

be taxed.³⁴ Now the principle of self-ownership requires argument, and the Chamberlain example does not provide any for it. Indeed, the example is the more persuasive precisely when, like me in the reading of it that generated the original article-version of Chapter 1, we do not notice that it carries us along because of an antecedent prejudice in favour of self-ownership. (Often, when a substantial premiss in an argument is unexposed, the argument convinces more than it would if that premiss were laid bare for inspection.) I now find it amazing that the idea of self-ownership was not brought to the fore in my article of 1977 (which became Chapter 1 above), or in the other early literature in criticism of *Anarchy, State, and Utopia*. It is to that idea that we now turn.

³⁴ According to David Gauthier (*Morals by Agreement*, sections 3.1–3.2), self-ownership is consistent with taxation of earnings. For criticism of Gauthier on that score, see section 4 of Chapter 9 below, and, for more general demonstration of the inconsistency between self-ownership and taxation of earnings, see pp. 215–16 of that chapter.

3. Self-ownership, world-ownership, and equality

... 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')

1. *Anarchy, State, and Utopia* is routinely characterized as *libertarian*, an epithet which suggests that liberty enjoys unrivalled pride of place in Nozick's political philosophy. But that suggestion is at best misleading. For the primary commitment of his philosophy is not to liberty but to the thesis of self-ownership, which says that each person is the morally rightful owner of his own person and powers, and, *consequently*, that each is free (morally speaking) to use those powers as he wishes, provided that he does not deploy them aggressively against others. 'Libertarianism' affirms not freedom as such, but freedom of a certain type, whose shape is delineated by the thesis of self-ownership.¹

In so designating what is central and what is derivative in Nozick, I am denying that he thinks that freedom comes first and that people qualify as self-owners because lack of self-ownership means lack of freedom. For Nozick gives us no independent purchase on freedom which would enable us to derive self-ownership from it. Although he is promiscuous in his use of the rhetoric of freedom, Nozick's real view is that the scope and nature of the freedom that we should enjoy is a function of our self-ownership: self-ownership, not freedom, is the point of departure for

¹ For invocations of self-ownership, and disparagement of the ownership of a person by others, see *Anarchy*, pp. 172, 281–3, 286, 290. For arguments that 'libertarians' do not deserve that label, see Chapter 2, section 2 above; this chapter, sections 3 and 6; Chapter 4, section 6; and Chapter 10, section 3.

condition is mandated 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 the fundamentalist egalitarianism here set against it. And the other disadvantage of the stated strategy is that the thesis of self-ownership has, after all, plenty of appeal, quite apart from anything that Nozick urges on its behalf. Its antecedent (that is, pre-philosophical) 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 socialist⁵ 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, for example, to 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 convince them that their claim on their own eyes is no stronger than that of some unlucky blind person.⁶ But if standard leftist 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

⁵ And, in particular, Marxist socialist: see Chapter 6, section 4 below.

⁶ I am here trying to motivate 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, because rights other than those of (full) self-ownership might explain that resistance. One such right would be a right to bodily integrity: one might hold that non-contractual duties to others begin only once that right is secure, and thereby reject both eye-transplanting and self-ownership. But leftists rarely reflect on examples like that of eye-transplanting, and they are therefore caught off guard, and baffled about how to resist the self-ownership thesis, when such examples are presented. (For more on my ownership of my eyes, see Chapter 10, section 5 below.)

alone am entitled to decide about the use of this arm, and to benefit from its use, simply because it is my arm. (Do not think that I am here confusing⁷ the factual truth that this is my arm with the normative claim that I should have exclusive disposal over it. My contention is that the stated 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, be it noted, made), that no person has, at least to begin with, a greater right in them than any other does; whereas the same thought is less compelling when it is applied to human parts and powers. Jean-Jacques Rousseau described the original formation of private property as a usurpation of what should be freely accessible to all,⁸ and many have found his thesis persuasive, but few would discern a comparable injustice in a person's insistence on sovereignty over his own limbs.

