PRIORITY OF INDIVIDUAL SOVEREIGNTY

A Libertarian Approach

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Abstract

This project develops a novel account of self-ownership overcoming two interrelated problems that contemporary libertarians have yet solved—the problem of imprisonment and the denial of assigning a greater moral weight to an individual body than to extrabodily materials. The thesis that an individual has natural ownership of his body appears to well account for the wrongness of non-consensual use of an individual's body. The problem of imprisonment challenges this appearance. Since right libertarians place weak or no limits on appropriation, they could not rationally condemn unilateral occupation of the natural environment that amounts to imprisonment of an innocent individual so long as the appropriator has worked on the environment. This project examines various right-libertarian attempts to solve this problem after mapping a new conceptual terrain of libertarianism. Besides the common division into libertarian theories that place limits on appropriation and libertarian theories that do not, this project proposes another division focusing on whether the thesis and rules of distribution are inferred from the same set of more fundamental principles and nonmoral premises. As these two divisions cut across each other, right-libertarian theories are classifiable into four types. This project demonstrates that, in solving the problem of imprisonment, right-libertarians generally in turn deny greater moral importance of our bodes relative to extrabodily

materials. Falling into none of those types, this project develops an original idea about what our bodies are distinct from extrabodily objects concerning our living. Our agency extends beyond our bodies to extrabodily materials because we make an impact on the world by means of exercising materials' causal capacities to make changes. Since we are identical to our bodies, our bodies play an extra role that extrabodily materials lack—changes that our bodies undergo are changes that we undergo. Control over changes to our bodies that we are, if disrespectful, is a tie-breaking consideration giving priority to respect self-ownership over ownership of extrabodily materials. The last part of this project provides a physiological conception of human body as organism by drawing recent literature of biology and philosophy of biology. The project reveals that several counterexamples to the normative priority of the body over extrabodily objects rest on dubious presuppositions stemming from the folk understanding of organism.

Declaration

I, the undersigned **Kin-wai Leung**, candidate for the degree of Doctor of Philosophy at Central European University Doctoral School of Political Science, Public Policy and International Relations, declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of work of others, and no part the thesis infringes on any person's or institution's copyright. I also declare that no part the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Hong Kong, January 31, 2022

Signature

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Introduction

Libertarianism is a tradition of political thought in which different views share a significant family resemblance.[1] One of the central aspects these views resemble in is that respect for individuals' negative liberties of certain sorts, including economic liberties, is a good index of how just a society is.[2] Many libertarians embrace the thesis of self-ownership, though its relation to the requirement of respect for negative liberties is open to debate. According to this thesis, an individual originally owns himself in the same way that a master owns his slave. 'Ownership' is a technically term; for now, we may focus on a central claim entailed by it: permissible use of an individual, done by himself or by others, is at his normative discretion.

It is easy to demonstrate the practical import of this thesis if we assume that an individual's normative discretion over himself covers his body as well. The thesis offers a straightforward justifying explanation for the wrongness of forcible prevention of an individual's use of his own body such as banning abortion and prohibiting consensual killing (Thomson, 1971; Vallentyne, 2003); it also explains the wrongness of non-consensual use of an individual's body such as rape, forced labour, and '(unchosen) eyeball redistribution'

[1] This definition of libertarianism is becoming popular among libertarians (Brennan et al., 2018; Mack & Gaus, 2004; van der Vossen, 2019).

[2] See Mack & Gaus, 2004, pp. 116–117.

(Mack, 2002, p. 260). According to the thesis, all these are wrong because how an individual's body is used is not decided by him.

However, the picture that the thesis of self-ownership well accounts for pre-reflective judgments about use of a human body has been continually challenged. Counterexamples have been given by critics to show that enforcement of self-ownership implausibly bans any paternalistic treatment and minor nuisances (Sobel, 2012; Wall, 2009). The mere fact about a human body grounds no reason for judgment and action (Cohen, 1995; Lippert-Rasmussen, 2008). Disgust causally explains our moral beliefs about cases supporting the thesis, and yet production of disgust is a psychological mechanism unreliable for tracking moral truths (Freiman & Lerner, 2015).

Among those challenges, one targets somewhat specifically at right-libertarianism. Right-libertarianism is a branch of right-wing libertarianism having three assumptions. First, 'raw external nature' is originally unowned (Cunliffe, 2000, p. 2). Second, through and only through working on previously unowned objects or voluntary agreement in compliance with some normative limits, if any, individuals acquire enforceable rights in the objects. Third, normative limits mentioned in the previous assumption are weak or none. In view of these three assumptions, both its advocates and critics notice a worry (Cohen, 1995, p. 98; Mack, 2010, pp. 69–71; Russell, 2010, p. 164). Suppose an appropriator works on unowned land

surrounding a forest in compliance with all normative limits on acquisition. The second assumption arguably implies that the appropriator becomes the sole owner of the land. He is legitimate in imprisoning indigenous people living in the forest since their leaving the forest is literally trespass and imprisonment is just enforcement of the appropriator's acquired right in the land. In short, right-libertarianism legitimises acquisition amounting to imprisonment and diverges from the ordinary viewpoint on what rights are expressed by the rhetorically forceful slogan 'It is my body!' since imprisonment deprives us of bodily movement. This is the problem of imprisonment.

Some might find the problem of imprisonment spurious as they think that the point of having self-ownership explains why imprisoning acquisition is wrong. Suppose that point is that an individual is left free to interact with the environment. Given this supposed point of having self-ownership, an individual has the right over his body and the opportunity or chance to access part of the environment as material resources (ordinarily understood), for he would be unfree to interact with the environment if he was excluded from accessing these two kinds of things. Since acquisition that imprisons an individual deprives him of the opportunity, such acquisition is unjustifiable.

Yet, if any reason for an individual's discretion over his body is similar to some reason that there might be for ownership of material resources, there is nothing special about the

body with respect to justice. Moral symmetry between the body and extrabodily resources threatens the thesis of comparative asymmetry stated as follows: respect for an individual's discretion over his body outweighs, absolutely or relatively, other interests of the same or another individual. This is another core thesis of libertarianism since it underlies the libertarian explanation of the wrongness of forcible use of an individual's body parts for other (potential) benefits to others or that individual (Lippert-Rasmussen, 2008). This thesis supports that forcible transplantation of organs is at least generally worse than redistribution of wealth. Yet, if these two measures infringe negative liberty to the same degree, neither of them is preferable to the other. If the state must choose between them for other considerations such as equality of welfare, forcible transplantation of organs is not a worse option.

In short, right-libertarians are caught in a prima facie dilemma: either the point of having ownership of our own body is also the point of having ownership of extrabodily objects, or they are not. If they are, the thesis of comparative asymmetry is doubtful; if they are not, people suffering the imprisonment in question cannot complain in the name of self-ownership or the point of having it.

In this dissertation, two research questions will be addressed:

1. Is there any solution to the problem of imprisonment that does not undermine the thesis of comparative asymmetry and is acceptable to libertarians?

2. What justifies the thesis of comparative asymmetry? More specifically, if the thesis can be defended on the ground of some intrinsic difference between our bodies and extrabodily resources, what is the difference?

In addressing the first question, a solution to the problem of imprisonment will be given, though it does not fall too right on the spectrum of opinions ranging from complete state control of production to complete free market. In addressing the second question, the unique intimacy of our capacity to undergo (or suffer) changes with our bodies will be explored; that only our bodies are both loci where our capacities to impact the world and to be impacted is an intrinsic moral difference between our bodies and extrabodily resources.

In Chapters 1 and 2, I investigate the problem of imprisonment from a right-libertarian perspective by mapping a partial conceptual terrain of libertarianism. This terrain will be presented in more detail at the beginning of Chapter 1. At this point, I briefly introduce another divide between libertarian theories which maintain the two theses: the pluralist view and the monist view. According to the pluralist view, the thesis and distributive rules, including the rule affirming the unilateral mora power of acquisition, are derived from different sets of more fundamental principles. According to the monist view, they are derived from the same set of the principles and nonmoral premises.

The flow of Chapters 1 and 2 is this. A plausible monist theory cannot avoid undermining the thesis of comparative asymmetry and is not a viable option for SO libertarians. Although pluralism can avoid the undermining effect by consistently and reasonably embracing the comparative asymmetry as a priority rule to settle conflict between self-ownership and other considerations, right-libertarian pluralists have their own drawbacks.

Some right-libertarian pluralists might give a rejoinder to the problem of imprisonment by proposing their own Lockean proviso. Lockean provisos are provisos requiring that acquisition or use does not make others worse than they are or would (otherwise) be, in a certain respect, under a certain circumstance. These right-libertarians would question the possibility of legitimate acquisition that imprisons others. The second assumption of right-libertarianism entails that acquisition is illegitimate if it breaches a normative limit. Since a Lockean proviso proposed is such a normative limit, and since imprisoning acquisition breaches the proviso proposed, imprisoning acquisition is illegitimate. Whether this rejoinder succeeds depends on the respect and the circumstance incorporated in the proviso proposed. Right-libertarians should worry that, if the proviso proposed is weak, then it can be met by imprisoning acquisition; if it is robust, then it does not qualify as right-libertarian. Moreover, what is the rationale for selecting a certain circumstance as the baseline for comparison? Failure to give the rationale will be accused of concealing conflict of individuals' claims to demand improvement or not being worsened.

In addition, the thesis of self-ownership is either axiomatic or not. If the thesis is taken as axiomatic, no point of having self-ownership can be taken for reference to compare evaluatively which self-ownership infringement is severer. On the other hand, a plausible theory in which the thesis's place is non-axiomatic may imply distributive rules governing a considerable area of the society's economic domain. The implication may be a solution to the problem of imprisonment, yet the relation between the thesis and the distributive rules implied as such is not pluralist.

