ownership has, after all, considerable intuitive strength. Its antecedent appeal rivals that of whatever principles of equality it is thought to contradict, even for many committed defenders of such principles: that is why *Anarchy, State, and Utopia* unsettles so many of its liberal and socialist readers.

In my experience, leftists who disparage Nozick's essentially unargued affirmation of each person's rights over himself lose confidence in their unqualified denial of the thesis of self-ownership when they are asked to consider who has the right to decide what should happen to, for example, their own eyes. They do not immediately agree that, were eye transplants easy to achieve, it would then be acceptable for the state to conscribe potential eye donors into a lottery whose losers must yield an eye to beneficiaries who would otherwise be not one-eyed but blind. The fact that they do not deserve their good eyes, that they do not need two good eyes more than blind people need one, and so forth; the fact, in a word, that they are merely lucky to have good eyes does not always convince them that their claim on their own eyes is no stronger than that of some unlucky blind person.³ But if standard left

3. I am here trying to motivate sympathy for the thesis of self-ownership, not to provide a knock-down argument for it. There are ways of resisting compulsory eye transplanting without affirming (full) self-ownership, but they require more reflection than leftists usually spend on these matters. One way is to hold that noncontractual duties to others begin only once one's own basic needs are satisfied, and that having two eyes is a basic need. Another way is sketched by Ronald Dworkin at pp. 38-39

objections to inequality of resources, private property, and ultimate condition are taken quite literally, then the fact that it is sheer luck that these (relatively) good eyes are mine should deprive me of special privileges in them.

Now one might infer, not that the usual objections to considerable inequality of private property in external things are without force, but that their force is due to the comparative antecedent weakness of the case for exclusive rights in external things. It is an intelligible presumption that I alone am entitled to decide about the use of this arm and to benefit from its dexterity, simply because it is my arm. Nor am I therefore confusing the factual truth that this is my arm with the normative claim that I should have exclusive disposal of it. My contention is that the factual truth is a *prima facie* plausible basis for, not a logical entailment of, the stated normative claim. But there is no comparable presumptive normative tie between any person and any part or portion of the external world. Hence one may plausibly say of external things, or at any rate of external things in their initial state, of raw land and natural resources (out of which all unraw external things are, of course, made), that no person has a greater *prima facie* right in them than any other does; whereas the same thought is less compelling when it is applied to human parts and powers. Many have found persuasive the thesis of Rousseau that the original formation of private property was a usurpation of what rightly should be held in common, but few have discerned a comparable injustice in a person's insistence on sovereignty over his own being.

These reflections suggest that those who stand to the left of Nozick might consider a different reaction to him from the one I described earlier. Instead of premising that equality of condition is morally mandatory and rejecting self-ownership on that basis, they might relax their opposition to the idea of self-ownership, but resist its use as the foundation of an argument that proceeds, via a legitimization of inequality in ownership of external resources, to defend the inequality of condition they oppose. They might try to see whether, or to what extent, they can achieve the equality of condition they prize by combining an egal-

of his "In Defence of Equality," *Social Philosophy and Policy* (Autumn 1983): 24-40.

itarian approach to worldly resources with an affirmation, or at any rate a nondenial, of the thesis of self-ownership.

I discuss elsewhere economic constitutions that seem to respect both self-ownership and equality of worldly resources.⁴ Any such constitution must be opposed both by Nozick and other entitlement theorists on the one hand, and by John Rawls and Ronald Dworkin on the other. For both kinds of theorists are unwilling to distinguish as sharply as might be thought apt between the moral status of ownership of external resources and the moral status of ownership of persons, though they assimilate the two in opposite directions. Nozick endows rightful private ownership of external resources with the moral quality that belongs, more plausibly, to people's ownership of themselves, and Rawls and Dworkin treat people's personal powers as subject, albeit with important qualifications,⁵ to the same egalitarian principles of distribution that they apply, less controversially, to external wherewithal. The suggested intermediate position is with Nozick and against Rawls and Dworkin in its affirmation (or at least nondenial) of self-ownership, but with Rawls and Dworkin and against Nozick in regarding the distribution of nonhuman resources as subject to egalitarian appraisal.

Now my present belief is that no such intermediate constitution is capable of ensuring equality of condition, and it follows that the attractive response to Nozick projected two paragraphs back is not, in fact, a viable one. An intermediate constitution preserves self-ownership but equalizes rights in worldly resources. In "Self-Ownership: II" I consider two ways of achieving that latter equalization. One is by placing all external resources under the joint ownership of everyone in society, each having an equal say over what is to be done with them. That provision might, by itself, ensure equality of condition, but it seems to be inconsistent with true self-ownership. For people can do (virtually?) nothing without using parts of the external world. If, then, they require the leave of the community to use it, then, effectively, they do not own themselves, since they can do nothing without com-

4. See "Self-Ownership, World-Ownership, and Equality: Part II," forthcoming in *Social Philosophy and Policy*.

5. Rawls and Dworkin assert a certain sovereignty of persons over themselves in their affirmation of political and other liberties, such as choice of career, and granting those liberties has distributive implications.

munal authorization.⁶ Hence no truly intermediate constitution will prescribe this first way of equalizing rights in external resources.

Another way of equalizing rights in external resources is by distributing an equal amount of them to each person. Then each, if self-owning, could do with his share as he pleases. This yields a truly intermediate constitution, but one that, I argue, fails to secure the equality of condition socialists prize. I therefore conclude, tentatively, and on the basis of an admittedly incomplete review, that self-ownership and socialist equality are incompatible. Anyone who supports equality of condition must oppose (full) self-ownership, even in a world in which rights over external resources have been equalized.

It follows that Marxists, who surely do support some form of equality of condition, must address the issue of self-ownership more frontally than it is their practice to do. For while Marxists do not, of course, expressly agree with the thesis of self-ownership, they proceed at crucial points as though it were unnecessary for them to disagree with it; unnecessary, that is, to distinguish themselves at a fundamental normative level from left-wing liberals, in a partly natural and partly regimented sense of "left-wing liberals," which I shall now try to define.