These reflections suggest that those who stand to the left of Nozick might consider a different reaction to him from the one that I described at p. 69 above. They might cease treating equality of condition as a premise and rejecting self-ownership on that basis. Instead, 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 that they oppose. They might strive, first, to undo the argument which proceeds from an affirmation of self-ownership to a justification of inequality of raw worldly resources. If they succeed in doing that, they might then try, in a second movement of argument, to defend the equality of condition they prize by combining an egalitarian approach to worldly resources with an affirmation, or, at any rate, a non-denial, of the thesis of self-ownership.

The first of those tasks is accomplished in the present chapter. In the next chapter I turn to the second task, and I seek an economic constitution which (1) upholds the principle of self-ownership but (2) enforces equality of raw worldly resources and, thereby, (3) preserves equality of final condition. I conclude, however, that no such constitutional design is available, and, therefore, that the second stage in the attractive response to

⁷ As, perhaps, Richard Overton did: see the beginning of Chapter 9 below.

⁸ See the epigraph at the beginning of Chapter 4.

Nozick projected in the previous paragraph cannot be completed. It follows 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. And that conclusion generates a criticism of Marxism, pursued in Chapters 5–7, for its failure to oppose the self-ownership principle. (I show how to defeat that principle in Chapter 10.)

So much by way of preview. The task of this chapter is to prove that, whatever may be said about the principle of self-ownership in its own right, and whether or not it can be combined with equality of worldly resources to yield equality of condition, affirmation of self-ownership does not warrant the strongly inequalitarian distribution of worldly resources with which Nozick associates it. This I show by means of a critique of Nozick's account of legitimate original appropriation of worldly resources.

2. Libertarians, or, to name them more accurately, entitlement theorists, 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 therefore no more legitimate than the titles with which it operates.⁹ How, then, do the titles that necessarily precede market activity acquire legitimacy in the first place?

On any characterization of private property, the question of what constitutes a rightful original acquisition of it enjoys a certain priority over the question of what constitutes a rightful subsequent transfer of it, since, unless private property can be formed, it cannot, *a fortiori*, be transferred. But, in virtue of the way entitlement theorists characterize private property, the priority of the question of how it may be appropriated is, for private property as they understand it, even more marked. For private property in entitlement discourse is property in what is sometimes called 'the full liberal sense'. It is decked out with all the rights that could conceivably attach to private property; and, once an original acquisition of such plenary private property is achieved, then no separate question

about its transfer can arise, since the full complement of private property rights includes unfettered rights of transfer and bequest. Accordingly, the topic of original appropriation is a most important crux for Nozick's defence of property, 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'.¹⁰ That 'additional bit' is arguably the most important part of the theory on offer.

Note that even now not everything around us is privately owned, and most people would agree that what remains privately unowned, such as the atmosphere we breathe and the pavements we tread, should not be available for privatization. But the better part of what we need to live is, by now, private property. Why was its original privatization not a theft of what rightly should (have continued to) be held in common?

The question would not arise if a certain false thing that Nozick says were true, namely, that 'things come into the world already attached to people having entitlements over them'.¹¹ That is relevantly false, since people create nothing *ex nihilo*, and all external private property is made of something that was once no one's private property, either in fact or morally (or is made of something that was made of something that was once not private property, or is made of something that was made of something that was made of something that was once not private property, and so on).¹² In the history of anything that is now privately owned 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 at all.

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, how, if at all, full liberal private property *could* legitimately be formed.

¹⁰ *Anarchy*, p. 174.

¹¹ *Ibid.*, p. 160.

¹² 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', p. 381; cf. Steiner, 'The Natural Right to the Means of Production', p. 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*, p. 660 n. 11).

⁹ 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*, Vol. III, p. 911). '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*, p. 115).

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 utility or human flourishing or need or reward for effort or the like, but by reference to information about the whole past history of the objects in the distribution.¹³ 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.¹⁴ And, second, it is not at all points clear whether he is engaged in expounding John Locke or in 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 pages. But what matters most, of course, is how much he in fact achieves, whatever his own appraisal of his achievement may be.