Some right-libertarians feel not troubled by the problem of imprisonment since they think that having inviolable rights over things constituting a prison is simply the upshot of exercise of the moral power to acquire previously unowned things unilaterally. This position is not as deeply counterintuitive as it looks. Who owns, morally, a farmland if not the person or the group who changed it from being bare to being fertile? Besides original self-ownership and the formal requirement of respecting rights acquired, these right-libertarians place no other normative limits on acquisition.

But do mothers who worked on their children have inviolable rights over their children? If they do, the thesis of self-ownership seems to be false. If they do not, do they lose their non-waivable rights over their children involuntarily at some moment of their children's growth? Hillel Steiner calls this 'Paradox of Universal Self-ownership' (Steiner, 1994, p.

242). In Chapter 2, I argue that, from these right-libertarians' perspective, the best strategy to solve this paradox is to insist that an individual's body is exceptionally outside the scope of the moral power of unilateral acquisition, and yet this limitation of the scope is an ad hoc assumption within the framework of monism.

Some right-libertarian monists refuse to acknowledge imprisoning appropriation for the reason that imprisonment violates the 'natural right of property', which they take as a normative limit on acquisition (Mack, 2010, p. 54). Respecting this right requires not precluding the right-holder from participating in a self-ownership-compatible convention of acquiring property. As imprisonment precludes participation, the acquisition fails to be legitimate.

There are two problems with these monists' theories. First, a convention respecting self-ownership could be a competition that confers upon firstcomers inviolable rights over things together surrounding some latecomers. Such a convention legitimates imprisoning acquisition. Innocent latecomers are not prisoners but losers in such a competition. Second, these monists beg the question as to which convention can confer upon ownership in things. If a convention favouring firstcomers can, what is the difference between these monists and those right-libertarians who place no limits on appropriation? Being similar to those right-libertarians, these monists also encounter Paradox of Universal Self-ownership.

In scrutinising the monist view, I argue that a plausible principle of non-interference entails conflict of individuals' rights against interference. Assumed the precept that similar cases be treated similarly, conflicting violable rights be satisfied equally. If equality is at the pareto front, then it is preferable. Even if it is not, equal satisfaction of the violable rights is a reason in support of distributive rules restricting imprisoning appropriation since such appropriation is inequality-generating. In short, appropriate treatment among parties involved in the conflict is more left than right and the treatment is a solution to the problem of imprisonment.

That said, Chapter 2 ends with a challenge to any monist, be it left or right. If both self-ownership and extrabodily ownership matter merely because of the point of self-ownership described in the more fundamental principle, there is nothing special about our body parts in consideration of justice. It is questionable that all our body parts are more important, morally, than extrabodily objects even if they are under comparison that is fair (in a certain sense stipulated in Chapter 2).

drawbacks -> bite the bullet since these drawbacks give no conclusive reasons for changing their positions, beyond the monist/pluralist divide, not right-libertarian

beyond the monist/pluralist divide and

the problem of imprisonment

In Chapter 3, I explore an intrinsic difference between our bodies and extrabodily resources. To discern the intrinsic difference between body parts and extrabodily objects, I suggest to first recognise that all body parts, including those (e.g., organs) not directly involved in our basic actions, are resources. Our agency extends to all resources because effects brought about by resources controlled by us are our actions after all. But a symmetrical analysis of our patiency, i.e., our being capable to be changed, is false. Our agency extends beyond the body, our patiency never does. Changes related to body parts are changes related to us per se, changes related to extrabodily resources are not. Only our body parts are loci where our agency and patiency exercise. This account is coined the 'Agency-Patiency account'.

But the mere fact that only our body parts are the loci does not explain why and what treatment is to be done. The principle of independence fills the gap between Agency-Patiency account and statements about ownership. This principle states that individuals have the violable natural right against subjection to the will of others. Such a right is explicated by the violable right against others' disrespectful control over our lives. Since a function of ownership as a bundle of enforceable rights is decreasing others' control over things owned, the principle of independence entails that we each have violable ownership of things

necessary and sufficient for the absence of others' disrespectful control over how we live. Given the nonmoral facts that we live qua agent and patient, from the principle of independence two requirements are derived: the requirements of not controlling how our agency and patiency exercise. By violating ownership of extrabodily objects per se, others control exercise of our agency. By violating ownership of our own body parts, others control both exercise of our agency and patiency. Avoiding disrespectful control over exercise of our patiency is a tie-breaking consideration in favour of self-ownership when self-ownership is balanced with ownership of extrabodily materials.

Explication of the principle of independence requires an analysis of control and an account of control being disrespectful. An individual is under another's control to do (or refrain from doing) something when two conditions prevail. First, another has a power to secure that he does it. Second, another is disposed to exercise or consolidate the power. Dispositions do not correspond to conditional probabilities. A bomb is by nature explosive, i.e., disposed to explode in a considerable variety of circumstances, though it is unlikely to explode assumed or given that it is stored inside the Moon.

Viewed as a conception of negative liberty, the analysis of control is distinct from the prominent liberal and republican conceptions. The former is too subjective, linking unfreedom to how probable an interferer would prefer to interfere if controlee endeavoured to do

otherwise. The latter is too objective, linking unfreedom to the (modal) possibility of an interferer's power with impunity. The analysis of control stands in the middle. An authoritarian regime is more disposed to but is unlikelier to interfere in affairs of some city within its territory than a democratic regime, assumed that the city is a global financial hub, for the regime's interference in the hub would destroy its 'peaceful rise' international branding. Something's disposition to exercise its power is not its power but the general tendency to exercise the power. A sainted giant is powerful, but he or she is less disposed to exercise it relative to an equally powerful tyrant.

Control, however, is not necessarily bad and may be constructive. To accuse parents, surgeons, and rescuers, of having disrespectful control over their children, patients (in the ordinary sense), and victims, respectively are highly contentious and perhaps arouse fair indignation. One of the factors in judgment about the degree of the disrespectfulness is the controller's disposition to manage his power by seeking voluntary permission from the controlee when communication is possible. What a controller would do in (hypothetical) cases where communication is impossible is not evidence for his denying the controlee's status of being a 'self-originating' source of valid claims about his own life (Rawls, 1999, p. 330). This account of disrespectful control leaves room for soft paternalistic intervention in cases where communication is impossible, yet it goes beyond soft paternalism by requiring the intervening body not to control disrespectfully. This requirement remains valid in situations in which

people are genuinely neutral towards or favour being intervened or controlled.

Despite the intimate connection between patiency and our bodies, some critics of the normative priority of self-ownership might reply that the two theses in question give implausible practical guidance. Why, for example, is non-consensual removal of a malignant tumour worse than forcible removal of a pacemaker from the same or another individual per se? These cases show the divergence between self-ownership's implications and pre-reflective judgments about some cases our sovereignty over our bodies. In Chapter 4, I critically examine presuppositions making those cases become counterexamples to the thesis of self-ownership and the thesis of comparative asymmetry respectively. The former are dubious presuppositions about constituents of organisms, some of which imply, inter alia, that a tumour is a body part. The latter are dubious presuppositions about comparing disrespectful control over use of bodies involved in different options, some of which imply, inter alia, that damaging a tiny piece of body tissue is always worse than removing a pacemaker with respect to individual discretion over his body.

Chapter 1 Pluralist Right-Libertarianism

1.1 Introduction

Self-ownership libertarianism, or called 'SO libertarianism,' has two theses together making it distinct from other libertarian theories.

> **Thesis of Self-ownership** (SO): Beings with certain features has natural (nonacquired, nonconventional) ownership of themselves unless they have acted unjustly or renounced the ownership.[3]

The qualification 'unless …' will often be omitted or be replaced with 'originally'. This expression leaves open several issues such as the features characterising self-owners and grounding self-ownership and the concept of owning. For simplicity, it is assumed that human animals having the potential to set ends for themselves are self-owners;[4] if a being is a self-

[3] What right a being has over himself when he acts, or prepares to act, unjustly is open to debate (Otsuka, 2003, Chapters 3–4; Vallentyne et al., 2005, p. 205). A right is natural if and only if it is nonacquired and conventional. A nonacquired right is not created by the right-holder's exercise of his moral power. A non*conventional* right is not conferred on its right-holder by other entities such as other agents, legal institutions, and conventions. This definition of natural right does not deny the following possibility: a being has a certain natural right at and only at some stage of its life where it has the feature in virtue of which it has the natural right. Besides, if a man-made robot's artificial intelligence grounds its right, the right is natural since the right is not established by some right-holder's exercise of moral power.

[4] The argument for this important assumption will be given in Chapter 3. The assumption does not reject the possibility and existence of other self-owners.

owner, then others are not permitted, morally, to change it without its consent.[5]

The thesis is silent about the weight of self-ownership relative to other considerations. Thus, theorists who are not SO libertarians may have reason to accept some version of it without being troubled by inconsistency or unwanted libertarian implications.[6] They have no reason to hold another thesis.

> **Thesis of Comparative Asymmetry** (CA): self-ownership is absolutely or relatively weightier than ownership of things that are not part of human organisms.[7]

CA so stated is ill-formulated, but I shall postpone this issue to Chapter 3. Suffice it to say that this thesis underlies much of the libertarian explanation of the wrongness of forcible use and prevention of self-use of a human part for other (potential) benefits to others or the same human (Lippert-Rasmussen, 2008). If SO libertarians solve any problem by giving up CA, they gain only a pyrrhic victory.