Consider three types of entity over which a person might claim sovereignty or (what is here equivalent to it) exclusive private property: the resources of the external world, his own person and powers, and other people. Liberalism, to idealize one of its traditional senses, may be defined as the thesis that each person has full private property in himself (and, consequently, no private property in anyone else). He may do what he likes with himself provided that he does not harm others. Right-wing liberalism, of which Nozick is an exponent, adds, as we have seen, that self-owning persons can acquire equally strong moral rights in external resources. Left-wing liberalism is, by contrast, egalitarian with respect to raw external resources: Henry George, Léon Walras, Herbert Spencer (in his earlier phase), and Hillel Steiner illustrate this position. Rawls and Dworkin are commonly accounted

6. The propertyless proletarian who cannot use means of production without a capitalist's leave suffers a similar lack of effective self-ownership. It follows, as I argue in "Self-Ownership: II," that, since Nozick regards proletarianhood as consistent with all the rights he thinks people have, he does not himself, at bottom, defend substantive self-ownership, but something much thinner and far less attractive.

liberals, but here they must be called something else, such as social democrats, for they are not liberals in the traditional sense just defined, since they deny self-ownership in one important way. They say that because it is a matter of brute luck that people have the talents they do, their talents do not, morally speaking, belong to them, but are, properly regarded, resources over which society as a whole may legitimately dispose.

Now Marxists have failed to oppose left-wing liberalism with regard to two large issues, and they have therefore, in respect of those issues, not stood as far left as Rawls and Dworkin do on the spectrum described above, even if one cannot say that they stand to the right of Rawls and Dworkin, since lack of comment by Marxists on the thesis of self-ownership makes it impossible to locate them as definitely as that.

The first issue is the critique of capitalist injustice. In the Marxian version of that critique, the exploitation of workers by capitalists derives entirely from the fact that workers lack access to physical productive resources and must therefore sell their labor power to capitalists, who enjoy a class monopoly in those resources. Hence, for Marxists, the injustice of capitalism is ultimately a matter of unfairness with respect to rights in external things, and its exposure requires no denial of the liberal thesis of self-ownership. Unlike social democrats, who tend to conceive state intervention on behalf of the less well off as securing justified constrained helping, and who must therefore reject the thesis of self-ownership, Marxists regard the badly off as not unlucky but misused, forcibly dispossessed of the means of life, and therefore harmed, and, under that construal of their plight, the demand for its redress needs no foundation stronger than left-wing liberalism.

The second issue is the nature of the ideal society. In the Marxist conception of it external resources are communally owned, as in the leftest of left liberalisms, and the individual is effectively sovereign over himself (even if not as a matter of constitutional right), since the free development of each is, in the famous phrase, the condition of the free development of all. A premise of superfluent abundance makes it unnecessary to press the talent of some into the service of the prosperity of others for the sake of equality of condition.

But Marxist nonopposition to left liberalism on the two issues just described cannot be sustained. Consider, first, the matter of capitalist injustice. What Marxists regard as exploitation will indeed result when

people are forcibly denied the external means of producing their existence. One case of that is what Marx called "primitive accumulation," the process whereby, in his account of it, a relatively independent British peasantry was turned into a proletariat by being deprived of its land. But such dispossession, while assuredly a sufficient condition of what Marxists think is exploitation, is not a necessary condition of it. For if all means of production were distributed equally across the population, but people retained self-ownership, then differences in talent and luck and time preference and degrees of willingness to take risk would bring about differential prosperity, which would, in due course, enable some to hire others on Marxian-exploitative terms.⁷ Or, to start with a more feasible hypothesis, if all means of production were socially owned and leased to workers' cooperatives for finite periods, then, once again, differences other than ones in initial resource endowments could lead to indefinitely large degrees of inequality of position, and, from there, to Marxian exploitation. So Marxists have exaggerated the extent to which what they consider exploitation depends on an *initial* inequality of rights in worldly assets.

(I digress briefly here to gesture at a problem that I hope to treat more carefully elsewhere. Marxists hold that the value of commodities is constituted entirely by the labor devoted to their production. They deny that worldly resources contribute to the creation of value. The problem is whether that denial is compatible with the extreme importance assigned to worldly resources in the Marxist diagnosis of the root cause of exploitation. Suppose that nature offered up its resources in such a form that there was no reason to alter them by labor. Then, if anything created value, it would have to be nature, or the resources themselves, rather than labor.⁸ And only then would an equal distribution of worldly resources virtually ensure the final equality of condition that Marxists favor. To put the point more generally: inequality of condition is the harder to defend precisely to the extent that labor is *not* responsible for the value

7. At least at levels of development of the productive forces below those at which, according to Marxists, capitalism, and therefore capitalist exploitation, will not obtain.

8. I do not myself think that anything, properly speaking, *creates* value, and that is one reason why the point developed in the paragraph above needs more careful statement. Another is that the paragraph pays no attention to the distinction between use value and exchange value, which is relevant here. (For skepticism about the notion of value *creation*, see my "Labour Theory of Value and the Concept of Exploitation," *Philosophy and Public Affairs* 8 [Summer 1979], especially pp. 350, 359).

of commodities. The claim people can make to the fruits of their own labor is the strongest basis for inequality of distribution, and the claim is difficult to reject as long as self-ownership is not denied. There is, then, an apparent discrepancy between the Marxist case for the injustice of capitalism and the Marxist wish to deprecate the significance of nonlabor inputs as a source of value.)

Marxism's nonopposition to left liberalism in the matter of its picture of the good society is also hard to sustain. For confrontation with left liberalism is avoidable only as long as Marxists continue to maintain that abundance will ensure complete compatibility among the interests of differently endowed people, and abundance on the required scale now seems unattainable. A lesser abundance, which enables resolutions of conflicts of interest without coercion, may well be possible.⁹ But such resolutions, to secure equality of condition, would lay on the naturally well-endowed obligations to labor for the benefit of those who are not. The former might fulfill their equality-serving obligations without being forced to do so, but they would nevertheless be required to fulfill them as a matter of the constitution of society, and they would, if necessary, be forced to fulfill them, even if (because people would be sufficiently just and altruistic)¹⁰ force would never in fact be necessary. And a society that is so constituted violates the principle of self-ownership which is common to all liberalism as liberalism was defined above.

Marxism, then, requires a critique of (left) liberalism. It must develop satisfactory answers to two questions, which it has scarcely raised. The first is, to what extent does a commitment to socialism require rejection of the engaging liberal conception of each person's sovereignty over himself? And the second is, how can rejection of liberalism, to the required extent, be justified?