Nozick interprets Locke conventionally, as holding that an agent may appropriate what he mixes his labour with, provided that he leaves

enough and as good for others and does not waste what he takes. He comments sceptically on the labour mixture notion, expresses puzzlement at Locke's insistence that appropriators must avoid waste, and spends most of his time discussing and refining the proviso that they must leave enough and as good for others.

I think that Nozick is right to concentrate his attention on the 'enough and as good' proviso. For resistance 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 (at worst) harmless, as satisfaction of Locke's proviso would seem to ensure, then it will be difficult to criticize it, regardless of how it was effected, and even, therefore, if no labour 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 labour, unless all acting on the world is regarded as labouring.¹⁵ For, even on a reasonably broad view of what labour 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.¹⁶ Or, if they are indeed labour, then they are not labour that it would be plausible to cite in defence 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 labour of dunking my head and opening my mouth.' Your powerful reply is to say that no one has any reason to complain about your appropriation of the water, since no one has been adversely affected by it.

So I agree with Nozick that 'the crucial point is whether an appropriation of an unowned object worsens the situation of others'.¹⁷ 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'.¹⁸ He makes no attempt to specify the nature of the 'normal' acquisition process, but, as I just allowed, that is not

¹³ 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 consequences for human happiness of competing courses of action.)

¹⁴ A laborious exposition of Nozick's expository sloppiness appears as an addendum at the end of this chapter.

¹⁵ Para. 44 of the *Second Treatise* suggests that Locke may indeed regard all action as labour. For an argument that Locke should not have made labour a necessary condition of acquisition, see Richard Arneson, 'Lockean Self-Ownership', p. 43.

¹⁶ See paras. 28, 29 and 33 of the *Second Treatise of Government*. (Para. 33 is given in full at p. 77 below.)

¹⁷ *Anarchy*, p. 175.

¹⁸ *Ibid.*, p. 178.

very important, since, whatever process is required, controversy is likely to settle on the provision just quoted. Hence, although it is not so billed,¹⁹ the quoted statement, with Nozick's elaboration of it, is Nozick's doctrine of appropriation; or, speaking more cautiously, if Nozick presents any doctrine of appropriation, then the quoted statement is the controversial element in his doctrine, and therefore the element which requires close 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 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 at the cost of 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

¹⁹ 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' will now be introduced 'into the structure of the entitlement theory' and they 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 (that is, the doctrine of initial appropriation as such) is the 'complication' of p. 182 (that is, the proviso on acquisition), then the condition on appropriation stated on p. 178 is Nozick's theory of appropriation, in so far as he has one.

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 towards non-appropriators, 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.²⁰

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

²⁰ The quoted passage proves that Locke's proviso does not mean what Hillel 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' ('The Natural Right', p. 45). For the passage plainly implies that one must leave for others enough and as good to use and/or appropriate *as they had before one appropriated*, not (merely) enough and as good to appropriate, *per capita*, as one appropriates oneself. Satisfaction of Locke's proviso entails satisfaction of the proviso Steiner misattributes to him, but the converse entailment fails, and Locke's proviso is therefore more stringent than the one Steiner states. (I grant that Locke notes, at para. 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 an appropriator must leave for others resources as good as they had available to them before, then why add the apparently further stipulation that he leave them *enough*? '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. (Note that this puzzle also arises for Steiner's different interpretation of Locke's proviso.)

John Simmons (*The Lockean Theory of Rights*, p. 292) rejects my reading of the 'enough and as good proviso', and suggests that 'enough' means 'enough for similar use' (to the one made by the appropriator). Two considerations prevent me from acceding to his counter-proposal. First, it is not superior to mine by way of endowing 'enough' and 'as good' with coherent independent senses, since 'enough for similar use' must mean 'as good', in this context. Second, Simmons' interpretation fails to account for Locke's use of the water example as a model for legitimate appropriation of land. The example falsifies Simmons' claim that *any* appropriation makes some others worse off in some way, if only in the loss of the opportunity to appropriate that particular thing (*ibid.*), since losing the opportunity to appropriate that particular quantity of water is not being made worse off in any way.

