

4. Are freedom and equality compatible?

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*)

I Introduction

1. Two kinds of response to Nozick were contrasted in Chapter 3. In the first, a premise that equality of condition is morally mandatory is used to reject his starting point, the thesis of self-ownership. But this first response (so I claimed) has the defect that the idea of self-ownership enjoys an initial appeal which so swiftly derived a rejection of it will not undermine. (In Chapter 10 I hope to undermine it in the more painstaking way that I think is necessary.)

In light of the poverty of that first response, a second response was projected (see Chapter 3, p. 71), which proceeds in two stages. First, it is shown that self-ownership does not justify an egalitarian scramble for raw worldly resources: this first stage of the second response was completed, with success, in Chapter 3. The second stage of the projected response is pursued in the present chapter. Here, once again, equality of condition is not put as a premise, and the principle of self-ownership is not rejected, on that or any other basis. Instead, one strives to reconcile self-ownership with equality (or not too much inequality) of condition, by constructing an economic constitution which combines self-ownership with an egalitarian approach to raw worldly resources. The strategy is to concede to libertarianism its attractive thesis, which is its assertion of each

person's rights over his own being and powers, while attacking its implausible one, which is its view of the original moral relationship between people and things, the moral relationship, that is, between people and things which have not as yet been acted on by people.

The desired economic constitution respects both self-ownership and equality of worldly resources. Any such constitution would 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 ranges of theorists are unwilling to distinguish as sharply as the stated strategy does between the moral status of ownership of external resources and the moral status of ownership of persons. Nozick endows people's claims to legitimately acquired external resources with the moral quality that belongs, so he believes, to people's ownership of themselves, and Rawls and Dworkin treat people's personal powers as subject, albeit with important qualifications,¹ to the same egalitarian principles of distribution that they apply, less controversially, to external wherewithal. The suggested intermediate position, to be reflected in the desired constitution, is with Nozick and against Rawls and Dworkin in its affirmation (or at least non-denial) of self-ownership, but with Rawls and Dworkin and against Nozick in subjecting the distribution of non-human resources to egalitarian appraisal.

One conclusion of this chapter is that no constitution that is truly intermediate in the described sense is capable of ensuring equality of condition. It follows that the two-stage response to Nozick rehearsed in the second paragraph of this chapter is not, in fact, a viable one. An intermediate constitution would preserve self-ownership but equalize rights in worldly resources. The present chapter examines two ways of achieving that latter equalization. One is by placing all external resources under the joint ownership of everyone in society, with each having a veto over what is to be done with them. That regime, together with self-ownership, indeed ensures equality of condition, but the joint ownership element deprives the self-ownership with which it is combined of its intended effect, which is the provision of autonomous self-governance. 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 (as opposed to formally, or juridically), they do not own themselves, since they can do

¹ 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.

nothing without communal authorization. Accordingly, no constitution that prescribes this first way of equalizing rights in external resources is truly intermediate.

But, if the contrast between effective and merely formal self-ownership upsets the described attempt to design an intermediate constitution, it also generates a serious problem for libertarians. For the propertyless proletarian who cannot use means of production without a capitalist's leave suffers a lack of effective self-ownership. It follows, as I argue in section 6 below, that, since libertarians regard proletarianhood as consistent with all the rights that they think people have, the self-ownership that they defend is much thinner and far less attractive than it appears, at first sight, to be.

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, at any rate initially, but one that, I argue, fails to secure the equality of condition that socialists prize. I conclude that socialists must reject self-ownership, and I show how to reject it in Chapter 10.

II Returns to ability and inability under joint ownership

2. In Chapter 3, I questioned Nozick's blithe assumption that 'virgin' things may be regarded as quite unowned and therefore (virtually) up for grabs; one scarcely need share that assumption even if one accepts that people are full owners of themselves. Now, a radical alternative to the view that things are, in their native state, quite unowned, is to regard them as jointly or collectively owned by all persons. In this section, I study an attempt to combine such a conception of the original moral relationship between people and things with the principle of self-ownership. I inquire into the upshot of uniting self-ownership with joint ownership of the external world, with a view to shedding some light on the distributive effect of self-ownership in a world whose parts are not open to unilateral privatization.

For the sake of simplicity, imagine a society of two people, who are called Able and Infirm, after their respective natural endowments. Each owns himself and both jointly own everything else. (It is immaterial, here, how these rules of ownership are enforced. We can imagine that a suitably powerful external authority (e.g., God) enforces them.) With suitable external resources, Able can produce life-sustaining and life-enhancing good, but Infirm has no productive power at all. We suppose

that each is rational, self-interested, and mutually disinterested (devoid, that is, of spite, benevolence, and all other motivations into which the welfare of others enters essentially),² and we ask what scheme of production and distribution they will agree on. We thereby investigate the reward which self-owned ability would command in one kind of world without private property.

Now, what Able and Infirm get depend not only on their own powers and decisions but also on what the world is like, materially speaking. Five mutually exclusive and jointly exhaustive possible material situations, not all of which are interesting, may readily be distinguished:

- i. Able cannot produce per day what is needed for one person for a day, so Able and Infirm both die.
- ii. Able can produce enough or more than enough for one person, but not enough for two. Infirm lets Able produce what he can, since only spite or envy would lead him not to.³ Able lives and Infirm dies.
- iii. Able can produce just enough to sustain both himself and Infirm. So Infirm forbids him to produce unless he produces that much. Able consequently does, and both live at subsistence.
- iv. If Able produces at all, then the amount he produces is determined independently of his choice, and it exceeds what is needed to sustain both Able and Infirm. They therefore bargain over the distribution of a fixed surplus. The price of failure to agree (the 'threat point') is no production, and, therefore, death for both.
- v. Again, Able can produce a surplus, but now, more realistically, he can vary its size, so that Able and Infirm will bargain not only, as in (iv), over who gets how much, but also over how much will be produced.

The interesting cases are (iv) and (v), in which bargains will be struck.⁴ It is a controversial question, in the relevant philosophical and economic literature, what one should expect the outcome of such bargaining to be. But it seems clear that the inputs to the bargaining process will be the utility functions of Able and Infirm, including the disutility of labour for

² The point of these familiar stipulations is to trace what reflects the structure of rights as such, apart from special generosity or malice.