A provision of answers to those questions would complete my research project, as I currently envisage it. But they will not be dealt

9. Or so I believe, but Marx himself may have been more pessimistic. He seems to have thought that anything short of an abundance that removed all conflicts of interest would guarantee continued social strife, a "struggle for necessities and all the old filthy business" (*The German Ideology* [London, 1965], p. 46). Was it because he was so needlessly pessimistic about anything less than utter abundance that he needed to be so groundlessly optimistic about the possibility of that abundance?

10. They would not have to be very just and altruistic because I have premised an abundance that, while smaller than what Marx prophesied, is great enough to ensure that very considerable self-sacrifice for the sake of equality would not be necessary.

with here. My present, more limited task is to argue that whether or not one must, in the end, affirm self-ownership, affirmation of it does not warrant the inegalitarian distribution of worldly resources with which Nozick combines it. This I show by means of a critique of Nozick on appropriation, to which I now turn.

II. Nozick on Appropriation

2. Libertarians, or, to name them more accurately, entitlement theorists,¹¹ are prone to maintain that the market legitimates the distribution of goods it generates. But every market-generated distribution is only a redistribution of titles that buying and selling are themselves powerless to create, and the upshot of market activity is consequently no more legitimate than the titles with which it operates.¹² But how might the titles that necessarily precede market activity acquire legitimacy in the first place?

The question of what would constitute a rightful original acquisition of private property enjoys a certain priority over the question of what constitutes a rightful subsequent transfer of it, on any definition of private property, since unless private property can be formed, it cannot, a fortiori, be transferred. But, in virtue of the way entitlement theorists define private property, the question of how it may be appropriated should, in their case, have even more priority than it generally does over the question of how it may be transferred. For private property in entitlement discourse is private property in what is sometimes called "the full liberal sense," fitted out with all the rights that could conceivably attach to private property; and once an original acquisition of

11. I argue that they do not deserve the libertarian label at pp. 225–29 of "Illusions about Private Property and Freedom," in John Mepham and David-Hillel Ruben, eds., *Issues in Marxist Philosophy*, vol. 4 (Hassocks, Sussex, 1981). See also pp. 126–27, 134–35 below.

12. As Marx and Spencer noted: "... the title itself is simply transferred, and not created by the sale. The title must exist before it can be sold, and a series of sales can no more create this title through continued repetition than a single sale can" (Karl Marx, *Capital* [Moscow, 1962], 3:757). "Does sale or bequest generate a right where it did not previously exist? ... Certainly not. And if one act of transfer can give no title, can many? No: though *nothing* be multiplied for ever, it will not produce *one*" (Herbert Spencer, *Social Statics* [London, 1851], p. 115).

such robust private property is achieved, then no real problem about its transfer arises, since the full complement of private property rights includes virtually unfettered rights of transfer and bequest. Accordingly, the topic of original appropriation is a most important crux for Nozick's philosophy, and it is therefore startling that he begins his brief discussion of it by remarking that he will now "introduce an additional bit of complexity into the structure of the entitlement theory."¹³ That "additional bit" is arguably the most important part of the theory on offer.

Now the problem of initial appropriation would not arise if a certain false thing that Nozick says earlier were true, namely, that "things come into the world already attached to people having entitlements over them."¹⁴ That is relevantly false, since people create nothing ex nihilo, and all external private property either is or was made of something that was once no one's private property, either in fact or morally (or was made of something that was made of something that was once not private property, or was made of something that was made of something that was made of something that was once not private property, and so on).¹⁵ In the prehistory of any existing piece of private property there was at least one moment at which something privately unowned was taken into private ownership. If, then, someone claims a Nozick-like right to something he legally owns, we may ask, apart from how he in particular came to own it, with what right it came to be *anyone's* private property in the first place.

Now it is easy to doubt that much actually existing private property was formed in what entitlement theorists could plausibly claim was a legitimating way. But let us here set aside questions about actual history. Let us ask, instead, by what means, if any, full liberal private property could legitimately be formed.

13. Nozick, *Anarchy, State, and Utopia*, p. 174.

14. *Ibid.*, p. 160.

15. Hillel Steiner formulates the essential point as follows: "It is a necessary truth that no object can be made from nothing, and hence that all titles to manufactured or freely transferred objects must derive from titles to natural and previously unowned objects" ("Justice and Entitlement," in Jeffrey Paul, ed., *Reading Nozick* [Totowa, N.J.: Rowman & Littlefield, 1981], p. 381). See, too, his "Natural Right to the Means of Production," *Philosophical Quarterly* 27 (1977): 44. Nozick himself recognizes the relevant truth elsewhere: "Since as far back as we know, everything comes from something else, to find an origin is to find a relative beginning, the beginning of an entity as being of a certain kind *K*" (*Philosophical Explanations* [Oxford, 1981], p. 660 [11]).

Nozick's answer to that question is part of his total theory of justice in holdings. According to that theory, a distribution of property is to be defended or criticized not in the light of considerations of need or reward for effort or the like, but by reference to information about the whole past history of the objects in the distribution.¹⁶ With respect to a given item of private property, we obtain the required information when we learn whether or not its owner acquired it justly, either from nature (call such acquisition *appropriation*) or from another who held it justly, because he in turn similarly acquired it justly from nature or from another who held it justly, because he in turn . . . (and so on, as before). Just holding depends on originally just appropriation and subsequently just *transfer*, except where the holding is a result of redistribution justified by injustice in past acts of appropriation and/or transfer.

Nozick devotes nine densely packed pages to the topic of just appropriation. Considering how important appropriation is for his theory, and bearing in mind Nozick's powers of exposition and advocacy, the pages are remarkably unsatisfactory. I do not mean merely that it is possible to criticize Nozick's argument, though that is certainly true. I mean that the pages are wanting in two more purely expository respects. First, Nozick distinguishes awkwardly between various provisos on acquisition without noting other noteworthy provisos that belong to the same conceptual area, and, as a result, without producing agreeably exclusive and exhaustive distinctions.¹⁷ And, second, it is not always

16. Information of the required kind is, of course, to a large extent inaccessible, and this makes it hard to derive policy implications from Nozick's theory, but it is not obvious that it weakens the theory itself, since it might belong to the nature of justice that it is typically very hard to tell whether or not an existing distribution of property is just. (Compare the argument sometimes wrongly thought to be decisive against utilitarianism, that it is impossible in practice to determine in advance—or even in arrears—the comparative consequences of available courses of action.)