the stream, we are to imagine, flowed so abundantly that, however much water they wanted, they did not need his.²¹

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 would have been, even when it is fulfilled. That is because of the phrase I had occasion to italicize on p. 76: '*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*.²² I shall argue that there are other intuitively relevant counterfactuals, and that they show that Nozick's proviso is too lax, that he has arbitrarily narrowed the class of alternatives with which we are to compare what happens when an appropriation occurs with a view to determining whether anyone is harmed by it. One might agree with Nozick that the way to determine the legitimacy of an appropriation is by looking at what might or would otherwise have happened to the people concerned, but one cannot take for granted that the appropriated thing would have remained in common use: it is unjustifiable to ignore other things that could have happened to it.

²¹ Locke's drinker satisfies a proviso even stronger than Locke's, and one that Nozick's medical researcher (*Anarchy*, 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 doing so. But, unlike Locke's water taker, the researcher 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.)

At p. 45 of his superb article on 'Lockean Self-Ownership', Richard Arneson questions my attribution of so stringent a proviso on acquisition to Locke on the basis of para. 33. But the very words ('enough and as good') which Locke uses when he introduces (what is generally acknowledged to be) his proviso on acquisition in para. 27 reappear in 33, and that surely suffices to establish that the drinker example is intended to illustrate that proviso. Arneson is right that in this passage Locke is not committing himself on the more difficult issue of how to draw the line between permissible and impermissible appropriations under conditions of scarcity, but I do not say that he is, and it bears adding that Locke does not commit himself anywhere else on that issue. Whatever may be the *circumstances* (be they of scarcity, of abundance, or of both) for which Locke lays down the 'enough and as good' proviso if, as Nozick supposes, it is a proviso on acquisition, then my claim stands that that proviso is much stronger than Nozick's.

²² At p. 181 of *Anarchy* 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.

Some of the possibilities that Nozick neglects will now be exposed. Our examination of them will generate a decisive case against his theory of private 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 world containing two self-owning persons²³ and in which everything non-human is in Lockean common ownership, a regime in which no one privately owns anything and each may use anything that no one else is currently using. 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 manage on common land, think of m and n as numbers of gallons of cows' milk, or, better,²⁴ 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 under common ownership of the external world through exercise of the personal powers each separately owns. Note that the sizes of m and n , which reflect the relative productive powers of A and B, are not specified here, since they play no role in the reasoning to follow.

Now suppose that A appropriates all the land, or – this being the crucial amount for the purposes of the ensuing argument – 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 labour designed by A, who is a good organiser. 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

²³ It is sometimes rash to draw general conclusions from examples of worlds with only two people in them, but everything that I shall say about this small world can be applied to more populous ones.

²⁴ Because, unlike cows, moose do not need regular human attention, which might be thought to require enduring tenure of land.

it does, we must compare *B*'s condition after *A*'s appropriation with how *B* would have fared had common ownership persisted, and, to keep things simple, 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, 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 frequently 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 position on private property formation.²⁶ I shall henceforth reckon 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 that, had *A* not appropriated, then a different counterfactual situation might have come to obtain: not that in which common use persisted but one in which *B*, perhaps concerned lest *A* do so, would have appropriated 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 II(a) in Table 1). 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 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.

²⁵ Cf. Chapter 1, sections 3 and 7 above. Nozick nods at this issue in passing at a couple of points at pp. 177–8, but he does not give it the attention it would have to get before his confident conclusion that capitalism satisfies his proviso on acquisition could be justified. If we take liberty very seriously, the state of nature baseline may not be very low (see footnote 22 above).

²⁶ The point is central to the further criticism of Nozick mounted in section 6 of Chapter 4 below.

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

Table 1. Counterfactual situations

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

Other possibilities²⁸ make this still more clear. 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 II(b) in Table 1). 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,

²⁸ Not, that is, (entirely) different counterfactual situations, but different possible upshots of the same (generally described) counterfactual situation, in which *B* appropriates: see, again, Table 1.