³ Alternatively, and on the assumption that each must eat in the evening to be alive the next day, Infirm allows Able to work for a day on condition that, at the end of it, a lottery decides who gets the food. If Infirm wins, Able dies and Infirm lives one day more than he would if Able wins (and then lives out his span).

⁴ I am supposing that it is not open to Able to wait until Infirm dies in order to become the sole owner of everything: assume that he would himself die no later than Infirm does in the absence of production. (Recall that the land is jointly owned, so that production by Able requires Infirm's permission.)

Able and the disutility of infirmity for Infirm. What will matter, in other and less technical words, is their preferences, what they like and dislike, and how much. And the crucial point is that Able's talent will not, just as such, affect how much he gets. If the exercise of his talent is irksome to him, then he will indeed get additional compensation, but only because he is irked, not because it is his labour which irks him. In short, he gets nothing extra just because it is he, and not Infirm, who does the producing. Infirm controls one necessary condition of production (relaxing his veto over use of the land), and Able controls two, but that gives Able no bargaining advantage. If a good costs \$101, and you have one hundred of the dollars and I only one of them, then, if we are both rational and self-interested, you will not get a greater share of the good if we buy it jointly just because you supply so much more of what is required to obtain it.

Here, then, joint world ownership prevents self-ownership from generating an inequality to which egalitarians would object. And, while the Able and Infirm story is an extremely special one in several respects, the particular point that talent as such yields no extra reward even under self-ownership where there is also joint ownership of external resources is, I believe, generalizable. (I do not say that no inequality repugnant to egalitarians can arise in the Able/Infirm situation, but only that either there will be no such inequality, or its source will not be Able's ownership of his own powers, but the influence of the parties' utility functions on the outcome of the bargaining process. One cannot guarantee that no inequality repugnant to egalitarians will arise, if only because different egalitarians favour different equalities, and it is extremely unlikely that all of them will emerge from the bargaining process.)

3. In section 4 I shall describe a seemingly fatal objection to the argument of section 2, and one from which, as I try to show in section 6, we can learn a great deal. But here, somewhat digressively, I develop a relatively minor objection to the argument, and one which is rather difficult to assess, because of controversial questions about the concept of rationality.

The objection questions the claim that self-ownership has no unequalizing effect in a jointly owned world. The following model may be used to develop the objection.

Consider two sets of equally able farmers. Members of the first set, the Joint farmers, own all the land jointly. Members of the second set, the Mixed farmers, each own some land privately, in varying amounts, but in no case enough to live off, and they also jointly own a further tract of land. Land fertility is such that the material position for each set of farmers is a

multi-person version of either (iv) or (v) of section 2: more than enough to keep everyone alive is available, if all the farmers work all the soil. If I am right in section 2, then the upshots of bargaining among Joint and among Mixed farmers should be identical whenever production possibilities are the same in the two cases, because private ownership of tracts of land insufficient to sustain life confers no more bargaining leverage than private ownership of nothing but talent alone does, where the rest of what is required for life-sustaining production is jointly owned.

The objection is that a Mixed farmer could threaten to destroy (part of) his private plot, whereas no one can threaten to destroy anything which is held jointly. If such threats would be credible, then it seems that privately well-endowed Mixed farmers could assert leverage over their privately less well-endowed cousins. And, if they could do so, then so could Able in the case, not excluded above, in which he has it in his power to let (part of) his talent decay. What is unclear, because of difficulties in the concept of rationality, is whether such a Schellingian⁵ threat would be credible, and, therefore, effective, *under the assumption that everyone is rational*. If it would be, then those with greater power to produce could get more in a jointly owned world for reasons which go beyond the consideration that their labour might be irksome to them.

But this objection to the argument of section 2 is, as I said, relatively minor, even if it is sound. One reason why it is minor is that it achieves purchase only in the rather peculiar case in which Able can indeed diminish his own productive power. But a more important reason for considering the objection secondary is that no libertarian would want to defeat the Able/Infirm argument (for the consistency of equality and self-ownership) on so adventurous a basis. He would want, instead, to overcome it by pressing the more fundamental objection to which I now turn.

4. Whatever should be said about the objection of section 3, there remains a deeper and seemingly fatal objection to the lesson drawn in section 2 from the Able/Infirm story. That lesson is that, without denying self-ownership, and without affirming equality of condition as an underived principle, one may move towards a form of equality of condition by insisting on joint ownership of the external world. And the seemingly fatal objection is that to affirm joint ownership of the world is, as the story of

⁵ See Thomas Schelling, *Strategy of Conflict*.

Able and Infirm might be thought to show, inconsistent with achieving the purpose and expected effect of self-ownership. What is the point of my owning myself if I can do nothing without the agreement of others? Do not Able and Infirm jointly own not only the world but also, in effect, each other? Would they not bargain exactly as they do if, instead of being self-owning, each was jointly owned by both? Does not joint world ownership entitle a person to prohibit another's wholly harmless use of an external resource, such as taking some water from a superabundant stream,⁶ and is it not, therefore, inconsistent with the most minimal *effective* self-ownership (and independently indefensible to boot)? It looks as though the suggested form of external resource equality, namely, joint world ownership, renders nugatory the self-ownership with which we had hoped to combine it. Self-ownership is not eliminated, but it is rendered useless, rather as it is useless to own a corkscrew when you are forbidden access to bottles of wine.

There are two possible replies to the objection that self-ownership is useless when it is combined with joint ownership of the world. The first, which is explored in section 5, is to argue that joint world ownership does not, in fact, deprive self-ownership of all use, since, to put the point crudely, economics isn't everything. The second reply, which I regard as both correct and very important, and which is mounted in section 6, is to accept that joint world ownership renders self-ownership merely formal, while showing that present polemical purposes do not require it to be anything more than that.

5. The first reply says that people have vital interests in matters other than production and the distribution of its fruits, matters on which joint world ownership might have no, or only a reduced, bearing. It would then be false that joint world ownership would render individual self-ownership useless.