[5] This statement is not conceptually true since the concept of owning refers to a bundle of property rights and the bundle may contain only a non-waivable claim-right, that is, a claim-right that others may violate even if the right-holder voluntarily consent their acts. Yet, any plausible conception of self-ownership, in my view, must entail the statement. For details of the conception of ownership, see Section x.

[6] The place of SO in their theories is, termed according to G. A. Cohen, 'fact-sensitive' principle (2008, Chapter 6). A Rawlsian might, for example, argue for some version of SO because legislation of self-ownership as legal right ensures (the central range of application of) the 'physical integrity of persons', required by the principle of equal basic liberties (Rawls, 2001, p. 75). A Rawlsian, however, would not support that such a right is unconditional and absolute.

[7] Differing from Lippert-Rasmussen's version …

The overarching thesis of Chapters 1 & 2 is that there is no good solution offered by SO right-libertarians to what I call the *imprisonment problem*. To illustrate this problem, consider the following hypothetical case.

> *Adam's Island*: Since his arrival at a previously unowned, no-man island, Adam has worked on all resources on the island. One day, he sees that innocent, unconscious Zelda is lying on a wreckage floating towards the island. He then encloses most resources with fences. He would accuse Zelda of impinging upon his property if Zelda sook to penetrate the fences. Even if Adam did not fence the resources, Zelda would die without living in co-ordination with Adam. Still, he builds a medical cabin for Zelda's survival.[8]

I suppose there are two default positions on Adam's Island. First, Adam wrongs Zelda by maintaining the enclosure; second, it is morally permissible for Zelda to penetrate the fences and reach some portion of resources. Not only are denials of them seemingly counterintuitive, but also any theory emphasising the relative importance of a certain right over the body, such as SO libertarianism, should imply rather than refute them.

SO right-libertarianism, however, seems to imply the denials. *Right*-libertarianism is a right-wing branch of libertarianism assuming that, first, individuals are morally permitted to

[8] This example is of the same type as those given by Eric Mack (1995). Daniel Russell considered a similar hypothetical case with which he demonstrates how his libertarian account solves the imprisonment problem (2010).

access unowned natural resources that are not human parts;[9] second, by labouring with a previously unowned object without breach of normative limits, an individual owns the object;[10] third, the normative limits are either weak or none.[11] Since Adam worked on all the resources ex hypothesi unowned, he is entitled to all of them. To conclude, Zelda would infringe his ownership if Zelda attempted to escape and maintaining the enclosure is simply enforcement of his ownership.

Three types of rejoinders to the problem can be given by SO right-libertarians. First, Adam breaches some weak normative limits, unrelated to SO, on acquisition. Second, the point of having of self-ownership implies that individuals have right to have some portion of material resources (which can be artefacts) or a certain opportunity to acquire material resources. Third, acquisition amounting to imprisonment is justifiable.

Section II maps a new conceptual terrain of SO libertarianism by combining the proviso/no-proviso divide and monist/pluralist divides between SO libertarian theories. The

[9] The concept of being unowned will be elaborated in Section 1.3.

[10]

[11] In contrast, left-libertarianism is a branch of left-wing libertarian theories assuming that originally at least natural resources that are not human parts are distributed in a broadly egalitarian manner or the proviso on acquisition is robust. The divide between right- and left-libertarianism, in my view, may be better regarded as a spectrum of different views of distributive justice. At one end of the spectrum is the view that natural objects are all fully unowned initially and use and appropriation of them are subject to no proviso except respecting property rights. A highly sweeping generalization is that the more the constraints on permissible use and successful acquisition a theory proposes, the farther it is from this end towards other ends of the spectrum. At one other ends of the spectrum are different views of distributive justice commonly described as left-wing.

first is given within a pluralist framework; the second and third is given within a monist framework. This chapter critically examine the first from a right-libertarian perspective. A preliminary to this examination will be given in Section III, clarifying the concept of self-ownership, and elaborating that prima facie SO is silent about imprisoning acquisition.

Sections IV, V, and VI discuss three types of provisos – welfare type, self-ownership type, and non-subjection type – respectively. Either they can be satisfied by acquisition amounting to imprisonment, or they are too robust to qualify as right-libertarian. Section VII explains the difficulty in developing a measure of self-ownership violation if SO is axiomatic since theorists cannot explain it by reference to any point of having self-ownership. The pluralist framework is abolished if SO is not axiomatic. A full defence of this horn overlaps part of Chapters 2 and 3 in which some more fundamental principles that SO can be derived from are discussed.

1.2 Mapping the Conceptual Terrain

In this section, I shall now map a partial conceptual terrain of SO libertarianism in which Chapters 1 & 2 will proceed. In the literature it is somewhat common to categorise libertarian theories as either Lockean libertarianism or no-proviso libertarianism.[12] Borrowing this idea of categorisation, 'proviso SO libertarianism' refers to a class of SO libertarian

[12] For the former, see Daskal (2010, pp. 21–43). For the latter, see Peter Bornschein (2018); Russell (2010).

theories of two types, one qualifying ABL with a proviso, the other entailing a distributive principle of extra-bodily objects.[13] 'no-proviso SO libertarianism' refers to a class of SO libertarian theories entailing ABL without proviso as qualification. Of course, since they are all SO libertarian theories, two qualifications, respecting self-ownership and other existing rights, are always added. A new dimension to categorisation of right-libertarian theories, as I shall now propose, is concerned with the relation between SO and the proposed set of rules that regulate ownership of extra-bodily objects. On the *pluralist* view, SO and the set of rules are not derived from a more fundamental normative principle, nor is one of them derived from another.[14] On the *monist* view, SO and the set of rules are derived from the same more fundamental normative principle, accounted for by the same reason given by the same fact. These two categorisations together form a partial conceptual terrain of SO libertarianism, representable by the following table:

	Proviso Libertarianism	No-proviso Libertarianism
Pluralist View	(i)	(ii)
Monist View	(iii)	(iv)

[13] Lockean SO libertarianism refers to the former type only.

[14]

This chapter scrutinises theories falling into (i) and (ii) in view of the imprisonment problem. Sections III to V reveal the inadequacy of several types of Lockean provisos. Appropriation amounting to imprisonment satisfies the provisos prohibiting appropriation that worsens people's situations in terms of welfare or respect for self-ownership (Section III & IV). The appropriation fails to meet the proviso that a practice of property does not make others more subjected than they would be under the circumstance of abundance; however, since the practice of a competitive market fails to meet the proviso, too, the proviso may not be suitable for right-libertarians (Section V). Section VI explains a general dilemma to pluralists. If SO is taken to be a fundamental moral principle in theory, it is difficult to construct or integrate with a scale of self-ownership infringement. Yet, if SO is not taken to be fundamental, an appropriate normative principle from which SO is derivable may have implication about ownership of extensive part of the earth. The implication may be a plausible one, but its relation to SO does not fit into pluralism.

Chapter 2 criticises monist right-libertarian theories. I question if any theorists of (iv) could plausibly deny the possibility that parents are firstcomers to their children; the possibility is the negation of the modal necessity of SO. Some advocates of (iii) assumes a moral test constraining and not explained by the point of self-ownership they propose. They are no-proviso monists disguised and face the same problem as genuine no-proviso monists do. A plausible theory of (iii) supports that Adam wrongs Zelda by enclosure, yet such a

theory confirms conflict of violable rights and left-libertarian approaches for resolving such conflict are coherent with SO libertarianism.

The above table does not fully exhaust the conceptual terrain of SO libertarianism because it leaves out what I coin the '*dual-aspects* view' in Chapter 3. According to this view, SO and the principle regulating extra-bodily resources are derivable from the same more fundamental normative principle, accounted for by different sets of reasons given by different facts. This view serves as the structure of the agency-patiency account of self-ownership advocated in the same chapter. Generally, ownership of extra-bodily objects protects an autonomous body's living qua agent (against disrespectful control); ownership of the body protects not only exercise of agency but also exercise of patiency. This explains the comparative asymmetry and so provides the first desideratum for SO libertarianism.

Chapter 4 provides the second. Within the dual-aspects view as a framework, since SO and the distributive justice are derivable from the same principle, a measurement used for measuring violation of the principle can be a measure for both violation of self-ownership and extra-bodily ownership. Commensurability enables us to make fair comparison between these two sorts of violation. There is a good sense in which self-ownership can be said to be morally weightier than ownership of extra-bodily objects: self-ownership violation is worse than the *same* degree of violation of extra-bodily ownership, ceteris paribus.

1.3 Self-ownership: The Concept

On the surface, there is a good deal of resources that could be offered by SO libertarians to say that Adam wrongs Zelda by fencing the resources. When Zelda lives as if she was imprisoned by Adam, does not Adam violate Zelda's self-ownership? Yet, an analysis of the concept of ownership appearing in the literature of self-ownership reveals that any conception of self-ownership is silent at this issue.

The concept 'ownership' in SO is the same as the concept involved in stating ownership of extra-bodily objects (Vallentyne et al., 2005). I own the body that is pointed to when someone points at me in the same way as you own a corkscrew bought from the convenience store. When you buy a corkscrew, you do not become an owner of any single bottle with which you have an opportunity to carry out the corkscrew's function or common use successfully. If you have a legal right to open some or any bottle with that corkscrew, you must have bought that bottle, too. In this daily example, one underlying view about owning something is:

> **Non-entailment View**: For any pair of objects (and space-time regions) not exemplifying the parthood relation, ownership of one does not entail ownership of another.

This explains why SO is silent at the imprisonment problem. The assumption that Zelda owns her body does not entail her ownership of any extra-bodily object and space-time region, provided that neither of them is part of the other.