17. Here is a partial justification of that charge. (Nonaficionados of Nozick exegesis may profitably ignore this footnote, for which his p. 176 is required reading.) At p. 176 of *Anarchy, State, and Utopia*, Nozick contrasts two ways in which "someone may be made worse off by another's appropriation": "first, by losing the opportunity to improve his situation by a particular appropriation or any one; and second, by no longer being able to use freely (without appropriation) what he previously could." He then proceeds to distinguish between a "stringent" (here called *S*) and a "weaker" (*W*) proviso on acquisition. Call the appropriator *A* and any person whose position might

clear when he is supposed to be expounding Locke and when developing his own position. He is not utterly forthright about how satisfactory he thinks various provisos on acquisition are. It is consequently hard to know how much he thinks he achieves in these critically important

be worsened by A's appropriation B. Then W and S may be formulated as follows:

W: A must not cause B to lose the opportunity to use freely what he previously could.

S: W, and A must not cause B to lose the opportunity to improve his situation by appropriating something, unless B is adequately compensated for any such loss of opportunity.

Now S is a conjunction, one conjunct of which is W, and the rest of which I shall call S'. Then note that S' differs from W in three independent ways. First, S' focuses on B's opportunities to appropriate things, whereas W focuses on his opportunities to use them. Second, S' requires that B not lose opportunities to improve his situation, whereas W does not mention possible improvements and therefore presumably forbids only making B worse off than he was, and not (also) making him worse off than he would or might have become. And, finally, S' contains a compensation clause ("unless..."), whereas W does not. (Nozick may wrongly have thought that B could improve his condition only by appropriating something, and, also wrongly, that no compensation could be added to W; in which case the three differences between S' and W would not be independent.)

Both the second and third differences have consequences unnoticed by Nozick, but I shall here fix on the third difference only, that S' has and W lacks a compensation clause. It has the effect that W is weaker than S only because W is a conjunct of S, and not also because, as Nozick surely thought, W is weaker than S'. W is not weaker than S', since the compensation clause in S' generates a way of satisfying S' without satisfying W.

I think Nozick has confused the difference between W and S' with the difference between S' and S'', S'' being S shorn of both W and the compensation clause:

S'': A must not cause B to lose the opportunity to improve his situation by appropriating something.

Here are three reasons for thinking that Nozick has confused the W/S' and S'/S'' differences:

(a) Nozick distinguishes between S and W in order to meet a regress argument he presents at p. 176 and to which the reader is referred. He says that S generates the regress and W does not. But it is not true that S generates the regress: its compensation clause offers appropriators the possibility of compensating those who can no longer appropriate, and therefore permits the final appropriation prohibition of which is necessary to get the regress going. It is S'', not S' (or, hence, S), that makes the regress inescapable.

(b) On p. 178 Nozick states a proviso which I quote below and which, he says, is "similar to the weaker of the ones we have attributed to Locke." But the p. 178 proviso resembles not W but S', its relative weakness being due solely to its compensation clause.

pages. But what matters most, of course, is how much he in fact achieves, whatever he may think.

Nozick interprets Locke conventionally, as holding that an agent may appropriate what he mixes his labor with, provided that he leaves enough and as good for others and does not waste what he takes. He comments skeptically on the labor mixture notion, expresses puzzlement at Locke's insistence that appropriators must avoid waste, and spends most of his time discussing and refining the provision that they must leave enough and as good for others.

I think Nozick is right to concentrate his attention on the "enough and as good" provision. For objection to an appropriation is more likely to fix on its impact on others than on the means whereby it was brought about. And if, in particular, its impact on others is harmless, as satisfaction of Locke's provision would seem to ensure, then it will be difficult to criticize it, regardless of how it was effected, and even, therefore, if no labor was expended in the course of it. It is, moreover, worth remarking that some of Locke's most plausible examples of legitimate appropriation cannot reasonably be said to result from labor, unless all acting on the world is regarded as laboring. For even on a reasonably broad view of what labor is, picking up a few fallen acorns and immersing one's head in a stream and swallowing some of its water are not good examples of it.¹⁸ Or, if they are indeed labor, then they are not labor that it would be plausible to cite in defense of the relevant appropriations. If you were asked what justified your appropriation of the water from the stream, you could not credibly reply: "Well, to begin with, the labor of dunking my head and opening my mouth." Your powerful reply is to say that no one has good reason to complain about your appropriation of the water, since no one is negatively affected by it.

(c) Whereas W indeed invalidates the regress argument, it does forbid transformation of all common land into private property, at least if some end up with no private property. But in the kind of capitalist society that Nozick thinks defensible just such privatization of all common land has occurred, and there exist propertyless people without access to anything still held in common. Therefore W cannot serve Nozick's polemical purposes, whereas S', because of its compensation clause, can.

18. See pars. 28, 29, and 33 of the *Second Treatise of Government*. (Par. 33 is given in full below.)

So I agree with Nozick that "the crucial point is whether an appropriation of an unowned object worsens the situation of others."¹⁹ Disagreement will come on the question of what should here count as worsening another's situation.

Nozick refines the crucial condition as follows: "A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened."²⁰ He makes no attempt to specify the nature of the "normal" acquisition process, but, as I just suggested, that is not very important, since, whatever process is required, controversy is likely to settle on the provision just quoted. Hence, although it is not so billed,²¹ with the quoted statement, with Nozick's elaboration of it, is Nozick's doctrine of appropriation; or, more cautiously, if Nozick presents any doctrine of appropriation, then the quoted statement is the element in his doctrine which needs special scrutiny.

Nozick's further discussion justifies the following comments on his proviso. It requires of an appropriation of an object *O*, which was unowned and available to all, that its withdrawal from general use does not make anyone's prospects worse than they would have been *had O remained in general use*. If no one's position is in any way made worse than it would have been had *O* remained unowned, then, of course, the proviso is satisfied. But it is also satisfied when someone's position is in some relevant way worsened, as long as his position is in other ways sufficiently improved to counterbalance that worsening. Hence I appropriate something legitimately if and only if no one has any reason to prefer its remaining in general use, or whoever does have some reason to prefer that gets something in the new situation which he did not have before and which is worth at least as much to him as what I have caused him to lose. To illustrate: I enclose the beach, which has

19. Nozick, *Anarchy, State, and Utopia*, p. 175.

20. *Ibid.*, p. 178.