But this reply seems to be incompatible with the fact that all human action requires space, which is jointly owned if the world is.⁷ (Even the mental activity of an immobile agent requires the space he occupies.) Or, if that is thought far-fetched, then consider, instead, that all human action requires nourishment, which requires food, which comes from the

⁶ See Chapter 3, p. 77 above.

⁷ On the importance of space as a resource, see my *Karl Marx's Theory of History*, pp. 50–2. For strong claims about the relationship between freedom and rights over space, see Hillel Steiner, 'Individual Liberty', pp. 44ff.

external world. It seems to follow that collective control over what anyone may do with the external world affects every department of life, and not just the domain of production. It looks, indeed, as though joint world ownership fully determines the entire outcome, whatever may be laid down officially about who owns whose powers.⁸

There is, perhaps, one 'action' which could be performed without the permission of others in a jointly owned world as long as there is self-ownership, and possibly not without it, namely, letting oneself die: in the absence of self-ownership one has noncontractual obligations which might forbid letting oneself die. (I speak of letting oneself die rather than of (other forms of) suicide, since active suicide might require external resources, and letting oneself die is achieved by refraining from using any.) But even this suggestion may be incorrect, since the world's joint owners might be thought to have the right to forbid one to die on the ground, for example, that one's dead body might pollute some of the world's resources.

6. But now let us recall our polemical task, which is to address Robert Nozick's contention that honouring people's self-ownership requires extending to them a freedom to live their own lives which is incompatible with the equality of condition prized by socialists. The recently suggested response to that contention was that self-ownership is, contrary to what Nozick says, compatible with equality of condition, since the inequality which Nozick defends depends on adjoining to self-ownership an inequalitarian principle of external resource distribution, which need not be accepted. When, instead, self-ownership is combined with joint ownership of the world, its tendency to generate inequality is removed.

The section 4 objection to that response was that the resource distribution under joint world ownership renders the self-ownership with which it is officially combined merely formal. *But that objection would, for immediate polemical purposes, be laid to rest, if it could be shown that the*

⁸ If, that is, the joint world ownership is itself substantive rather than merely official. For consider a regime in which a person A owns both himself and everyone else, with all other resources being in joint ownership. Then either that joint ownership remains substantive (because A's ownership of everyone is substantively consistent with the exercise of rights over things), in which case the statement in the text applies; or the joint world ownership itself lacks substance (because all 'rights' over things by owned persons belong, substantially, to the owner of those persons). I provisionally conclude, pending further possible counter-examples, that joint world ownership fully determines the outcome, rendering other provisions merely official, except for the case, if there is one, where it is itself merely official.

self-ownership defended by Nozick is itself merely formal, for he could not then maintain that self-ownership necessitates inequality of condition (since the Able/Infirm model shows that merely formal self-ownership does not do that).

To be sure, Nozick would like us to think, what he evidently himself thinks, that the self-ownership which he favours is more than merely formal. In Chapter III of *Anarchy, State, and Utopia* he pleads that each person should be free to live his own life, a *desideratum* which is supposed to be secured by the rights constituting Nozickian self-ownership.⁹ But Nozick also thinks that the most abject proletarian – call him Z¹⁰ – who must either sell his labour power to a capitalist or die, enjoys the relevant rights.¹¹ And if that is so, then Nozick could not object that Able's self-ownership is merely formal, since, whether or not it is indeed merely formal, it is not less consequential than Z's.

If Able and Z lack self-ownership, in an effective sense, then that is because neither can do anything without the agreement of Infirm and the capitalist, respectively. But they are, nevertheless, different from chattel slaves. For while each can do nothing without another's agreement, it is also true that there is nothing which either need do without his own agreement: neither Infirm nor the capitalist has rights of sheer command that are not grounded in a prior contract to obey. By contrast, the slave's master may unilaterally determine what the slave must do.

The resulting dilemma for Nozick is severe. Either capitalism does not confer consequential self-ownership, since Z's self-ownership is not robust enough to qualify as such, or, if it does so qualify, then genuine self-ownership allows the enforcement of equality of condition, since Able's self-ownership is at least as robust as Z's, and no inequality follows from self-ownership in the Able/Infirm world.

Notice, moreover, that both Able and Infirm are in one respect far better placed than Z is. For each of Able and Infirm must strike an agreement with the other in order to survive, and, since both are rational and self-interested, it follows that the survival of each is assured (in a world abundant enough to sustain two people on the labour of one). By contrast,

no capitalist need strike an agreement with Z in order to survive,¹² and Z's very survival is, therefore, not guaranteed.

To put the main point differently: Nozick says that a propensity to inequality is unavoidable when people are allowed to live their own lives. Yet he must hold that, despite the constraints on his life choices, and despite his adverse power position *vis-à-vis* others, Z leads his own life. But it then follows that Nozick is wrong that, when people lead their own lives, equality of condition cannot be guaranteed, since Able and Infirm lead their own lives at least as much as Z does, and the constitution under which they live guarantees a certain equality of condition.¹³

I have said (see Chapter 3, p. 70 above) that it is a strength in Nozick's position that the thesis of self-ownership is inherently appealing. But what exactly, we should now ask, possesses appeal for us? What, in this conceptual region, do we feel moved to insist that people should enjoy? Is it (i) self-ownership as such, the bare bourgeois freedom which distinguishes the most abject proletarian from a slave; or is it (ii) the more substantive circumstance of control over one's life? If (i) is the right answer, then we win both the polemic against Nozick and the larger struggle to reconcile socialist equality with liberty. But I think that most of us believe that people should have more effective sovereignty over themselves than either Able or the proletarian enjoy. This does not, of course, rescue Nozick. On the contrary: whereas it seemed that it was a virtue in libertarianism that it affirms self-ownership, it now turns out that self-ownership as such, in the absence of further enfranchisement, has no special attraction. But it is also true, for similar reasons, that socialists should not favour joint world ownership. They must seek another way of achieving equality of condition, one that supports greater autonomy than joint world ownership allows.

We can now draw three conclusions. First, the tale of Able and Infirm shows that strict socialist equality is compatible with the freedom that defenders of capitalism boast that everyone has in capitalist society, since that freedom is nothing more than formal self-ownership, and formal self-ownership obtains in the world of Able and Infirm.