The following view is becoming (or perhaps has become) dominant in the literature of libertarianism:

> **Bundle View**: Ownership of a piece of material object or a space-time region is a bundle of rights as triadic moral relationships between individuals (and groups) vis-à-vis the object or the region.[15]

One implication of this view is that ownership is not all-or-nothing but vary in types and degrees. Under the *Hohfeldian* conceptual scheme, ownership is analysable into rights of four types: claim-rights (correlated with others' duties), liberty-rights (correlated with absence of others' duties or 'no-rights'), moral powers to alter other rights (correlated with others' moral liabilities), and moral immunities against non-consensual loss of other rights (correlated with others' moral disabilities). Ownership as a set of rights is *fuller* than another ownership if the former contains the latter and some additional right. Someone's ownership of a historical

[15] Below are a few examples. Hillel Steiner, "Working Rights," in M. H. Kramer, N. E. Simmonds, and H. Steiner, A Debate over Rights (Oxford: Clarendon Press, 1998); Peter Vallentyne, Hillel Steiner, Otsuka 2007, p.204; Fabian Wendt, Justice and political authority in left-libertarianism 2014, p.3; Muireann Quigley, *Self-Ownership, Property Rights, and the Human Body*, 2018, p.163; Billy Christmas 2019, p.7.

building is fuller than another's if the latter contains only liberty-rights to enter at night and the former has similar rights but also the liberty-right to enter in the evening or the claim-right that others not enter the historical building at night.

Therefore, it is not a conceptual truth that owning something entails both liberty-rights and corresponding claim-rights. Even if we do not hold Non-entailment View, Zelda's natural ownership of her body might comprise only *naked* liberty-rights to interact with resources, i.e., liberty-rights whose exercise may be interfered with because the interference violates no claim-rights.[16] It is a conceptual possibility that Zelda owns herself while Adam may interfere with her exercise of those liberty-rights.

An interlocutor might complain that it is shallow to conceptualise what is expressed by 'It is my body!' with the concept 'ownership.' For reason of space, I leave aside discussion of the usefulness of the concept in legal adjudication and theoretical construction. Attention should be drawn to how and why the moral dispute between Adam and Zelda arises. By interacting with resources on the island, Adam claims to have them. Even if the concept 'ownership' were replaced with another concept, Adam would just make the same claim. A change of concept, in my view, does not resolve the dispute. On the contrary, if there is a moral principle according to which Adam's enclosure wrongs Zelda, there may be no harm in

[16] For the notions of naked liberty as well as *vested* liberty, see Hillel Steiner *Essays on Rights*, p.75.

explicating the explanation in terms of ownership.

1.4 Lockean Provisos: Welfare Type

In his defence of the natural moral power to exclude 'the common right of other men' over a thing without a compact, John Locke famously writes that such moral exclusion is possible 'at least where there is enough, and as good, left in common for others'.[17] All Lockean provisos are similar in structure and spirit to Locke's proviso. These provisos stipulate how others would generally fare *on net* evaluated on a certain set of metrics relative to their situations under a certain circumstance as a baseline for comparison.[18] The spirit of a Lockean proviso is that, if appropriation (or use) satisfies a Lockean proviso, no adverse impact on others is attributed to it, and 'it will be difficult to criticise it' (Cohen *SFE*, p. 75).

The common structure of Lockean provisos suggests that they can be classifiable according to the baseline circumstance or according to the metric on which people's situations are gauged. In these three sections, I examine three types of Lockean provisos differing in the metric. The welfare-type proviso will be examined in this section, the non-subjection type in the next, and the self-ownership type in the last.

[17] Chap. 5 para. 27. You may further read his defence as a defence of not only the moral power but also the claim-right against prevention of any permissible act of acquisition, i.e., any permissible act in which the moral power allegedly manifests. distinguish between the use- and the acquisition-proviso.

[18] All the provisos discussed below fit this definition and they are proclaimed by their originators to be Lockean.

On a welfare-type Lockean proviso, the metric on which to evaluate people's situations is the expected welfare level.[19] By 'welfare level' I refer to the absolute level of aggregate welfare a person has during his lifetime, which is an increasing function of the number and value of preferences materialised.[20] As explained above, theorists could propose different circumstances as the baseline for (intra- and inter-personal) comparison of how people fare. Several of these proposals will be critically scrutinised under the assumption that the proper metric is welfare-level.

The first proposal is setting the circumstance baseline as the hypothetical circumstance where initially all extra-bodily natural objects were fully unowned among all. An object *O* is fully unowned among a group of people if and only if they have moral powers to appropriate

[19] See Nozick *ASU* pp.175-6. I acknowledge that the ascription of the welfare metric to Nozick's proviso is not based on some firm textual evidence or logical deduction from some premise that Nozick could not rationally reject. Nevertheless, the ascription is supported by the 'zipping-back' argument given by Nozick. When the earth is exhaustively claimed by people and nothing is left for the propertyless to appropriate, under what condition does the antecedent prima facie appropriation satisfy the proviso? Nozick who defends the possibility of property rights arising from the initial absence of ownership in the earth must demonstrate that it is possible to satisfy the proviso. And the answer given by Nozick is that 'there may remain some for … [the propertyless] to *use* as before' (ASU, p.176). But if the metric was natural liberty (in the negative sense) to use or appropriate, then the answer would be false, for the propertyless are less negatively free than before. Reading his proviso as a welfare-version proviso, on the contrary, helps to make sense of his answer. I do not deny that other plausible metrics may make sense of his answer, too, yet I suspect that many of these metrics do not help defend the proviso against the criticism below.

[20] For the concepts of welfare and of opportunity for welfare, see Arneson 'Equality and Equal Opportunity for Welfare' 1989.

O and are at moral liberty to access *O*.[21] For example, a fishpond is a less-than-full unowned property among a group of people when some (or all) of them has a non-waivable liberty-right against some of the others to use the fishpond. On this proposal, '[t]he crucial point is whether appropriation of an *unowned* object worsens the situation of others.'[22]

Two other proposals are also worthy of consideration. It is proposed to set the baseline to be the welfare level in the scenario where the appropriator Q does not exist.[23] On this proposal, P has a reason to complain even if he is now better than before Q's appropriation.[24] He could complain that, if Q had not existed, he could have been even better by, let's say, cooperating with someone else, handling at his disposal the object now occupied or consumed by Q, and so on.

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[21] More precisely, *O* is fully *appropriable* if and only if every member of the group has moral powers to create his claim-rights over *O* against each other and these moral powers are subject to each other's higher-order moral powers to waive them. That they are at moral liberty to use *O* means that *O* is under common ownership among them. I distinguish common ownership from collective ownership and what I call 'communal ownership.' An object is collectively owned when all use and transfer of its title are unanimously consented. An object *O* is under full communal ownership among a group of people if and only if every member has liberty-rights (against each other) to use *O* and only unanimous consent can waive the liberty-rights.

[22] See ASU, p.175.

[23] See David Gauthier 1986, p.204; Narveson 1998, p.176; Mack 1995. More properly, the welfare-level should be representative of person P's welfare levels in different possible scenarios (close enough to the actual world) where Q does not exist.

[24] That Q's acquisition benefits P is not a good indicator of cooperation between them. But how come could P be better than before Q's acquisition despite the absence of their cooperation? This possibility may be a case of positive externality on P caused by Q's unilateral, unorganised behaviour, a case of an increase in the total sock of natural resources available to P, a case of change in P's preference, and so on.

On another proposal, the baseline is set to be P's welfare level where P and Q cooperate on *fair* terms.[25] Note that this proposal applies to only cases where parties cooperate with each other. No one is obliged to cooperate.[26] Q's actual refusal to cooperation is not a reason for P's complaint even if P would be better if they cooperated on fair terms.

No matter which of the abovementioned baselines a Lockean libertarian chooses, from the proviso chosen he cannot infer that Adam's enclosure wrongs Zelda. Had Adam not enclosed the resources or not existed, the medical cabin would not have been made and Zelda would have died. Moreover, since Adam is not in cooperation with Zelda, the proviso incorporating the fair-terms baseline does not apply to them.

Can a welfare-type proviso which is also egalitarian help to solve the imprisonment problem? Consider the Lockean proviso defended by Michael Otsuka: '[s]omeone else's share is as advantageous as yours if and only if it is such that she would be able (by producing,

[25] More properly, it is the welfare level representative of P's welfare levels in different possible scenarios (close enough to the actual world) where P and Q cooperate on fair terms. On fair terms of cooperation, both parties' life prospect *must be better* than without cooperation. Cooperation in which some of the parties involved is worse than without cooperation has no point from that party's perspective. When P's complaint rests on his situation in a possible scheme of cooperation in which Q sees no point, it is unclear that P's complaint is reasonable. Besides, an interlocuter might wonder what terms of cooperation are fair and suspect that the talk about a Lockean proviso is redundant as the content of justice is exhausted by fairness. A right-wing libertarian might object setting some fair distribution as the baseline because the resulting proviso is no more than an end-state or a patterned principle. Yet, for the present purpose—conducting an overall examination of different welfare type Lockean provisos, I carry no burden of response.

[26] It is a fair assumption made within the libertarian framework.

consuming, or trading) to better herself to the same degree as you' in terms of the absolute level of welfare (2003, p.27). On the assumption that Adam's and Zelda's respective preferences are as ordinary as ours, presumably his enclosure renders her unable to better herself to the same degree as him.

The aforementioned assumption, however, reveals welfarists' particular difficulty in handling the imprisonment problem. If the metric on which to gauge an act's negative impact on others is welfare (or something the value of which is welfare-sensitive such as opportunity for welfare), then it is possible that someone is not adversely impacted by being imprisoned according to the metric.[27] Zelda's best alternative might be satisfied by a life of imprisonment and Adam might not really wish to stay on the island of which he proclaims to be the king.