21. Or perhaps it is so billed. For Nozick's pages on appropriation begin, as I reported earlier, with the announcement that "an additional bit of complexity" must now be introduced "into the structure of the entitlement theory" and end with an announcement that "this completes our indication of the complication in the entitlement theory introduced by the Lockean proviso" (*ibid.*, pp. 174, 182). If the "complexity" of p. 174 is the "complication" of p. 182, then the condition on appropriation stated on p. 178 is Nozick's theory of appropriation, at least insofar as he has one.

been common land, declare it my own, and announce a price of one dollar per person per day for the use of it (or, if you think there could not be dollars in what sounds like a state of nature situation, then imagine that my price is a certain amount of massage of my bad back). But I so enhance the recreational value of the beach (perhaps by dyeing the sand different attractive colours, or just by picking up the litter every night) that all would-be users of it regard a dollar (or a massage) for a day's use of it as a dollar well spent: they prefer a day at the beach as it now is in exchange for a dollar to a free day at the beach as it was and as it would have remained had no one appropriated it. Hence my appropriation of the beach satisfies Nozick's proviso.

Now it might seem that appropriations satisfying Nozick's condition could not conceivably generate a grievance. But that is an illusion. For Nozick's proviso on acquisition is not as demanding as Locke's. To see how Locke intended his proviso, and how solicitous it is toward nonappropriators, consider paragraph 33 of the *Second Treatise*:

Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough and as good left; and more than the yet unprovided could use. So that in effect there was never the less left for others because of his enclosure for himself. For he that leaves as much as another can make use of, does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left to quench his thirst; and the case of land and water, where there is enough of both, is perfectly the same.²²

22. Locke's proviso does not mean what Steiner says it means when he writes that "it imposes an egalitarian structure on individuals' appropriative entitlements, prescribing to each a quantitatively and qualitatively similar bundle of natural objects" ("Natural Right," p. 45). One must leave for others enough and as good to use and/or appropriate *as they had before one appropriated*, not enough and as good to appropriate, *per capita*, *as one appropriates oneself*. Satisfaction of Locke's provision entails satisfaction of the provision Steiner misattributes to him, but the converse entailment fails, and Locke's provision is therefore more stringent than the one Steiner states. (I grant that Locke notes, at paragraph 34, that legitimate appropriators satisfy what Steiner thinks is Locke's proviso, since Locke says that, in the wake of a legitimate appropriation, nonappropriators have "as good left for [their] improvement as was already taken up." But it does not follow that this entailment of what I say is Locke's proviso is his proviso, and I think it textually demonstrable that it is not.)

If people must leave for others resources as good as they had available to them before, then what is added by the apparently further stipulation that they leave them enough?

Note that there is no way at all in which anyone might have been or become better off had the man not drunk that water: as far as others are concerned, his drinking it leaves things exactly as they were. They would not have been better off even if he had given them the water he took, since the stream, we are to imagine, flowed so abundantly that, even if they wanted water, they did not need his.²³

But whereas people cannot be made worse off than they might have been by an appropriation that satisfies Locke's proviso, the same is not true of Nozick's. People can be made seriously worse off than they might have been, even when it is fulfilled. That is because of the phrase I had occasion to italicize earlier: "*had O remained in general use.*" It has the upshot that, as Nozick intends his proviso, *the only counterfactual situation relevant to assessing the justice of an appropriation is one in which O would have continued to be accessible to all.*²⁴ I shall argue that there are other intuitively relevant counterfactuals, and that they show that Nozick's condition is too lax. The possibilities I shall review compose a decisive case against Nozick's theory of private

"Enough" presumably means "enough to survive by the use of," but if resources as good as were previously available are left, then the "enough" stipulation is unsatisfied only if others already lacked enough to live on. It is therefore difficult to see what the force of the "enough" stipulation is.

23. Locke's drinker satisfies a proviso even stronger than Locke's, and one that Nozick's medical researcher (*Anarchy, State, and Utopia*, p. 181), who satisfies Locke's proviso, does not satisfy. That researcher makes a much-needed drug, which no one else knows how to make out, of resources in superfluous supply, and therefore makes no one worse off than he was before by so doing. But, unlike Locke's water taker, he could benefit others, namely, those who need the drug, by giving it to them or selling it to them cheaply. Locke's proviso allows one to take and transform and keep what others had no need of in its untransformed state, even if they need it once it has been transformed. A stronger proviso, satisfied by the water taker but not by the researcher, would allow one to take and transform and keep only what no one had reason to want even after it had been transformed. (Nozick's researcher, in satisfying Locke's proviso, thereby satisfies a proviso much stronger than Nozick's own. It is important to notice that, for otherwise Nozick's proviso might look more innocent than it is.)

24. At p. 181 of *Anarchy, State, and Utopia* Nozick in effect acknowledges that to consider only that counterfactual situation makes the "baseline" above which people must be for private property to be justified very low. (How, by the way, does his confident remark about the baseline on p. 181 square with his expression of agnosticism about its proper height at p. 177? Is he speaking about different baselines, or is one of those two remarks a slip? If different baselines are in issue, I do not understand what the difference between them is.)

property formation, and a case, be it noted, which raises no challenge to the thesis of self-ownership.

3. To see how Nozick's condition operates, and to test it, imagine a two-person world in which there is, initially, Lockean common ownership of its finite quantity of land. Each of the self-owning persons, who are *A* and *B*, draws sustenance from the land without obstructing the sustenance-drawing activity of the other. *A* is able to get *m* from the land, and *B* is able to get *n*, where *m* and *n* are, let us say, numbers of bushels of wheat (or, if you think individual wheat production hard to achieve on common land, think of *m* and *n* as numbers of gallons of cows' milk, or, better, of moose milk, taken from moose that neither *A* nor *B* owns). One might say that *m* and *n* represent what *A* and *B* are able to obtain through exercise of the personal powers each separately owns under common ownership of the land. Note that the relative sizes of *m* and *n*, which reflect the relative personal powers of *A* and *B*, will play no role in the reasoning to follow.

Now suppose that *A* appropriates all the land, or—this being the theoretically crucial amount—an amount that leaves *B* less than enough to live off. He then offers *B* a salary of $n + p$ ($p \geq 0$) bushels to work the land, which *B* perforce accepts. *A* himself gets $m + q$ under the new arrangement, and *q* is greater than *p*, so that *A* gains more extra bushels from the change than *B* does. In other words, *B* loses no wheat and maybe gains some, but in any case *A* gains more than *B* does. The rise in output, from $n + m$ to $n + m + p + q$, is due to the productivity of a division of labor designed by *A*, who is a good organizer. Let us call the situation following *A*'s appropriation the *actual situation*. It is the situation with which we shall compare various counterfactual ones. (The relevant features of the situations to be discussed will be found in Table 1.)