⁹ See *Anarchy*, pp. 28–35 (on side constraints) and pp. 42–5, 48–51 (on leading one's own life).

¹⁰ After *ibid.*, pp. 262–4.

¹¹ Z is abject because he owns no private property, and he will therefore contract, on adverse terms, with someone who does own some, if he can find a propertied person willing to contract with him. His predicament might be thought dire, but Nozick does not think that he has (in general) a just grievance: see Chapter 3 above, pp. 85–6.

¹² Some would question this contrast between the capitalist and the worker. I defend it in section 13 of Chapter 13 ('The Structure of Proletarian Unfreedom') of *History, Labour and Freedom*.

¹³ For a challenge to the parallel between Able and Z, see Jan Narveson, *The Libertarian Idea*, pp. 71–3. For excellent defence of it, see Grant Brown, review of Narveson's book, pp. 442–3.

Second, although it indeed turns out that the freedom of which Nozick speaks can be reconciled with equality, that is only because it is a very confined freedom, and it remains to be shown that equality can be reconciled with a freedom more worthy of the name.

Such freedom – and this is the third conclusion – is not self-ownership, but autonomy, the circumstance of genuine control over one's own life. Universal self-ownership with the world up for grabs fails to ensure autonomy, since it tends to produce proletarians, who lack it. Universal self-ownership does not, indeed, produce proletarians when it is conjoined with joint ownership of external resources, but the latter breaches autonomy in a different way. I shall argue, later, that the right conclusion is that, for real freedom, or autonomy, to prevail, there have to be restrictions on self-ownership,¹⁴ and that is ironical, since it is autonomy that attracts us to self-ownership, through a disastrous misidentification. The very thing that makes the self-ownership thesis attractive should actually make us spurn self-ownership. But I now proceed to expound, and reject, a different attempt to secure equality of condition, which combines self-ownership with an egalitarian dispensation over external resources of a kind other than joint ownership.

III The Steiner constitution

7. A third economic constitution, different from both Nozick's and the one described in section 2 above, combines self-ownership with private ownership of initially equal parts of the world's resources. Unlike joint ownership, which forbids a Nozickian formation of unequal private property by placing all resources under collective control, the new proposal, which I shall call the Steiner constitution,¹⁵ institutes private property from the start, but it forbids the inequalitarian Nozickian scramble by privatizing resources in an initially equal division. The Steiner constitution is not Ronald Dworkin's well-known economic constitution, which Dworkin calls 'Equality of Resources', since Steiner equalizes external resources only, whereas Dworkin also favours an equalizing

compensation for inequality of personal talent.¹⁶ In fact, and as we shall see in section 9, Dworkin contends, in my view unsuccessfully, that a constitution of the Steiner type is incapable of consistent justification.

At first blush, joint ownership and equal division look to be equally egalitarian ways of treating external resources, but, whether or not they really are both egalitarian, and equally so, their outcomes are utterly different. Consider, again, Infirm and Able. Suppose that Steiner is in force, so that each owns an equal amount of land. Suppose, further, that Able could work both plots of land and thereby produce more than enough to sustain both himself and Infirm, and that Able can also produce at least enough to sustain himself by working his own land only. Then Able's precontractual 'threat-point' would be much higher than Infirm's: Infirm's would be death, but Able's would be whatever standard of living he could achieve by working his own land only. If, then, Able contracts to support Infirm in return for some of the product of working Infirm's land, he is likely to supply Infirm with his subsistence only, since he has Infirm over a barrel. And if the product Able could keep for himself after tilling Infirm's land is not, in his view, worth the additional labour he must spend to get it, then Able will let Infirm die.¹⁷ So in this case, and, no doubt, generally, joint ownership is kinder than equal division to the less able. Note, further, that Infirm would fare even worse under Lockean common ownership.¹⁸ Common ownership would allow Able to till as much land as he wished without giving Infirm anything, and, unlike the Steiner constitution, it would endow Infirm with nothing to offer Able in return for Able's support.

Notice that, under many circumstances, equal division will generate capitalism. If people's talent and/or luck are sufficiently unequal, relatively high fliers may so transform their original shares that they can profitably hire others to work on them at wages superior to what those others could glean from working their own resources. Low fliers will then have reason to sell their shares to their more fortunate brethren and

¹⁴ See Chapter 10, section 3 below.

¹⁵ I so name it because it is Hillel Steiner's solution to the problem of justice in distribution when the issue of successive generations, which I do not address here, is set aside. See Steiner's 'The Natural Right to the Means of Production', pp. 48–9, and his superb 'Capitalism, Justice and Equal Starts', *passim*. The latter article is particularly relevant to and against Ronald Dworkin's claim – see part IV below – that the Steiner constitution lacks coherent motivation.

¹⁶ I do not know whether Dworkin thinks that the equalizing compensation ought, if possible, to be complete. The following pages of 'Equality of Resources' suggest more than one answer to that question: pp. 299, 301, 327, 337.

¹⁷ I suppose, once again (see footnote 4 above), that Able may not wait until Infirm dies in order to pick up his share. (Perhaps Infirm foretells that by designating his land as his burial plot.)

¹⁸ At least if we ignore the *First Treatise of Government* (see especially paras. 41, 42), which can be interpreted as laying a duty on Able to support Infirm. For more on that, see the critique of James Tully at Chapter 7, section 11 below.

become their wage labourers.¹⁹ By contrast, joint ownership turns into capitalism only if every joint owner agrees that it should, or agrees to an equal (or other) division out of which capitalism develops. And capitalist societies which develop out of an initially equal division will tend to display more inequality (or display the same inequality sooner) than those capitalist arrangements with joint ownership in their prehistory, even if both sorts will also tend to display less inequality than those growing out of Nozickian appropriation.