Beyond the distinctions among ways of worsening a person's situation featured in the text, I need to register this modal one: *X* worsens *Y*'s situation in a (relatively) weak sense if *X* removes superior (from *Y*'s point of view) possibilities (that might not, in the event, have been actualized), but *X* worsens *Y*'s situation in a stronger sense if *X* prevents something that would otherwise *actually* have happened and been better for *Y*. The scenarios I press against Nozick to show that his proviso is too weak can be taken either way, as excluded possibilities, or as what would actually have happened had *A* not appropriated. I cannot say which is the right way to take them because Nozick does not say which sense of 'worsening', within the stated modal distinction, he intends.

I should respond here to Thomas Münzer's complaint that 'Cohen elides the difference ... between an acceptable and the best possible system of property' (*A Theory of Property*, p. 271n). My point is not that *A*'s appropriation fails to generate 'the best possible system', but that if (what cannot be ruled out) particular superior (from *B*'s point of view) systems would have been possible, or would have developed, in the absence of *A*'s appropriation, then, intuitively, *B* has a grievance that throws doubt on the legitimacy of *A*'s appropriation.

(On certain views about counterfactual statements, there is nothing that counts as *the* thing that would have happened, had *A* not appropriated. One might then look at the expected value for *B* of *A*'s non-appropriation, as a function of all possible alternatives, weighted by their probabilities.)

²⁹ Pareto-inferiority is an ambiguous notion among economists, who tend not to distinguish between the idea that everyone would favour a different situation and the idea that everyone would benefit from a different situation (whatever they might themselves think and

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 labour and then play his role in it, for the same $n + p$ wage, and that *B*, preferring survival to starvation, accepts. Then *A*'s appropriation is still justified under Nozick's proviso, even though here it is the case not merely (as in II(a) and II(b)) that *B* could also have engineered a productivity gain but that he actually engineers the gain, and a gain, moreover, that *A* is incompetent to produce. The example shows that, even when privatization generates additional value, the privatizer need not be the 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 labour in force in the actual situation and in II(a) and II(b) could not have been implemented under Lockean common ownership. That seems to me to be true by definition. To be sure, *A* and *B* might have agreed to a division of labour 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 (at least *pro tem*) socialism, which is another possibility unjustifiably neglected by Nozick, and about which I shall say more in section 5.³¹

By way of summary, we may note that Nozick transforms Locke's

hence whatever they would be inclined to favour. I am here 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 if communication with unconsenting but benefiting persons is impossible, or terribly expensive. (See *Anarchy*, pp. 22-3, and see Eric Mack, 'Nozick on Unproductivity', for an argument that Nozick's selective permission of 'boundary crossings' with compensation threatens to unfound his defence of the sanctity of private property.)

³⁰ I am not myself here affirming that they do. Note, among other things, that one need not suppose that value adders should get the value of what they add in order to regard them as exploited by those who get it just because they have power over them. See my *History, Labour, and Freedom*, p. 230 n. 37.

³¹ For yet more neglected possibilities, see section 3 of Hillel Steiner, 'Capitalism, Justice, and Equal Starts'.

proviso in two ways, one legitimate and the other not. The legitimate move is to permit failure to leave enough and as good provided that sufficient compensation is forthcoming. That does not weaken Locke's proviso in a principled way: it captures its spirit and formulates it in an appropriately general fashion. But the other, unacceptable, move is to weaken the proviso by considering not what might or would have happened *tout court*, absent the appropriation, but what would have happened on the special hypothesis that the world would have remained commonly owned. This move unjustifiably relaxes the criteria for saying that *A* harms *B*.³²

4. But now suppose that *B* lacks *A*'s organizational skills, 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 II(c) of Table 1). Under that assumption, is *A*'s appropriation legitimate?