Now does *A*'s appropriation satisfy Nozick's proviso? To see whether it does, we must compare *B*'s condition after *A*'s appropriation with how *B* would have fared had common ownership persisted, and, for simplicity's sake, let us suppose that *B* would have fared exactly as he was already faring: he would have continued to draw just *n* bushels of wheat. Then *A*'s appropriation clearly satisfies Nozick's condition, if the way to reckon the change in *B*'s prospects is by comparing numbers of bushels of wheat. If, however, being subject to the directives of another person is regarded as a relevant effect on *B* of *A*'s appropriation,

Table I

	Actual situation (A's appropriation)	I. Persistence of common ownership	Counterfactual situations		
			II. B's appropriation		
			(a) B's talent = A's talent	(b) B's talent > A's talent	(c) B's talent < A's talent
A gets	$m + q$	m	$m + p$	$m + q + r$	m
B gets	$n + p$	n	$n + q$	$n + p + s$	n
	$(q > p \geq 0)$			$(r > 0; s > 0)$	

then we cannot say whether or not the latter violates Nozick's proviso, since we have not put a value on the disbenefit to *B* of being under *A*'s command. In assessing the gains and losses people sustain following transformations such as the one we are examining, entitlement theorists tend to neglect the value people may place on the kind of power relations in which they stand to others,²⁵ a neglect that is extraordinary in supposed libertarians professedly committed to human autonomy and the overriding importance of being in charge of one's own life. I shall, however, make no further use of this point in my demonstration of the inadequacy of Nozick's theory of private property formation.²⁶ I shall henceforth assess benefit and disbenefit in terms of nothing but numbers of bushels of wheat.

To see that Nozick's condition on appropriation is too weak, consider now a different counterfactual situation, not that in which common use persists but one in which *B*, perhaps concerned lest *A* do so, appropriates what *A* appropriates in the actual situation. Suppose that *B* is also a good organizer, and that had he appropriated *he* could have got an additional q and paid *A* only an additional p (see IIa in Table I). Then although *A*'s appropriation in the actual situation satisfies Nozick's proviso,²⁷ it does not seem that *A* has what he does have on Nozick's

25. See my "Robert Nozick and Wilt Chamberlain: How Patterns Preserve Liberty," in John Arthur and William Shaw, eds., *Justice and Economic Distribution* (Englewood Cliffs, N.J.: Prentice-Hall, 1978), pp. 251-53, 258-60; and Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), pp. 291-303.

26. The point is central to the further criticism of Nozick mounted in "Self-Ownership: II" and briefly indicated in n. 6 above.

27. If, that is, *B*'s loss of liberty is ignored: see the previous paragraph in the text.

view, the right to force *B* to accept it. For why should *B* be required to accept what amounts to a doctrine of "first come, first served"? Perhaps *B* abstained from appropriating out of regard for *A*. Ought *A* to profit only because he is more ruthless than *B*? It should now be clear that Nozick's proviso is too weak.

Other possibilities²⁸ make this clearer still. To take one of them, suppose that *B* is a much better organizer than *A* so that, had *B* appropriated, then each of *A* and *B* would have had more wheat than he does in the actual situation (see IIb in Table I). Nozick's proviso is, nevertheless, satisfied, since whether or not it is satisfied is unaffected by anything that might have happened had *B* appropriated. And this means that Nozick's condition licenses and protects appropriations whose upshots make each person worse off than he need be, upshots that are, therefore, in one good sense, Pareto-inferior.²⁹ *A*, if sufficiently ignorant or irrational to do so, would be entitled to prevent *B* from taking what *A* had appropriated, even if both would become better off if *B* took it.

In constructing the "actual situation" I supposed that the productivity increase it displayed was due to *A*'s organizational talent. But that supposition was unnecessary, and, if we suppose otherwise, then the case against Nozick is seen to be even stronger. Suppose, then, that *B* alone is a good organizer, and that, when *A* has appropriated, he proposes to *B* that *B* design an optimal division of labor and then play his role in it, for the same $n + p$ wage, and that *B*, preferring exploitation to starvation, accepts. Then *A*'s appropriation is still justified under Nozick's proviso, even though here it is the case not merely that *B* could also have engineered a productivity gain but that he actually

28. Not, that is, different counterfactual situations, but different possible upshots of the same counterfactual situation.

29. Pareto-inferiority is an ambiguous notion among economists, who tend not to distinguish between the idea that everyone would *favor* a different situation and the idea that everyone would *benefit from* a different situation (whatever they may themselves think and hence whatever they are inclined to favor). I am using the Pareto notion in the second of these two ways, and what I say is false when it is taken in the first way.

Nozick himself sometimes allows (what would otherwise be?) violations of rights to secure a Pareto-improvement in the present sense, but only when communication with unconsenting but benefiting persons is impossible. See the last full sentence on p. 72 of *Anarchy, State, and Utopia*. But see, too, Eric Mack, "Nozick on Unproductivity," in Paul, ed., *Reading Nozick*, for an argument that Nozick's selective permission of "boundary crossings" with compensation threatens to unfound his defense of the sanctity of private property.

is the one who brings it about. The example shows that, even when privatization generates additional value, the privatizer need not be the real value adder, and, if one thinks that value adders merit reward,³⁰ then one should note that Nozick's condition does not ensure that they get any. To reap all the benefit from any enhancement of production that results from privatization, his just appropriators need not do anything to resources beyond making them their own.

I also supposed that the productive division of labor in force in the actual situation and in *Ila* and *Ilb*, could not have been implemented under Lockean common ownership. That seems to me true by definition. To be sure, *A* and *B* might have agreed to a division of labor without either of them privately appropriating the land. But then, so I would argue, they would, in effect, have appropriated it collectively. They would have instituted a form of socialism, which is another possibility unjustifiably neglected by Nozick, and about which I shall say more in section 4.

But now suppose that *B* lacks *A*'s organizational powers, and that, if he had appropriated the land, he could not have so directed *A* as to generate any increase over what gets produced under common ownership (see *Ilc* of Table 1). Under that assumption, is *A*'s appropriation justified?