A better line of reply to this difficulty is filtering out some alternatives' materialisation in the calculation of an individual's expected level of welfare. Alternatives that do not count in the calculation are alternatives that hinder or have no place in any rational plan that an individual would have with full deliberative rationality, or alternatives that he would feel

[27] That the assumption is empirically contingent is only one of the explanations for the possibility. The possibility could be real in some peculiar environment. In fact, Otsuka once gave a hypothetical example in which, due to some natural disaster, unilateral acquisition of all resources is judged permissible according to the egalitarian proviso. See 2003, pp.28-9.

alienated from upon reflection in light of his history and surroundings.[28]

Welfarists following this line of reply may diverge on the case of Adam's Island. On one side, given Zelda's proneness to death, she might feel alienated from her preference of imprisonment (if she has). But what if Zelda would not feel alienated from this alternative? Should welfarists keep changing the criteria until such a preference is filtered out in calculating Zelda's (expected) welfare-level? On the other, for welfarists, what principles of justice primarily regulate is welfare.[29] If the state of non-imprisonment is what Zelda 'values at naught with full deliberative rationality,' what bothers her on the island?[30]

There are various kinds of responses to welfarists, and among them one is about the point of self-ownership. The point of self-ownership is safeguarding an individual against disrespectful control over his or her life from others. Chapter 3 gives an analysis of control and delineate conditions under which control is disrespectful. At this point, what can be said is that the extent or the presence of (disrespectful) control does not depend on mental states of the individual controlled.[31] Whether Zelda is autonomous relative to her preference for

[28] For the notion of full deliberative rationality, see Rawls TJ rev., sections 63-4; for the notion of self-alienation, see John Christman 2009, Ch. 7.

[29] One empirical question is whether welfare is best regulated through regulation of other entities.

[30] Richard J. Arneson 1989, p.92.

[31] I follow Hillel Steiner's *pure* negative conception of freedom, according to which an individual's social freedom to do a certain action is logically independent of the individual's attitudes towards the action (and of the deontic property of the action) Steiner 1974. In his important work *An Essay on Rights*, he gives a more

imprisonment is irrelevant to judgments about the degree of control she is under on the island. Unless it is firmly judged that Zelda is not subjected to Adam's will, libertarians taking the point of self-ownership seriously could not rationally turn a blind eye to what happens on the island, even if Zelda and Adam are equal in their opportunity for welfare.

1.5 Lockean Provisos: Self-ownership Type

If the non-SO part of a pluralist view does not address the imprisonment problem satisfactorily, perhaps the SO-part alone suffices to resolve the problem.

Matt Zwolinski claims that SO implies prohibition of (threat of) use of physical force against property 'intimately connected with a person as an extension of the person himself' (Matt Zwolinski, Social Philosophy and Policy 2016, p.85).[32] His libertarian view is pluralist since he suggests that wrongness of aggressive and non-aggressive violation of rights in *nonpersonal* property can be explained on other grounds.

Zwolinski's distinction between personal property and nonpersonal property cut across the one between bodily and extra-bodily objects. If an extra-bodily object is an extension of Zelda herself, then it is her personal property and fall within the protective perimeter formed

sophisticated version of the pure negative conception of freedom (Steiner 1994, ch.2). On this later version, mental states of the party who prevents and the deontic property of the action constituting prevention are irrelevant to freedom-judgments, too.

[32] In other words, SO implies the non-aggression principle.

by her self-ownership. But unless Zwolinski explicates a conception of the self and how the self extends to extra-bodily objects, his distinction only provides a framework for further research. After all, even if the space that I currently occupy is in some sense intimately connected with me, it is not numerically identical to me if 'me' refers to some animal of the species Homo sapiens. (Besides, it is also implausible to say that a gift given by my dear is *part* of me who is an animal. What relation 'extension' used by Zwolinski refers to is unclear.)

A more serious problem with Zwolinski's pluralistic account is that compliance with SO by not using physical force against personal property is compatible with imprisonment that is apparently wrong. Consider a case similar to *Adam's Island* except that Zelda was washed ashore on a beach where Adam would die immediately if he stepped on. Recognising that Zelda was there, he fenced the beach and dropped a medical cabin. Since Adam cannot initiate physical force against Zelda and her personal property, if any, he does not violate her right in personal property aggressively. Thus, Adam's enclosure complies with SO (on Zwolinski's construal).

A better proposal to solve the imprisonment problem based on SO is embracing the Self-ownership Proviso (SOP), which has gained in popularity among SO libertarians and thereby is worthy of examination.[33] According to SOP, a self-owner has the right against

[33] See Mack THE SELF-OWNERSHIP PROVISO: A NEW AND IMPROVED LOCKEAN PROVISO 1995; Feser 2005; Daniel Russell 2010; Wendt 2019; Christmas 2019.

negation and degradation of her 'world-interactive' capacities, i.e., capacities to affect her extra-bodily environment in purposefully, done by others in aggressive (or 'invasive in other words) and nonaggressive manners.[34] The former manner involves directing physical force towards an individual, whereas the latter 'negating (to a sufficient extent) the presence of an extra-personal environment open to being affected by that agent's powers' (1995, p.186). Mack thinks that SOP can be derived from SO since SO entails the right over talents and energies that are largely world-interactive capacities. (Because of SOP's bearing on ownership of extra-bodily environment, the derivation of SOP from SO is itself a Monist View. But a pluralist like Zwolinski can take the derivation as the SO-side of his SO libertarian theory.)

Dealing with the imprisonment problem with SOP looks promising. If Zelda's world-interactive capacities decline as a result of her being prevented by Adam's enclosure from exercising them through and in interacting with material objects on the island, then Adam's enclosure violates SOP. It follows that, in conformity with SO, Adam ought not to fence the resources (or not to enforce the enclosure if Zelda alone can penetrate the fence).

Below I demonstrate there are two problems with SOP. The first problem is that

[34] Mack 1995, p.186. This is related to Mack's assumption that the being that has natural self-ownership initially is a purposive being. See Mack … Note that Mack uses the word 'powers' instead of 'capacities' and perhaps what he means by the former is the same as what I mean by the latter. However, his use may reflect his unawareness of the distinction that I am going to make – between capacities, opportunities, and powers. And his problem in deriving SOP from SO lies in this unawareness.

compliance with SOP is not a sufficient condition for the absence of the imprisonment problem. The second problem is that from SO one cannot derive SOP.

I present the first problem with the argument as follows:

(1) SOP is silent about acts that prevent exercise of capacities without nullifying and degrading them.

(2) Some of those acts amount to imprisonment.

(3) Therefore, SOP is silent about some cases in which the imprisonment problem arises.

Advocates of SOP would not dispute (1) as it is how SOP is understood. They would instead argue that there is not such an act satisfying the description 'prevent exercise of capacities without nullifying and degrading them'. Since there is no such an act, and since (2) entails that there exists such an act, (2) is false.

Maybe the advocates are right about the causation between exercise of capacities and capacities in reality. Be that as it may, I contend that conceptually an act that prevents exercise of a capacity is distinct from an act that leads to nullification or degradation of a capacity. Capacities are distinct from corresponding opportunities.[35] If a powerful being evaporates all currently existing swimming pools, my opportunity to swim is denied by the being but I won't

[35] This distinction is made by Anthony Kenny (*Will, Freedom and Power* 1975, p.133). If I have an ability to ϕ and the opportunity to exercise the ability, and if I try, I shall normally succeed in ϕ-ing.

thereby lose my capacity to swim just because of the evaporation. Assumed, for *reductio ad absurdum*, that I thereby lost it. I am confident that I would acquire the capacity to swim again immediately after heavy raining. Wouldn't I not only learnt but also master swimming too quickly at this time, compared to the time (say, 6 months) that I spent on learning dog paddle in my childhood?

Whether prevention of exercising a capacity causes a loss of it is empirically contingent, depending on the length of the prevention and the types of capacities. Thus, it is not difficult to find (hypothetical) evidence that that confirms or refutes (2). Suppose Adam will remove the fences two months after Zelda's arrival and during the two months Zelda is allowed to use the medical cabin to maintain and to even strengthen her bodily parts and conditions such as her muscles and immune system, to make her body more capable to adapt the island. Zelda is prevented from exercising some of her capacities, but she will not lose them. I contend that the two-months imprisonment remains violation of certain right of Zelda over her body, yet it does not violate SOP as no capacity has thereby lost or degraded.

The second problem is about the derivation of SOP from SO. SO entails that only an action as causing nullification or degradation of a self-owner's capacity may count as an infringement of the right in the property. SOP entails that some other actions may count so, too. Therefore, from SO we cannot derive SOP. To illustrate this problem, we may contrast

two hypothetical cases. In one case, I throw a knockout punch at you and you lost your sight afterwards. In another case, you lost several capacities due to malnutrition after I had imprisoned you by locking the door of the room that you were not forced to enter. My punching you caused your loss of sight, but my locking the door only prevent you from keeping healthy without causing the loss. SO is silent about the latter, whereas SOP implies that both actions are wrong.