Note that, even if we say that it is legitimate, then it is legitimate only by virtue of satisfying conditions far stronger than those Nozick lays down. And my own view is that its legitimacy is even then contestable. For to suppose otherwise is to take for granted that the land is not, from the start (that is, before anyone operates on it), jointly or collectively owned by *A* and *B*, so that the proper way to decide its fate would be by the democratic device of consensual agreement, instead of unilaterally. Why should we not regard the land, prior to *A*'s appropriation, as jointly owned, rather than, as Nozick takes for granted, owned by no one?³³

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

³² Richard Arneson objects to my string of counter-examples to Nozick's proviso that 'if we are wondering whether your action harms me the fact that an alternative action which you might have performed would have lavished great benefit on me is not germane to the issue' ('Lockean Self-Ownership', p. 45). True enough, but the fact on which I rest my case is not the one formulated by Arneson but the fact that your action prevents me from gaining benefits that you would not be lavishing on me.

Arneson says that 'Cohen claims to be making an internal criticism of Nozick from the standpoint of self-ownership', and that, so construed, 'this criticism is wrong' (*ibid.*, p. 45 fn. 23), for the reason quoted above. But my claim is not that premises affirmed by Nozick refute his own theory of appropriation but this weaker one, which does not count as 'an internal criticism' in the relevant strong sense of that phrase: that Nozick lacks the premises to justify that theory, and that the self-ownership premise, in particular, fails to justify it.

³³ Some think that, in laying down his proviso, Nozick vests everyone with original rights in natural resources' (Atraccia Ingram, *A Political Theory of Rights*, p. 55). In my different interpretation of him, Nozick thinks that the proviso reflects no such original rights in the world, but the self-ownership right over oneself that one not be harmed: see further, p. 114 of the 'Retrospect' in Chapter 4 below.

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.³⁴ 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 speaking, the initial position, 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 reason 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 premiss, he does not even bother to state it, or show any awareness that he needs it.

I return to the theme of joint ownership in Chapter 4. The rest of this chapter is framed by continued acceptance of the assumption that, prior to any appropriation of any of it, the world is unowned.

5. 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

³⁴ For a partial explication of the idea of joint ownership of the world by all of its inhabitants, and a defence of it against what seem at first to be fatal objections, see John Exdell, 'Distributive Justice', especially pp. 147-9. The idea is more or less explicit in various articles by Hillel Steiner; see, for example, his 'Liberty and Equality', pp. 555-69, and 'The Rights of Future Generations', pp. 225-41. There is, of course, no legally constituted joint ownership institution in the state of nature, but the implication of that for natural rights with respect to raw resources is no greater than the implication for natural rights over persons of the fact that there is no legally constituted self-ownership institution in the state of nature.

For a friendly discussion of 'the principle that natural resources are the joint possession of the human race as a whole', see Brian Barry, 'Humanity and Justice', p. 450 *et circa*.

property'.³⁵ 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 non-capitalists better off than they otherwise would have been.

Nozick replies by affirming 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 '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'.³⁶ 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 capitalist mechanisms of production and distribution 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 premiss 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 already in being, 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.

Such people, and there will be many of them in libertarian capitalist society, are, because of their propertylessness, dependent for their survival on someone wanting to buy their labour power. Their predicament might be thought dire, but Nozick denies that they have a grievance. For a propertyless person, or proletarian, has a grievance, in Nozick's view, only if his propertylessness renders him worse off than he would have been had the world remained in Lockean common ownership, without private property, and Nozick believes that proletarians are unlikely to be, in that way, worse off. He would say, of those proletarians who do manage to sell their labour power, that they will get at least as much, and

³⁵ *Anarchy*, p. 177.

³⁶ *Ibid.*

probably more, in exchange for it than they could have hoped to get by applying it in a rude state of nature; and, of those proletarians whose labour power is not worth buying, that, although they will therefore, in Nozick's non-welfare state, die (in the absence of charity), they would have died in a state of nature anyway.