It is justified only if (\neq if and only if) we should not regard the land as *jointly owned* at the outset. When land is owned in common, each can use it on his own initiative, provided that he does not interfere with similar use by others: under common ownership of the land no one owns any of it. Under joint ownership, by contrast, the land is owned, by all together, and what each may do with it is subject to collective decision. The appropriate procedure for reaching that decision may be hard to define, but it will certainly not be open to any one of the joint owners to privatize all or part of the asset unilaterally, no matter what compensation he offers to the rest. If you and I jointly own a house, I cannot, against your will, section off a third of it and leave you the rest, even if what I leave is worth more than your share in the whole was. So if joint ownership rather than no ownership is, morally speak-

30. I am not myself here affirming that they do: one need not suppose that value adders should get (some of) the value of what they produce in order to regard them as exploited by those who get it just because they have power over them. See my "Labor Theory of Value," p. 357, n. 21, par. 2.

ing, the original position,³¹ then *B* has the right to forbid *A* to appropriate, even if *B* would benefit by what he thereby forbids. And *B* might have good reasons to exercise his right to forbid an appropriation by *A* from which *B* himself would benefit. For, if he forbids *A* to appropriate, he can then bargain with *A* about the share of output he will get if he relents and allows *A* to appropriate. *B* is then likely to improve his take by an amount greater than what *A* would otherwise have offered him.

So Nozick must suppose that the world's resources are, morally speaking, nothing like jointly owned, but very much up for grabs, yet, far from establishing that premise, he does not even bother to state it, or show any awareness that he needs it.

4. In the section of *Anarchy, State, and Utopia* which precedes the one in which he states the proviso criticized above, Nozick asks and answers a question that is germane to that proviso, although it is obscure whether or not he has that very proviso in mind when he puts the question. The question is whether "the situation of persons [like our *B*] who are unable to appropriate (there being no more accessible and useful unowned objects) [is] worsened by a system allowing appropriation and permanent property."³² Nozick intends thereby to ask whether such people are worse off than they would have been had such a system never developed. His question is roughly equivalent to the question whether the existence of capitalism makes noncapitalists better off than they otherwise would have been.

Nozick replies by marshaling some familiar empirical theses about the utility of private property, the usual claims about risks, incentives, and so forth which represent capitalism as a productive form of economic organization. But, as he points out, he does not invoke these considerations to provide a utilitarian justification of private property, for here they

31. For a partial explication of the idea of joint ownership of the world by all of its inhabitants, and a defense of it against what seem at first to be fatal objections, see John Exdell, "Distributive Justice: Nozick and Property Rights," *Ethics* 87 (January 1977), especially pp. 147-49. The idea is more or less explicit in various articles by Hillel Steiner; see, for example, his "Liberty and Equality," *Political Studies* 34 (1980): 555-69, and "The Rights of Future Generations," in Douglas MacLean and Peter G. Brown, eds., *Energy and the Future* (Totowa, N.J.: Rowman & Littlefield, 1983), pp. 225-41.

32. Nozick, *Anarchy, State, and Utopia*, p. 177.

"enter a Lockean theory to support the claim that appropriation of private property satisfies the intent behind the 'enough and as good left over' proviso."³³ When there is nothing left to appropriate, the situation of those who have appropriated nothing is to that extent worse than it would have been, but the mechanisms of production and distribution under capitalism ensure that they are more than adequately compensated for their loss of freedom of access to resources that are not privately owned.

As explained, the empirical claims about the utility of private property figure here in an argument whose major premise is not utilitarianism. The argument is not: whatever makes people better off is a good thing, and private property makes people better off; but: anyone has the right to appropriate private property when that makes nobody worse off, and appropriation of private property in general makes everyone better off (and therefore not worse off). And Nozick's conclusion, unlike the utilitarian one, is not that a private property system, being best, should be brought into being or, if it exists, kept. It is that if a private property system exists, then the fact that some people own no or little private property in it is not a reason for removing it. (He would say, of those propertyless persons who are forced to sell their labor power, that they will get more in exchange for it from their employers than they could have hoped to get by applying it in a rude state of nature; and, of those propertyless persons whose labor power is not worth buying, that, though they may therefore die, they would have died in the state of nature anyway.)

Even so, because he depends on an empirical minor premise, Nozick's defense of private property turns out to be, like the utilitarian defense of it, potentially vulnerable to empirical counterargument. His major premise is not empirical, but neither is the major premise of the utilitarian defense, which is that whatever makes people better off is a good thing. I point this out because it is often thought to be an attraction of Nozick's political philosophy that, through its emphasis on rights, it finesses empirical questions about consequences which are hard to answer and in which utilitarianism becomes enmired. That is an illusion, since, as we now see, theses about consequences are foundational to Nozick's defense of private property rights, and the rights he asserts consequently lack the clarity and authority he would like us to suppose they have.

33. Ibid.

Nozick's empirical claims are addressed and rebutted, one by one by Hal Varian, who argues that "market socialist" or "people's capitalist" property arrangements are more productive still than the pure capitalism Nozick favors, at any rate under certain conditions.³⁴

But it is not clear that Varian's empirical counterclaims touch the case for capitalism which Nozick builds at page 177, as Nozick intends that case. For Varian compares the regime of capitalist private property not to unstructured common ownership but to an organized non- or merely semicapitalist property system. And if institutionally undeveloped common ownership is the only thing to which we are supposed to compare capitalism when we seek an answer to the question quoted in the first paragraph of this section, as it is indeed the only thing we are allowed to consider when testing Nozick's proviso, then Varian's remarks are, in an immediate sense, beside the point. But only in an immediate sense. For if Varian's counterclaims are irrelevant in the way suggested, then that is only because Nozick is, once again, unreasonably restricting the range of permissible comparison. For why should institutionally primitive common ownership be the only alternative to capitalism which is allowed to count, and not also more structured noncapitalist arrangements? Yet, if the latter are indeed allowed to count, then Nozick's confidence in his case for capitalism and his blithe certainty that capitalism satisfies his proviso,³⁵ may be judged to be unfounded. When assessing A's appropriation we should consider not only what would have happened had B appropriated, but also what would have happened had A and B cooperated under a socialistic economic constitution.³⁶

Now once we broaden, in these and other ways, our range of comparison, then, so it seems, a defensibly strong Lockean proviso will

34. See Hal Varian, "Distributive Justice, Welfare Economics, and the Theory of Fairness," *Philosophy and Public Affairs* 4 (Spring 1975): 235, 237-38. Another theorist of appropriation who emphasizes the advantages of capitalism over the Lockean state of nature without noting that a noncapitalist system might be more advantageous is Baruch Brody. See his "Redistribution without Egalitarianism," *Social Philosophy and Policy* (Autumn 1983), especially p. 82.