Unlike joint ownership, equal division does not guarantee subsistence for Infirm, even when that is materially possible,²⁰ and it therefore contradicts a basic welfare state principle. Equal division under self-ownership must therefore be unacceptable to anyone who believes in even a minimally demanding principle of equality of condition, and it might therefore be argued that equal division does not, in fact, respect the egalitarian intuition about external resources.²¹ But, however that may be, self-ownership together with equal division will not yield the equality of condition prized by socialists. And, since joint ownership, which might yield that equality, rules out the substantive personal rights definitive of effective self-ownership, a constitution of the sort I described in section 1, combining self-ownership (in something more than name) with equality

¹⁹ There is less tendency to such an upshot when the greater talent of more productive people cannot be developed, and/or exercised to differentially productive effect, except as a result of a division of labour in which less productive people are essential participants. But socialists and left-wing liberals are inclined to exaggerate the extent to which that is likely to be so.

²⁰ For a set of statements urging some such dependence of the more on the less productive, see William Galston, *Justice and the Human Good*, pp. 207, 211–12; and two authors he quotes: David Miller, *Social Justice*, pp. 105–6; and Leonard Hobhouse, *The Elements of Social Justice*, pp. 140–1. Part of the claim is nicely put by Bishop Latour in Willa Cather's *Death Comes for the Archbishop*. Latour says to his friend, the excellent cook, Father Joseph Vaillant: 'I am not deprecating your individual talent, Joseph . . . but, when one thinks of it, a soup like this is not the work of one man. It is the result of a constantly refined tradition. There are nearly one thousand years of history in this soup' (p. 39). For a persuasive attempt to block inferences which socialists might wish to draw from Bishop Latour's observation, see Nozick, *Anarchy*, p. 95.

²¹ As it is in scenarios iii–v (but not i and ii) in section 2 above.

²² For an implicit claim to that effect, see the axiomatization of self-ownership with external resource equality offered by John Roemer in his 'Public Ownership'. I must emphasize 'might' in the text because I do not believe that Roemer demonstrates that external resources are unequally distributed in the Steiner constitution. They patently *are* equally distributed, and some (at least) of Roemer's axioms therefore lack generality, as conditions on self-ownership and external resource equality, even if they are true of particular ways of achieving that conjunction. In an unpublished paper which I will send to anyone who asks for it, I show that axioms 3, 5 and 6 (Land Monotonicity, Technological Monotonicity and Self-Ownership of Skill, respectively): see, further, footnote 25 below) lack the stated generality. I distinguish in that paper respects in which Roemer's construction is successful from the particular respect, mentioned here, in which it fails.

of worldly resources and securing equality of condition, has not been discovered here.

I believe, moreover, that no such constitution is to be discovered: no egalitarian rule regarding external resources alone will, together with self-ownership, deliver equality of outcome, except, as in the case of joint ownership, at an unacceptable sacrifice of autonomy. There is a tendency in self-ownership to produce inequality, and the only way to nullify that tendency (without expressly abridging self-ownership) is through a regime over external resources which is so rigid that it excludes exercise of independent rights over oneself.

8. A comparative examination of the convertibility into one another of equal division (ED) and joint ownership (JO) constitutions supports the view that, if self-ownership is to be maintained, then ED is the preferable form of external resource equality. What follows is not intended as a case for ED over JO *tout court*, though some of it might also be so viewed, but only for ED over JO *given* that people are regarded as sovereign over their own powers.

Where there is unanimous preference for the other constitution, either of JO and ED may readily be converted into the other. If everyone under JO wants ED, they will simply divide the jointly owned resources. And if everyone under ED wants JO, they will simply pool what they separately own. Neither system has a convertibility advantage over the other under unanimous preference for the alternative system, when transaction costs are ignored (as they surely should be at the present level of reflection). But what if some but not all under ED want JO, or some but not all under JO want ED?

Under ED the some who want JO will not get it. They will not, that is, get full joint ownership of everything by everybody, since some will keep their separate shares. But those who want JO could join with all those who want to join with them in a less than comprehensive joint ownership: call it VJO (V for voluntary). Now, not all of those who want JO will want VJO as much as they do JO, or even at all. Do they therefore have a grievance against the ED starting point? Can they say that those who want ED get what they want but those who want JO do not? No, for the proper parallel to someone who wants comprehensive JO is someone who wants comprehensive ED, and he is not guaranteed what he wants under ED either (since ED makes VJO possible). If those who want JO go into VJO, then neither they nor those who want comprehensive ED get what they want. But both groups fail to get what they want because others make

choices which a believer in self-ownership must endorse their right to make.

If, on the other hand, there is JO at the beginning, then it persists as long as just one person wants it to, and that seems inconsistent with regarding the others as self-owners, in an effective sense. One could, of course, begin with a JO under which any of the n joint owners would be entitled to leave with $1/n$ th of total external resources. But, when transaction costs are ignored, to add such an entitlement to JO is to assimilate it to ED. JO with the right to contract out is, for practical purposes, equivalent to ED (since ED permits each to contract into JO or VJO).

The conclusion seems to be that, if one begins with a commitment to both self-ownership and equality of external resources, and one has to choose between JO and ED, then the natural way to realize external resources equality is through ED rather than through JO. To go for JO would probably reflect a belief, prejudicial to self-ownership, that people should be endowed with rights which enable them to benefit from (the fruits of) the personal powers of others.

IV Dworkin on Steiner

9. The Steiner constitution unites self-ownership with an equal division of external resources (only), and therefore implements what Ronald Dworkin calls 'the starting gate theory of justice', which he wrongly supposes may readily be dismissed.²²

Before I address Dworkin's case against the starting gate theory, it will be useful to relate the concerns of the present chapter to those of his magisterial diptych on the theme of equality.²³ The Dworkin articles define a distinction between equality of welfare, which Dworkin rejects, and equality of resources, which he favours. That distinction is orthogonal to the one which has exercised me here, which is between personal and worldly endowments. An egalitarian view of worldly resources may be attached to an egalitarian view of personal powers, or, instead, as in Steiner, to a view which represents them as self-owned. If one takes, as Dworkin does, a doubly egalitarian view, then one may, as he shows, develop that view either as an egalitarianism of welfare or as an egalitarianism of (all) resources. Whichever way one develops the comprehensively egalitarian view, no one owns anything as of basic moral right, and relations among things and persons are arranged so that either

welfare or share in total resources is equalized. But if, like Steiner, one restricts one's egalitarianism to worldly resources, then, too, one might develop the egalitarian component either as an egalitarianism of resources or as an egalitarianism of welfare. The first alternative is to divide the external resources themselves equally²⁴ and then let people do what they want with them. The second alternative, to wit, welfare egalitarianism with respect to external resources only, might seem incoherent (since external resources produce no – or only a negligible – stream of utility dissociable from the result of applying talent to them), but John Roemer has provided an arresting axiomatic sketch of it.²⁵