An interlocuter might wonder if in both cases I (, my action, or the immediate evented caused by me,) *caused* your loss of sight. For the sake of argument, even if what he says is true, the respective causal mechanisms in the two cases are clearly different. In the first case, I exercised my agential power to bring about a causally related sequence of events in which your losing sight is an intermediate, and your power to undergo the change was activated by me. The causal mechanism involved in the second case is analogous to the spontaneous decay of a radioactive atom. Suffering from malnutrition, you lacked energy to maintain (proper) functioning of your eyes, and your power to undergo change was exercised spontaneously, not by me.[36]

[36] Other theories of causation may spell out the respective causal mechanisms without the concept of causal power. Consider, for example, the conserved quantity theory proposed by Phil Dowe. According to it, in the first case, there was an exchange of energy and/or momentum between I and you in the event of punch where we intersected (more precisely speaking, our causal processes intersected), so we had causal interaction; in the second case, I have causal interaction with the door and your bodily parts have casual interaction with each

We can debate which case involves greater wrongness, but the current issue is about what counts infringement of self-ownership, given that the concept 'ownership' in SO is the concept that we use in making or renouncing claim to extra-bodily objects (Peter Bornschein, 2018). The right against nullification entails more than ownership does. The right against a pot of plant being withered, for example, is analysable into the ownership of the plant and of bottled water. But the former does not entail the latter. That is simply the implication of the non-entailment view introduced in Section II.

1.6 Lockean Provisos: Non-subjection Type

Bas van der Vossen put forwards a non-subjection version of the Lockean proviso in his recent work.[37] Although in the work he does not allude to the notion of self-ownership (except in one footnote), the proviso can be integrated into a SO libertarian theory in a pluralist fashion.[38] This proviso states as follows:

'**Proviso:** Unowned things can be appropriated only if they leave others' rights to use and

other, but we do not exchange energy and/or momentum. For details of his theory, see Phil Dowe *Physical Causation* 2000.

[37] https://static1.squarespace.com/static/59cd250b6f4ca34545e724da/t/5e8b54d7d0b47256c290f33f/1586189527925/As+Good+As+Enough+And+As+Good-FINAL.pdf

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[38] The notion of self-ownership is alluded to in the footnote no. 22. See van der Vossen 2020 p.22.

appropriate the earth as non-subjected as they would be in the absence of appropriation' (p.12).[39]

van der Vossen then argues that a competitive market for labour meets Proviso. In Subsection A, I shall make some preliminary notes on van der Vossen's Lockean Proviso. In Subsection B, I argue that Adam's enclosure meets Proviso. In Subsection C, I argue that Adam's enclosure also meets a variant of Proviso setting the baseline circumstance to be abundance. Nevertheless, I agree that selection of a set of rules allowing monopoly of goods and services may fail to meet the variant. This offers a partial solution to the imprisonment problem.[40]

In Subsection D, a competitive labour market fails to be robust (Subsection C). One challenge to the argument in Subsection D will be rebutted in Subsection E. In Subsection F, I make an argument against Lockean provisos in general.

Subsection A

[39] The last adverbial phrase of the sentence is 'in the absence of appropriation'. (p.22) This phrase may be taken literally to mean a circumstance where nothing of the earth has been appropriated. But van der Vossen speaks of the circumstance of abundance more than the former. These two circumstances are distinct. Even if no one has yet appropriated something, scarcity exists in the natural environment hostile to living. On the other hand, appropriating something (by doing to it an act of acquisition) may leave more than what others might use or appropriate. Below, the circumstance of abundance is assumed to be what van der Vossen tries to express with that phrase. That said, on either reading of the phrase my arguments against Proviso remain intact.

[40]

The core concept in Proviso is *non-subjection*.

'**Non-Subjection**: P stands in a relation of non-subjection to Q with respect to some natural right R to the extent that P's ability to enjoy R does not depend on Q' (p.18).

P's ability to enjoy a right *depends* on Q if there exists 'the possibility that … [*Q*]'s actions effectively deny … [P] the ability to' exercise the right.[41] To illustrate, suppose you have a control right, that is, a liberty-right vested with the corresponding claim-right, to use a vehicle. Despite the right you have, you are subjected to me relative to it to the extent that my possible action such as blocking the road renders your using the vehicle impossible.

Being non-subjected to who? van der Vossen further stipulates that subjection exists when denial of P's opportunity is the result of aggregate action comprising individuals' actions unintended to bring about the denial. Proviso may be read as stating a duty not to increase *overall subjection* that others suffer by appropriation.

However, no plausible proviso can demand absolute independence.[42] Proviso demands only that P's exercise of some natural right is as non-subjected as he would be if resources

[41] I acknowledge that he makes no explicit statement about the sufficient condition for the dependence.

[42] For van der Vossen, a proviso demand absolute independence is implausible because absolute independence makes social interaction difficult if not impossible (pp. 20-1).

were initially unowned.[43] The adverbial phrase 'in the absence of appropriation' calls for clarification about its denotation. I shall now set this issue aside until Subsection D and temporarily use it to denote the circumstance where all non-bodily natural things were unowned, i.e., appropriable and common for all.

What right does 'R' denote? It is the control right to be left *opportunities* to 'better oneself through using and appropriating the earth' (2020, p.17).[44] I do not think van der Vossen has fully cleared the unclarity and ambiguity of R. How much is the earth that one should be left opportunities to appropriate (and use) worth? What do 'opportunities' mean?

For reason of space, I cannot examine different combinations of their possible interpretations. I assume that the earth that one should remain having the opportunity to appropriate (and use) is worth

V: the aggregate value of what the holder of R (e.g., Zelda) could appropriate and use in

[43] Here is textual evidence supporting that 'rights' means 'control rights': 'At the core, we have moral permissions (and the claims that protect them) to give us the ability to live our lives.' (2020, p.15) Besides, although the formulation is concerned with successful acquisition, throughout the article van der Vossen often talks about use and appropriation together.

[44] Concerning this there is some unclarity of van der Vossen's work. The right is at some point described as 'the right to better oneself through using and appropriating the earth.' (2020, p. 11) Sometimes, however, it is described as 'the opportunity … to better oneself through exercising the right to use and appropriate.' (2020, p.30) On the latter description, even if one does not and will not take the opportunities to better oneself, one remains having a right against others that they do not take away one's opportunities.

lifetime under the baseline circumstance.[45]

The value of *V* depends on the baseline circumstance. Since Proviso incorporates the circumstance of resources being unowned, an appropriator should not take away others the opportunity to capture the aggregate value of what others could appropriate and use in lifetime if non-bodily natural objects were initially unowned.

In Subsection B, I shall discuss the combinations of the above interpretation of 'the earth' and each of the following concepts of opportunities:

1. Opportunity as possibility: one has an opportunity to do φ if and only if, possibly, one's attempt to do φ succeeds.
2. Opportunity as probability: To have some degree of opportunity to do φ is to have some degree of probability of doing φ if one attempts to do φ.
3. Opportunity as part of 'ableness': one has an opportunity to do φ if and only if one has the capacity to do Φ and there exists a set of conditions under which his endeavour to do Φ would generally succeed.[46]

Subsection B

[45] Readers may pay attention to the modal auxiliary verb 'could'. Using 'could' rather than 'would' increases the difficulty of meeting Proviso because what someone would appropriate is a subset of what someone could appropriate. This choice of the verb raises the difficulty of demonstrating that Adam meets Proviso. …

[46] I follow Peter Morriss's distinction between abilities and what he terms 'ableness' (2002, ch.11). Besides, giving books to those who are illiterate does not give them opportunities to read (Morriss 2002, pp.247-248).

Does the enclosure make Zelda more subjected with respect to the right against others denying the possibility to appropriate and use the earth successfully? I confess that I fail to grasp what it means by 'denying the possibility.' For the sake of argument, I assume that it means doing something on the basis of which we judge that the assertion about the possibility false. If before the enclosure there is a possible world where Zelda's attempt to break through the fence is successful, this possible world remains after the enclosure and whatever Adam might subsequently do. Adam's enclosure in no way increases his power to deny Zelda's opportunity as possibility in question.

The concept of probability that I have in mind is conditional probability – the probability of an event is the probability of that event given or assumed another event. The probability of having a rainy day tomorrow, without anything else assumed or given, is lower than the probability of having a rainy day tomorrow, assumed that there are dark clouds in the sky tomorrow.[47]

Does the enclosure make Zelda more subjected with respect to the right against others lowering the probability to appropriate and use the earth successfully? Presumably, the probability of Zelda's appropriation and use of the earth given the enclosure is lower than it is given the absence of enclosure. However, note that Adam did not just fence but also built a

[47] https://plato.stanford.edu/entries/probability-interpret/#ClaPro

medical cabinet in the case of Adam's Island. The decrease in the probability due to the enclosure might be offset by the increase in the probability due to the medical cabinet. The same point applies to evaluation of change in Adam's power to affect Zelda's probability of appropriation below the baseline level before and after the enclosure.

Does enclosure increase Adam's power to limit Zelda's opportunity as part of ableness to appropriate and use the earth overall? There are two presumptive reasons that it does not. First, again, the medical cabin. An asylum seeker who can (in the 'ability' sense) cross the border loses the corresponding opportunity when a wall is built; he who can break through the wall or walk through the gate still lacks the opportunity when a guard is watching. However, when an asylum seeker is given sufficient supplies, his opportunity to cross the boundary is, *on net*, not worse than before. Likewise, the medical cabin, taken as part of Zelda's opportunity to penetrate fences built by Adam, offsets impoverishment of the opportunity due to the enclosure. Unless Adam's giving the medical cabin to Zelda improves his powers to take away the medical cabinet, to consolidate the fences, and so on, Adam's power to effectively deny Zelda's opportunity to appropriate the earth is not improved by the enclosure overall.

Another reason is that Adam's power to make that denial is grounded by inequality in natural endowments between Adam and Zelda. But this inequality exists before the enclosure.

The enclosure does not improve the power but is simply its manifestation or in other words its exercise. In addition, if the strength of the power to prevent appropriation and use of resources is an increasing function of the probability of the successful prevention, then, as argued above, there might be no change or even a decrease in the strength of power. Therefore, presumably there is no difference in the degree of Zelda's overall subjection before and after the enclosure.[48]

Subsection C

This subsection questions whether Adam's enclosure does not meet a variant of Proviso stated as follows:

> **Proviso II**: A choice of practice of property right is permissible if and only if no one is made more subjected with respect to the right of appropriation under the practice than they would be under abundance.