Because his major premiss demands attention to the fate of each person, taken separately, Nozick's argument is, as I said, not a utilitarian one. Even so, because he depends on an empirical minor premiss, his defence of private property turns out to be, like the utilitarian defence of it, potentially vulnerable to empirical counterargument. His major premiss is not empirical, but neither is the major premiss of the utilitarian defence, which is that whatever makes people better off in the aggregate is a good thing. I point this out because it is often thought to be a feature of libertarian political philosophy that, through its emphasis on rights, it finesses empirical questions about consequences which are hard to answer and in which utilitarianism becomes enmeshed. That is an illusion, since, as we now see, theses about consequences are foundational to Nozick's defence of private property rights, and the rights he affirms therefore lack the clarity and authority he would like us to suppose they have.

Nozick's empirical claims are addressed and rebutted, one by one, by Hal Varian, who argues that 'market socialist' or 'people's capitalistic' property arrangements are more productive still than the pure capitalism Nozick favours, at any rate under certain conditions.³⁷

But Varian's empirical counter-claims do not, strictly speaking, touch the case for capitalism which Nozick builds at page 177 of *Anarchy*, 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 semi-, capitalist 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 supposed 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 counter-claims are irrelevant in the suggested way, 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 non-capitalist 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,³⁸ 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 socialist economic constitution.

Now once we broaden, in these and other ways,³⁹ our range of comparison, then, so it seems, a defensibly strong Lockean proviso will 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 whose rule is that everyone must slave for the tallest person in 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 assessing 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, because it aggregates, utilitarianism is consistent with monstrous violation of individual rights, and a different alternative is therefore necessary.

A further alternative to Locke-like criteria is John Rawls' difference principle, in its canonical sense, which contrasts with the way many, including, I think, Rawls, have sometimes misinterpreted it. In its canonical sense 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

³⁷ See Varian, 'Distributive Justice', pp. 235, 237-8. Another theorist of appropriation who emphasizes the advantages of capitalism over the Lockean state of nature without noting that a non-capitalist system might be more advantageous still is Baruch Brody. See his 'Redistribution without Egalitarianism', especially p. 82.

³⁸ Expressed at *Anarchy*, p. 181 (see footnote 22 above): that certainly depends on regarding Lockean common ownership as the only alternative with which capitalism need be compared.

³⁹ For we might also consider what would have happened had the land been equally divided

alternative system, the difference principle may be satisfied even if those who are 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 respond⁴⁰ 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.⁴¹ He seems so to interpret it when he urges the immunity of a society that satisfies it to instability because of 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 variable 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.

⁴⁰ For a subtle version of this response, see Joshua Cohen, 'Democratic Equality', pp. 739–40.

⁴¹ This misconception is manifest at p. 103 and fairly evident at p. 536 of *A Theory of Justice*. Why does 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 an inequality 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 any 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*.

6. I have argued elsewhere that the familiar idea that private property and freedom are conceptually connected is an ideological illusion.⁴² 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's benefit but against his will, and if it actually does benefit him as intended. A state that imposes a health insurance scheme on people all of whom benefit from it but some of whom are, for whatever reason, 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 it 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 may not be intended to benefit him: we can call that an *objectively paternalist* policy. Note that the Nozickian objection to such a policy that we are considering here 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.⁴³ 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.⁴⁴

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

⁴² See 'Illusions about Private Property and Freedom', and also Chapter 1 above, sections 3 and 7, and Chapter 2 above, section 2.

⁴³ The special case mentioned in footnote 29 above is not a counter-example to that statement, since what Nozick there allows is benefiting someone not against his known will but merely without his known compliance.

⁴⁴ 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 section 3, and I am here setting it aside in order to focus on the present different one.

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.⁴⁵ 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.

Addendum

Here is the laborious demonstration of Nozick's sloppiness promised in footnote 14 above.

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 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

⁴⁵ The point that formation of private property can contradict a person's (such as *B*'s) will should not be confused with the point made at p. 80 above, that it can turn one person into another's subordinate.

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 which he presents at p. 176 of *Anarchy* (and to which the reader is referred: I shall not expound it here). 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 quoted at p. 75 above 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 the compensation clause which Nozick attaches to it (see the last full sentence in the text on p. 178).
- (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.