Thus, Dworkin's distinction between welfare and resources egalitarianism, and my distinction between comprehensive egalitarianism and egalitarianism with respect to external resources only, generate, when they are put together, the following four-fold classification of views:

<i>Welfare egalitarianism</i>		<i>Resources egalitarianism</i>	
with respect to all resources	comprehensive	comprehensive resources egalitarianism	
	welfare egalitarianism (e.g., as described by Dworkin)	resources egalitarianism (e.g., as espoused by Dworkin)	
with respect to external resources only	partial welfare egalitarianism (e.g., as axiomatized by Roemer)	partial resources egalitarianism (e.g., as espoused by Steiner)	

Dworkin emphasizes the distinction separating the columns of the above table, but he gives short shrift to the distinction which separates its rows. He does not bring the bottom row into clear focus, and he therefore does not deal successfully with its right-hand side, which is tantamount to what he calls the 'starting gate theory', a theory whose fairly obvious rationale eludes him. The starting gate theory 'holds that justice requires equal initial resources' and 'laissez-faire thereafter'. It says that 'if people start in the same circumstances and do not cheat or steal from one another, then it is fair that people keep what they gain through their own skill'. This, says Dworkin, is 'hardly a coherent political theory at all'. It is 'an

²⁴ For example, by means of the auction described by Dworkin at pp. 286–90 of 'Equality of Resources'.

²⁵ See footnote 21 above. Two of Roemer's axioms are (1) Land Monotonicity: nobody's

(2) Self-Ownership of Skill: if A has at least as much skill as B, then he has at least as much welfare as B.

²² See Dworkin, 'Equality of Resources', pp. 309–10.

²³ I refer to the two-part essay which appeared in *Philosophy and Public Affairs* for 1981.

indefensible combination of very different theories of justice': for Dworkin, an initial equality is justifiable if and only if it is justifiable to preserve equality throughout.

But Dworkin misunderstands the motivation for the starting gate theory. He is wrong that the *laissez-faire* component depends on 'some version of the Lockean theory that people acquire property by mixing their labour with goods or something of that sort', and that a similar approach should, therefore, apply at the beginning, that consistency requires Lockean or Nozickian acquisition then, rather than an equal division of resources. It is, I shall argue, false that 'the moment when the immigrants first land is . . . an arbitrary point in their lives at which to locate any one-shot requirement that they each have an equal share of any available resources'.²⁶

The *laissez-faire* component in the starting gate theory cannot be grounded in Locke's theory that people acquire property by mixing their labour with things, since starting gate's *laissez-faire* begins only once all external resources have been distributed, and it is then too late to acquire title in something by mixing one's labour with it. Labour mixture secures title, for Locke, only in what is not yet owned, and there is nothing unowned with which to mix one's labour once the initial equal division of external resources has been effected.

Dworkin represents Locke as holding that labour secures title because it joins what the labourer works on to something he already owns, to wit, his labour. I think that is a correct exegesis of Locke. But some think that, for Locke, labouring on something makes it one's own not (only) for the stated reason, but when and because, by labouring on it, one thereby enhances its value. And *some* such consideration might indeed be used to justify the *laissez-faire* component in the starting gate theory. But one who drew upon it would not, I shall argue, be thereby committed against an initial equal division.

Note that what I shall call the 'value argument' is truly different from the argument from labour mixture, even though many (and sometimes, perhaps, Locke) are prone to confuse the two. If the justification of your ownership of what you have laboured on is that your labour is in it, then you do not own it because you have enhanced its value, even if what deserves to be called 'labour' necessarily creates value. And, for the value argument, it is the conferring of value itself, not the labour by which it is conferred, which is essential: if you magically enhanced something's value

without labouring, but, say, by wishing that it was more valuable, then, on the value argument, you would be entitled to whatever that argument justifies you in having.

Locke's principal labour mixture paragraphs do not, in my view, invoke the consideration that labour enhances the value of that to which it is applied. And Karl Olivecrona may be right that when, in later paragraphs, Locke does bring value enhancement to the fore, he is not trying to justify the initial appropriation of private property.²⁷ According to Olivecrona, Locke is there, instead, justifying the extensive inequality of goods that comes to obtain long after original appropriation has ceased. Locke's justification of it is that almost all of the value of what is now so unequally distributed is due not to any unequal initial appropriating but to the labour which followed long after initial appropriation.²⁸

So construed – not, that is, as a justification for original appropriation – the value argument might indeed be used to justify the inequality generated by *laissez-faire*, the justification of it being that labour is responsible for (almost all of) the value difference in which that inequality inheres. But it is perfectly consistent to propound that defence of *laissez-faire* inequality while yet insisting on an equal division at the outset of the resources for whose value no one's labour is responsible. Indeed, if labour's value-creating power is the basic justification of the inequality brought about by *laissez-faire*, then an initial equal division of external resources is not merely consistent with, but also a natural prelude to, *laissez-faire*, since no one creates the value of raw natural resources.

To conclude: if what matters about labour is that it annexes something already owned to something unowned, then labour plays no part in justifying the *laissez-faire* component in the starting gate theory, since, on that theory, everything is already owned once *laissez-faire* begins. And if what matters about labour is that it adds value, then that might indeed justify the *laissez-faire* component, but without having egalitarian implications for the distribution of raw resources. To be sure, one might contrive a (not very good) argument for original appropriation by reference to labour's value-creating power,²⁹ but one is not committed to endorsing such an argument when one justifies inequalities which arise after appropriation by arguing that labour brought them about. It is, then, false that

²⁶ All quotations in the foregoing two paragraphs are from 'Equality of Resources', p. 309.