35. Expressed at p. 181 (see n. 24 above): that certainty depends on regarding Lockean common ownership as the only alternative with which capitalism need be compared.

36. And, too, what would have happened had there been an equal division of land rather than Nozickian appropriation.

forbid the formation of full liberal private property. For there will always be some who would have been better off under an alternative dispensation that it would be arbitrary to exclude from consideration. (An example of an alternative dispensation that it would *not* be arbitrary to exclude is that in which everyone is the slave of the tallest person in the society.) And since, moreover, a defensibly strong Lockean proviso on the formation and retention of economic systems will rule that no one should be worse off in the given economic system than he would have been under some unignorable alternative, it almost certainly follows that not only capitalism but every economic system will fail to satisfy a defensibly strong Lockean proviso, and that one must therefore abandon the Lockean way of testing the legitimacy of economic systems.

One alternative is to settle for utilitarianism. Because of its aggregative character, utilitarianism is insensitive to the fate of the individual, and it therefore has no use for Lockean provisos. But if, like Nozick and myself, one regards utilitarianisms as consistent with monstrous violation of individual rights, then a different alternative is necessary.

One different alternative is John Rawls's difference principle, in its strict meaning, which contrasts with the way many, including, I think, Rawls, often misinterpret it. In its strict meaning the difference principle is satisfied by a given economic system only if those who are worst off under it are not more badly off than the worst off would be under any alternative to it. But since those who are actually worst off need not be those who would be worst off in an alternative system, the difference principle may be satisfied even if those actually worst off would be better off in that alternative. The difference principle is therefore not, as it may falsely appear to be, a Lockean proviso whose range is restricted to the worst off, and it can be satisfied even when such a proviso is not satisfied. But the difference principle has an intuitive power comparable to that of a Lockean proviso. For when it is satisfied one may respond to the complaint of the worst-off group by pointing out that others would suffer at least as much as they do in any dispensation in which they were better off than they actually are.

Now Rawls seems sometimes to interpret the difference principle as though the worst off in an economy that satisfies it would *themselves* be no better off under any alternative.³⁷ He seems so to interpret it

37. This misconstrual is manifest at p. 103 and fairly evident at p. 536 of *A Theory*

when he urges the immunity of a society that satisfies it to instability through unrest from below, for in an economy that satisfies the difference principle in its incorrect form the worst off would indeed have no reason for unrest. But this involves a misinterpretation of the difference principle, since the latter is chosen in the original position whose occupants must treat "worst-off group" as a nonrigid designator.

The misinterpreted difference principle *is* a strong Lockean proviso with its range restricted to those who are worst off. So misinterpreted the principle is, like unrestricted Lockean provisos, almost certainly unsatisfiable. The difference principle proper can, however, be satisfied, and it is to that extent superior to a Lockean test of economic systems, once the whole feasible set of them is brought into view.

5. I have argued elsewhere that the familiar idea that private property and freedom are conceptually connected is an ideological illusion. In the light of Nozick's doctrine of appropriation, I am able to provide further support for that claim.

Call an action *paternalist* if it is performed for the sake of another benefit but against his will, and if it actually does benefit him as intended. A state that imposes a health insurance scheme on people a of whom benefit from it but some of whom are, on whatever basis opposed to it acts paternalistically in the defined sense (if, as I am supposing, the state applies the scheme to those who do not want

of Justice (Cambridge: Belknap Press of Harvard University Press, 1971). Why do Rawls commit it? An unkind speculation would be that he tacitly supposes that the worst off in any given economic system are by nature so constituted that they would be the worst off in every one. Or perhaps he conflates the truth that the worst off in a system that satisfies the difference principle would, necessarily, be even worse off under flat equality with the falsehood that they would, necessarily, be the worst off under a other system.

To see the distinction between the difference principle proper and its misconstrual suppose that a society is in state *A* and that *B* is the only feasible alternative to it:

	<i>A</i>	<i>B</i>
Jack	10	10
Jill	8	5
Mary	6	9

(The numbers represent amounts of primary goods.) The difference principle mandates retention of *A*, its misconstrual a change to *B*.

38. In the article referred to in n. 11 above.

for their own good, and not, for example, because the scheme is a public good and the state is against free riding). Nozick would say that the scheme is unjust, because the taxation it levies, like all taxation whose purpose is not to protect property rights, violates property rights. He would, a fortiori, regard as unjust a policy that taxes someone against his will and that in fact benefits him, even though it is not intended to benefit him: we can call that an *objectively paternalist* policy. Note that the Nozickian objection we are here considering is not that there is a constrained transfer from one person to another, that, for example, nobody should be forced to pay for anyone else's health care. Nozick would object even if the amount of tax a person paid were strictly related to his own health prospects.

Nozick disallows objectively paternalist use of people's private property.³⁹ But he permits objectively paternalist treatment of people in other ways. For since he permits appropriations that satisfy nothing but his proviso, he allows *A* to appropriate against *B*'s will when *B* benefits as a result, or rather as long as *B* does not lose.⁴⁰

Are Nozick's positions consistent? He would say that they are, since *B*'s rights are not violated when *A* appropriates, and rights are violated when the state funds a medical plan through taxation. And that is so, if Nozick's theory of appropriation and property rights is correct, but it would seem question-begging to allow that theory to establish the mooted consistency here, where we are examining Nozick's attempt to ground property rights in the first place. And whether or not the move would be question-begging, it is clear beyond doubt that an appropriation of private property can contradict an individual's will just as much as levying a tax on him can.⁴¹ Therefore Nozick cannot claim to be inspired throughout by a desire to protect freedom, unless he means by "freedom" what he really does mean by it: the freedom of private property owners to do as they wish with their property.

39. The special case mentioned in n. 29 above is not a counterexample to that statement, since what Nozick there allows is benefiting someone not against his known will but merely without his known compliance.

40. Actually, he permits still more, since he allows *B* to be made worse off than he would have been, as long as he is not made worse off than he would have become under persistence of common ownership. But that point was made in sec. 3, and I am here setting it aside in order to focus on the present different one.

41. The point that formation of private property can contradict a person's (such as *B*'s) will should not be confused with the point I made earlier, that it can turn one person into another's subordinate.