This variant is attributable to van der Vossen because he sometimes uses 'under abundance' instead of 'in the absence of appropriation.'[49] The conclusion of this subsection is that

[48] In Subsection E, I discuss how overall subjection is measured; I believe that, assumed what I will discuss, the conclusion drawn here would remain the same.

[49] Textual evidence. 'The point of the proviso isn't social isolation. It's to … ensure one's right to use and acquire resources remains as non-subjected as it would be *absent appropriation*' [emphasis added] (2020, p.18). But he defines robust opportunities to acquire property to be 'whether, and on what terms, one gets to acquire

applying Proviso II to individual behaviours such as Adam's enclosure directly does not help solve the imprisonment problem.

Does Adam's enclosure make Zelda more subjected than she would be under abundance? It is not an easy to answer this question because there are different types of the circumstance of abundance. Abundance is a circumstance under which nearly all people's most favoured exhaustive set of compossible desires can be readily satisfied.[50] Three major types of circumstances close enough to the actual world fit the definition of abundance: (a) there is a far larger size of the total stock of goods and services readily available; (b) ordinary people's respective sets of desires are more easily satiable; (c) the circumstance is a hybrid between the former two types. (Below I will explain why only circumstances close enough to the actual world are considered.)

Under type-(a) and type-(c) abundance, on the assumption that Zelda's preferences was as ordinary as people at the actual world, Zelda would have a more autonomous body, else it would not be abundance. In view of this, presumably Zelda would be more likely to penetrate the fence despite Adam's denial under abundance. So, we have presumptive reason to judge that Adam's power to subject Zelda under abundance is weaker than his similar

property cannot depend on others any more than it would *under abundance* [emphasis added]' (2020, pp. 17-18). It is unclear which proviso, Provis I or Proviso II, van der Vossen has in mind.

[50] van der Vossen himself defines abundance to be a circumstance where one's appropriation always leaves more than 'what others might use or appropriate themselves' (2020, p.3).

power in Adam's Island. Yet, the greater power that Adam has in Adam's Island relative to his under abundance is not explained by his appropriation but Zelda's more autonomous body.

Under type-(b) abundance, because of having a set of preferences more easily satiable relative to his at the actual world, the bargain between Adam and Zelda would be more favourable to Zelda. However, the relevant issue is about Adam's power. Adam's power to strike a hard bargain against Zelda would not be changed if Adam desired less. Adam's enclosure does not render him more powerful than he would be under type-(b) abundance.

The conclusion of this subsection is that applying Proviso II to individual acts directly may not yield judgments that we wish. This subsection should end with an important point. The subject that Proviso II applies to should be a practice of property right constituted by effective enforcement of a set of rules. Suppose the choice is between two sets of rules, R_1 and R_2, the former forbidding and the latter allowing Adam to monopolise supply of goods and services. If Zelda would be less subjected under R_1 than R_2, and if Zelda is more subjected under R_2 than she would be under abundance, then Zelda is *made* more subjected than she would be under abundance by choosing R_2 over R_1. As long as the consequent is true, Proviso II supports R_1, that is, the set of rules that forbids Adam to monopolise supply of goods and services. So, Proviso II constitutes a nearly complete solution to the imprisonment

problem.[51]

Subsection D

These two subsections undermine van der Vossen's two theses, stated as follows, respectively. First, in a fully appropriated world, competitive markets for labour guarantee the masses opportunities to acquire property equivalent to *V*, i.e., the aggregate value of property they could acquire under abundance.[52] Second, such a set of opportunities is *robust* in the sense that 'whether, and on what terms, one gets to acquire property cannot depend on others any more than it would *under abundance* [emphasis added]' (2020, pp. 17-8).

I shall first elaborate van der Vossen's rationales for believing the two theses. A competitive market, he defines, is not an arena of perfect competition where people have homogenous skills and bear no transaction cost; it is a market where there is a sufficiently large number of sellers and buyers, transactions are not 'coerced,' and antitrust laws are well-enforced.[53] When everything is owned, how may a competitive market for labour enables the

[51] Proviso II is not a complete solution because, in order to yield the claim that Adam wrongs Zelda by enclosure, relate what deontic property an individual conduct exemplifies to

[52] For the reason of using 'could' instead of 'would,' see n. 45 in p. 18. Note that 'typical' is added in expressing what '*V*' denotes. An explanation for this will be given below.

[53] Here is textual evidence for that he makes this stipulative definition of competitive market. The phrases '[i]f sufficient other parties (R, S, . . .) were around' suggests the first characteristic (2020, p.19). The quote below is related to the second and third characteristics: '[t]he proviso … condemns actions by which people might coercively shape the set of options others have available, collude to effectively offer only one choice of employment, or something equivalent' (2020, p.20).

masses to have a set of opportunities to acquire property equivalent to V? By ensuring that the masses have a set of opportunities to earn wages and salaries in total equivalent to V. Besides, if the labour market is competitive, then a single employer's refusal to employ someone does not deny the latter's opportunity to be employed by another and accumulate wealth up to V. A single employer's power to do that, if any, is not stronger than his similar power under abundance. The set of opportunities of appropriation available in such a labour market seems to be robust.

I now sketch my argument against the first thesis. The first thesis can be defended by setting the baseline circumstance to be some circumstance of abundance rather distant from reality. But van der Vossen does not argue that it can also be defended if the baseline circumstance is set to be a typical circumstance of abundance close enough to reality. The latter kind of baseline circumstance is more suitable for giving practical guidance and evaluation of different practices of property right.

As raised in last subsection, there are different types of circumstances fitting the definition of abundance; more importantly, people's situations in different circumstances of abundance are different. A choice of the competitive labour market satisfies Proviso II, I propose, only if

in a competitive labour market, no individual's degree of overall subjection with respect to

the right of appropriation is higher than the general degree of his overall subjection in a circumstance of abundance close enough to reality.[54]

The baseline circumstance is qualified with 'close enough to reality.' How a practice performs in a circumstance of abundance radically different from reality, I suppose, does not satisfy our interest in reforming current societies. Proviso II should be reformulated in a way to test a practice's performance in environments close enough to reality.

In the last subsection, I mentioned three major types of circumstances of abundance close enough to reality. In one of the circumstances, type (a), the supply of material objects is higher than in the actual world. I doubt that, under a competitive market for labour, ordinary people can have the opportunity to be as well off as they are in a type-(a) (and type-(c)) circumstance. Below is my argument.

Q1. Less talented employees' prospects for lifetime income and wealth are higher than theirs at the actual world, where W_a be a typical type-(a) circumstance, and similarly for W_b and W_c.

Q2. Changing a typical current labour market to be a competitive labour market does not increase their prospects.

Q3. Therefore, less talented employees' prospects are higher than theirs at a competitive

[54] I acknowledge the notion of 'closeness' is vague and the difficulty of setting a threshold of closeness.

labour market.

About (Q1). Since W_a is close enough to the actual world, the masses' preferences at W_a are presumably similar to theirs at the actual world. Given this setting about ordinary people's preferences, *V* must be higher than what they have opportunity to acquire in total at the actual world, else their preferences at W_a could not be satisfied, and W_a would not be a world with abundance.

(Q2) is empirically contingent (and I will explain this soon). The best I can do to justify (Q2) is to rebut some objection to it. The objection that I shall rebut, which in my view would be raised by van der Vossen, points to a competitive labour market's positive impact on less talented employees' bargaining position. Given an increase in the number of employers and effectuation of antitrust laws, employees' bargaining positions are generally better than theirs in the current market. They are more likely to do a better deal with employers and so have better prospects than in the current market.

But other factors may cancel out the abovementioned advantages for employees. In a competitive labour market, transactions cannot be coerced. Government interventions in employment such as laws on minimum wage, occupational safety & employees'

compensation insurance, pension, and so on, do not exist in a competitive labour market. In addition, if antitrust laws are well enforced, labour unions should be banned, too, for labour unions, if strong enough, monopolise supply of labour. Employment is made purely in view of price signals as the overall results of total demand and supply of labour; and presumably the less talented are disadvantaged in competition for high-paying job positions or occupations.[55] Lack of legal protection weakens the less talented employees' bargaining positions, on the supposition that differential natural and social endowments will largely be left untouched if a current labour market is now changed to be more competitive-market. Although an increase in the number of employers weaken any single employer's power to strike a hard bargain, lack of legal protection strengthens it. The net effect on less talented employees' bargaining positions is indeterminate, depending on the real situation. It follows that they might fail to strike for a package deal better than they currently have.

A neo-liberal interlocuter might promptly reply that, since social productivity will be sharply increased if the current labour market turns much competitive-market, less talented employees will have better prospects, absolutely, than now. He might be right as (Q2) is empirically contingent. Still, less talented employees' prospects might be lower at a competitive labour market than at W_a.

[55] The word 'presumably,' perhaps, should be changed to 'analytically' if the predicate 'being less talented' means 'disadvantaged in competition.'

I suppose one rationale behind someone's believing ~(Q3) is that the baseline circumstance 'abundance' is a world where a plenty of the earth remains unexplored or everyone lives alone or together in a loosely organised way. But I believe that these circumstances are not representative of possible worlds where abundance obtains; I am more certain that they are not if the range of possible worlds is restricted to the subset whose members are close enough to reality.

Subsection E

This subsection questions van de Vossen's rationale for his second thesis, that is, the thesis that the set of opportunities to acquire property no less worthy than *V* in lifetime is *robust* in the sense that 'whether, and on what terms, one gets to acquire property cannot depend on others any more than it would *under abundance* [emphasis added]' (2020, pp. 17-8).