²⁷ See his 'Locke's Theory of Appropriation', pp. 231–3.

²⁸ For more on Locke on labour's value-creating power, see Chapter 7, sections 6–10 below.

²⁹ See, Chapter 7, footnote 37, below.

the theory of Lockean acquisition (or whatever other theory of justice in acquisition is supposed to justify the *laissez-faire* component in a starting gate theory) can have no less force in governing the initial distribution than it has in justifying title through talent.³⁰

Now, the true foundation of the starting gate theory is the contrast between persons and worldly resources as possible objects of rights and egalitarian dispensation. It is reasonable to think, with respect to external resources that have not been acted upon by anyone, that no one has more right to them than anyone else does, and that equal rights in them should therefore be instituted. But it is not so evidently reasonable to suppose, similarly, that no one has, to begin with, more right than anyone else over the powers of given people. And if you also think that each individual has the right to decide what to do with his own powers, and you (surely not inconsistently) combine that thought with external resources egalitarianism, then the upshot is the 'starting gate theory'.

The fundamental distinction for the starting gate theory is not between what is appropriate at the beginning and what is appropriate later. The theory gets framed that way only on the supposition that all external resources are to hand at the outset. If that is false, and some of them come forward later, by rising out of the sea, or as a consequence of exploration, then the so-called (and essentially misnamed) starting gate theory requires a supplementary equal division rather than a Nozickian free-for-all. The moment when the immigrants first land is not, therefore, 'an arbitrary point' at which to insist on equality. It is unarbitrary in virtue of the auxiliary assumption that all the external resources that will ever exist are already available.

The combination of initial equality and subsequent unequalizing competition which, Dworkin claims, 'cannot hold together a political theory', makes sense, he thinks, in the game of Monopoly, 'whose point is to allow luck and skill a highly circumscribed and, in the last analysis, arbitrary role'.³¹ Now, whatever Dworkin means (I find the statement baffling) when he says that part of the point of Monopoly is to allow skill to play an arbitrary role, consider instead a different game, which models the 'starting gate theory' rather more accurately, and indeed gives it its name, to wit, some sort of track race. One may find a political theory which takes that as a suitable model for distributive justice repugnant. One may think that the Coes and Ovetts and Chamberlains in the game of life

should not receive high rewards because of their God- or nature-given talents. But then one must contend with intelligible qualms about people's rights over their own powers, which Dworkin ignores. The normative stance of the left would be easier to sustain if the starting gate theory were simply incoherent. But it is not.³²

V Conclusion

10. It is a familiar right-wing claim that freedom and equality are conflicting ideals, and that, to the extent that they conflict, freedom should be preferred to equality. Some rightists regret that, as they suppose, equality has to be rejected, whereas other see no harm in that.

Most leftists reply either that there is no real conflict between equality and freedom, when both are properly conceived, or that, to the extent that there indeed is one, freedom should give way to equality, since justice demands equality, and justice comes before all other political values.

This chapter has been about equality and freedom, and its author is one kind of leftist. But I have not tried to show that there is no conflict between equality and freedom for leftists to worry about: that large question has gone unaddressed here. What I have shown, instead, is that there is no conflict between equality and what the libertarian Right calls freedom. For, under joint ownership of the world's resources, everyone has the rights constituting self-ownership – which is the libertarian Right's conception of freedom – without prejudice to the maintenance of equality of condition.

³² It is curious that Dworkin should object to the starting gate theory on the ground that it distinguishes an initial just distribution from later distributions justified as voluntary transformations of that initial one, since his own theory of justice, equality of resources, has the same structure. Readers familiar with the 'Equality of Resources' article will understand that if people do not differ in their intangible personal resources, then what follows the auction's equal division of external resources is, precisely, *laissez-faire*. Nor does Dworkin's theory articulate itself in that two-stage starting-gate-like way only in the special case in which intangible resources are equal. A structurally identical dichotomous (modelled on a scheme insuring against low talent endowment) precedes pure market process. So Dworkin's privileged starting point is no less (and no more) arbitrary than Steiner's. What divides their theories is nothing to do with temporal structure, but the content of the initial quality. Dworkin characterizes the starting gate theory as urging that (this was quoted at p. 107 above) 'if people start in the same circumstances, and do not cheat or steal from one another, then it is fair that people keep what they gain through their own skill' ('Equality of Resources', p. 309). But if we read 'circumstances' in the extended fashion (which includes internal resources) in which Dworkin uses that term (see *ibid.*, p. 302), then he himself affirms the quoted statement.

³⁰ Dworkin, 'Equality of Resources', p. 309.

³¹ *Ibid.*, p. 310.

VI Retrospect

I now offer a summary of the pair of chapters that come to an end here, which some readers may find useful.

One way of doing philosophy well is to assemble premises which even opponents will not want to deny, and by dint of skill at inference, to derive results which opponents will indeed want to deny but which, having granted the premises, they will be hard pressed to deny. The trick is to go from widely accepted premises to controversial conclusions. It is, of course, no trick at all to go from premises which are themselves controversial to controversial conclusions.

Now some critics of Robert Nozick dismiss his work as belonging to the second category just distinguished. Thomas Nagel, for example, avers, in his review of *Anarchy, State, and Utopia*, that Nozick's strongly egalitarian conclusions are boringly unsurprising in light of the strongly egalitarian premises with which he begins.³³ But I believe that Nozick can be presented more sympathetically than that, and that he needs to be so presented in order that we may understand the otherwise unaccountable allure of his ideas.

Nagel thinks what he does about Nozick because³⁴ he shares Nozick's view that freedom is antithetical to equality, the difference between these thinkers being that Nagel does not regard the antithesis as a reason for rejecting equality wholesale. Being less disposed to regard freedom and equality as incompatible, I am less inclined to treat Nozick's egalitarian conclusions as a rewrite of his (would-be) freedom-affirming premises. Let me, then, say how I think Nozick gets from the latter to the former, and, then, in what ways his progress can be blocked.

Nozick aims to defend the inequality that makes socialists angry and liberals uneasy by exploiting the commitment to freedom which is common to socialists, liberals, and rightists of the Nozick free-market-supporting kind. There exist other kinds of rightists, such as Roger Scruton, who affect scepticism about freedom itself, but, whatever impact they have achieved on contemporary upper middle-brow intellectual culture, they do not, like Nozick, disturb socialists and liberals intellectually, precisely because they do not pretend to build their edifice on shared normative foundations.

But how does Nozick go from freedom to inequality? He departs from

essentially two premises, the first of which is that no one should be a slave, in whole or in part, to anyone else. No one, that is, may rightfully be owned by anyone else, but each is, rightfully, a self-owner. And, since I am not a slave, but a sovereign self-owner, then you may not co-opt my services when I have not contracted to supply them. If you had the right to command them independent of contract, then I would be, to that extent, your slave. It supposedly follows that a welfare state, in which, for example, quadriplegics are sustained by income extracted from the able-bodied on pain of coercive sanction, involves the partial slavery of some to others. It involves, so Nozick would contend, exactly that subordination of some to others to which socialists object when they plead against the power of capitalists over workers. Yet that is a legitimate power, being the fruit of contract, whereas no contract is involved as background to the service which the welfare state demands.

We may summarize this first part of Nozick's argument as follows:

- (1) No one is to any degree the slave of anyone else. Therefore
- (2) No one is owned, in whole or in part, by anyone else. Therefore
- (3) Each person is owned by himself. Therefore
- (4) Each person must be free to do as he pleases, if³⁵ he does not harm anyone else: he is not required to help anyone else.

Now the conclusion just stated does not by itself legitimate extensive inequality of distribution. For inequality to begin to form, people must have rights not over themselves but over external things, and no such rights can be excogitated from the foregoing argument. In order to establish them, Nozick needs a further premise, a second premise, and that is the premises to which I now turn.

Whereas Nozick's first premise is about people and their powers, his second premise ((5), below) is about everything else and its powers, which is to say that it is about nature and about the unmodified resources of nature. These, for Nozick, are, antecedently to anyone's actions or labour on them, not owned by anyone. They pre-dated the appearance of human beings in the world, and while each human being is born with the natural rights over himself implied by the first premise, none is born with any natural rights over things. Accordingly, any rights which anyone establishes in things must derive from exercises of rights over

³³ See his 'Libertarianism Without Foundations', especially p. 193.

³⁴ See Chapter 2, subsection 2e above.

³⁵ Not if and only if, since some harmings do not violate self-ownership, just as some damages to your property do not violate your rights in it. The issue of which harms are permissible, and which not, is addressed in section 6 of chapter 9 below.

himself.³⁶ And the way, in particular, that original rights in things are formed is through each person's entitlement to appropriate any amount of raw resources if (see (4)), which is a consequence of (1)) he does not thereby harm anyone (including in 'anyone' not only those who exist when he appropriates but also anyone who comes later). Non-harming appropriation is simply a case in point of the 'natural liberty' endorsed in (4).

So the second premiss is:

(5) The external world, in its native state, is not owned, in whole or in part, by anyone.

And (5), together with (4), enables inference of:

(6) Each person may gather to himself unlimited quantities of natural resources if he does not thereby harm anyone.

The next step requires a view about what it means to harm somebody by appropriating an unowned natural resource. Nozick's answer is that it is to make him worse off than he would have been had the resource not been appropriated at all. But unappropriated resources, like common land, tend to be used less productively, for organizational and incentive reasons, than resources that have been taken into secure private control and that are therefore transformable for private gain. It is relatively easy to obtain sufficient benefit from private exploitation of resources that appropriators will have enough to compensate others for the latter's loss of access to them. Non-appropriators will not then be worse off than they would have been had the resources not been appropriated. Along these lines, the comprehensive privatization of almost everything, by those who are quick enough to privatize before others do, is readily justified. Some, who form what we may call a proletariat, will have been too slow or will have been born too late to privatize anything, but they will not be relevantly worse off, so they have no just grievance to press. In sum, (6) enables inference of:

(7) Unequal quantities of natural resources may become, with full legitimacy, privately owned by a section of the population.

Now if each owns himself, in the sense of (4), and the resources of the external world are monopolized by a section of the population, the

resulting economy will, on ordinary assumptions about human motivation (which is to say, on the assumption that people are not extraordinarily altruistic), exhibit extensive inequality of condition, on any view of what equality of condition is, be it equality of income, or of utility, or of need satisfaction or whatever. So (4) and (7) yield the desired conclusion, which is that:

(8) Extensive inequality of condition is unavoidable, or avoidable only on pain of violating people's rights to themselves and to things.

Now, there are (at least) three ways of resisting the foregoing line of argumentation, each of which is featured in this book. The first is to challenge the derivation of (4) from (1), and, more generally, to subject the rhetoric of self-ownership to critical scrutiny: that will be the task of Chapter 10 below. But I think that it is interesting and important that we can resist Nozick in two decisive ways which involve no rejection of the self-ownership idea. One is to challenge his notion of harm, by means of which he passes from (6) to (7). One can question the test Nozick uses for determining whether an appropriation of private property harms someone, and argue, against him, that the fact that a person is no worse off than he would have been had the resource not been privately appropriated at all does not show that he is not harmed, since he may nevertheless be far worse off than he would have been had the resource not been appropriated by whoever actually appropriated it: that was the burden of section 3 of Chapter 3 above. And the other way of objecting to Nozick without questioning the idea of self-ownership is to challenge his second premiss, (5), the premiss that the external world is originally unowned. It is, of course, legally speaking, originally unowned, but we are here discussing not its original legal condition, but its original moral condition. (If we were discussing legal, as opposed to moral, truth, then the claim that people own themselves would also be evidently false.) One may, then, press against Nozick an alternative view of the original moral relationship between people and things, under which we regard nature as, from the start, collectively owned by everyone. If that different conception of rights over the world is united with the principle of self-ownership, extensive inequality of condition is avoidable: and that was a principal claim of the chapter that ends here.

³⁶ On the plausible principle that a creature lacking certain rights could acquire them only as a result of exercises of rights by a creature (for example, as in this case, itself) that already has rights of some kind.