It is a presumption that greater inequalities lead to greater subjection that the worse-off suffer. But, for van der Vossen, 'the charge that a Lockean system of unilateral appropriation will *necessarily* produce problematic inequalities … must be rejected' (2020, p.20). How do we make sense of this quote? Assumed that the first thesis is true, the second thesis presupposes either one of the following two claims:

A. Greater inequalities do not necessarily intensify greater overall subjection.

B. Inequalities in the competitive labour market are not greater than inequalities in general circumstances of abundance.

I shall argue that (A) presupposes a measure of overall non-subjection that is implausible because of the way's insensitivity to change in total value of natural resources available. I then propose an alternative measure, which avoids the sort of implausibility, supporting ~(A). I explain why we have no good reason for believing (B), drawing on the points about the distributive pattern in type-(a) circumstances and less talented employees' bargaining positions in the competitive labour market. If both (A) and (B) are false, a choice of the practice of competitive labour market fails to satisfy Proviso II.

One measure of overall non-subjection confirming (A) is the following:

> An individual's overall non-subjection with respect to the right of appropriation cannot be lower if the aggregate value of objects that no one can deny him from appropriating in lifetime is not lower.

Together with the first thesis, less talented employees in a competitive labour market are at least as non-subjected as they are in general circumstances of abundance. Greater inequalities in a competitive labour market, if any, might be justifiable.

I do not find the measure plausible. Developing a measure of overall non-subjection is beyond the scope of this dissertation. What this dissertation contributes to further development is to point out some factor relevant to the measure. Overall non-subjection is in some way related to the total value of natural resources *available* for appropriation (judged at the time that the measurement is taken). The latter variable is not a constant since, for example, technological advances or natural events might enlarge or reduce it. Consider a different scenario of Adam's Island where the island has far richer resources than the island in the original scenario, *mutatis mutandis*. I am inclined to think that Zelda in this scenario is more overall subjected than in the original scenario; this higher degree of overall subjection seems to be explainable by the apparently sole difference between the two scenarios, that is, the total value of natural resources available.

Here is an alternative measure of overall non-subjection. The degree of overall non-subjection is a fraction so stated:

> The aggregate value of objects that no one can deny him from appropriating in lifetime / The total value of objects available for appropriation.

This measure implies that, Zelda is less overall subjected in the original scenario than she is in the other scenario.

a per capita share of the value of natural resources available[56]

Greater inequalities adversely impact the worse-off's degree of overall non-subjection.

Generally, there are greater inequalities in a competitive labour market than in a typical circumstance of abundance close enough to reality.

Ceteris paribus,

One may, on this measure, believe that huger inequalities do not make the worse off more subjected than they are under abundance as long as their property right over their wealth equivalent to *V* are protected. If that belief is false, and if a competitive labour market leads to greater inequalities in reality than in a typical circumstance of abundance, then we may have no good reason to believe the second thesis.

I shall first introduce a presumption as follows.

Inequality in Competitive Market (ICM): Generally, changing a current labour market to be more competitive-market does not narrow down the income differential.

If we believe that inequalities in natural and social endowments causes income differential, we have presumptive reason to believe ICM.

[56] judged ex ante?

The *extent* of a power is an increasing function of the aggregate value of possible opportunities that the subject can be denied by exercise of the power.[57] The *strength* of a power is an increasing function of the unlikelihood of depowerment, i.e., the unlikelihood of the happening of elimination of the power assumed that wielders of the power would struggle against the resistance.[58]

The content of the argument for (S2) can be used to form an argument against the second thesis. To put this argument in a nutshell, if less talented employees' bargaining positions improves after competitive-labour-market reform, then it may be that the set of opportunities is robust; however, the net effect of the reform on less talented employees' bargaining positions is indeterminate, depending on the real situation.

In the next subsection, I will suggest a rough measure of overall subjection in response

[57] Suppose an individual has a choice between three mutually exclusive opportunities-sets, S1 worth 10 units, S2 worth 20 units, and S3 worth 30 units. Someone who can effectively deny only S3 has a power over the individual less *extensive* than that of another who can effectively deny both S2 and S3. It might be argued that the average value is more appropriate to be the function of the extent. For the present purpose, I shall not engage in this dispute.

[58] This is not the same as the unlikelihood of the happening of elimination of the power assumed that the power-subject chose to attempt to eliminate the power and the wielders would struggle for the it. An authoritarian regime is strong partially because it is unlikely that the power-subjects will revolt. In measuring the strength, if it is assumed that the power-subjects would, then the strength of the regime's power is underrated compared to another regime that the power-subjects will revolt.

to a possible objection. At this point, I explain two presumptions underlying my argument against van der Vossen's claim. First,

> **Economic Inequality and Power** (EIP): Generally, in a society where people are accustomed to producing and consuming largely in response to price signals, the more unequal the income differential between the rich and the poor is, the stronger the strength and higher the durability of the former's power over the latter is.

The durability of a power over a power-subject should reflect how unlikely would it be destroyed in the struggle between its power-wielder and power-subject. If income differential is larger, power-subjects are less likely to make a successful attempt to eliminate the power over them. I have nothing else to say about EIP.

Subsection F

The last two subsections show that a practice of property right that allows monopoly of non-bodily natural resources fails to meet Proviso II, which requires that a practice of property right does not render people suffer a higher degree of overall subjection than they would suffer under abundance. However, this subsection elaborates the problem of arbitrary selection of the baseline circumstance, which I believe that all Lockean provisos face, regardless of the metric for assessing quality of life. To facilitate comprehension of the problem, I shall begin with a reminder that the structure of a Lockean proviso is contrast of people's situations in different circumstances or scenarios and the spirit of such a proviso is that meeting the proviso by itself is an explanation for permitting the appropriation.

Either a Lockean proviso incorporates a moralised baseline circumstance, or it does not. A moralised baseline circumstance is a circumstance in which people fully comply with moral principles other than the proviso. If a Lockean proviso incorporates a moralised baseline circumstance, then satisfying the proviso does not explain why appropriation is permissible; what serves as a defence against criticisms of appropriation is the moral principles together with the fact that the appropriation conforms with them. A principle of compensation, for example, is a Lockean proviso in virtue of the structure – it generates deontic judgments on actions through comparing the value of people's entitlement before and after the actions. But what matter to making deontic judgments, and what the advocates should spell out first and foremost, are the moral principles according to which people's entitlements are confirmed.

A non-moralised baseline circumstance incorporated into a Lockean proviso is either a utopia or not. A utopia can be represented to be (one of) the most favoured point(s) on a possible Pareto Frontier much farther rightward from the actual one. Incorporating such a baseline circumstance, a Lockean proviso lacks the following desideratum: acts of appropriation satisfying a Lockean proviso are feasible at the actual world. The reason is that, for nearly any act of appropriation, it makes others worse than they would be compared to their situations at the utopia.

If a baseline circumstance is not a utopia, then in such a circumstance some non-appropriators' situation would be imperfect in a certain respect. For example, in a circumstance of absence of appropriation, as in Adam's Island, subjection might exist due to unequal natural endowments. A proviso incorporating such a circumstance entails that appropriation causing or maintaining others' imperfect situations is permissible as long as they are not worse than they would be in the circumstance. Yet, it is always an open question about whether an act that fits the description 'not worsening situations of others below a non-moralised baseline circumstance' is permissible. This problem is more serious for a proviso that incorporates a baseline circumstance (e.g., in the absence of appropriation) in which people's quality of life is at a relatively low level. The reason is that, compared to provisos incorporating a more ideal baseline circumstance (e.g., abundance), the proviso permits causing a greater extent of imperfectness (e.g., subjection). Further justification for the

baseline circumstance may rely on other moral principles, but this means that the baseline circumstance is not non-moralised but moralised.

1.7 Difficulty of Measuring Self-ownership Infringement

Last section critically examined different versions of Lockean provisos, but no-proviso pluralists are invulnerable to the examination. But no-proviso pluralists are susceptible to a dilemma. For any pluralist theory, SO is either a fundamental normative principle or not. If SO is fundamental, then it is difficult to construct a scale of self-ownership infringement. If SO is not fundamental, the more fundamental principle which SO can be derived from entails other normative principle regulating ownership of extra-bodily objects. But this relationship between the principles is not pluralist.

I shall confess that I can give no conclusive argument for the first horn, for

The first horn of the dilemma will be elaborated in Chapters 2 and Chapter 3. I acknowledge that no conclusive argument establishing this horn can be given, for such an argument would show that all possible fundamental principles which SO can be derived from have no implications about ownership of a considerable portion of extrabodily resources.

ownership of extra-bodily objects. At this point, it suffices to give some examples of this horn. SO can be derived from the principle that people have the natural right against limiting

opportunities to realise plans.[59] The reason is that bodily parts are means to realisation of plans. By the same token, since resources are also means to realisation of plans, some principle affirming people's right of opportunities to appropriate or have part of the earth can be derived from the principle, too. Yet, this picture is incongruent with the pluralist view.

On the basis of the assumption that SO is fundamental, this section argues for the first horn by revealing difficulties with several ideas of constructing the scale. I acknowledge this approach is doomed to be inconclusive as someone might come up with a metric not discussed in this section, yet I believe that that metric may have some of the problems confronting metrics discussed in this section.

I shall begin with explaining the need for a metric for grading self-ownership infringement. Although failing to provide such a metric does not refute SO in itself, it greatly reduces the usefulness of the concept of self-ownership. We might face a choice between self-ownership and other considerations or a choice between the same or different individuals' self-ownership.[60] Some right might be inviolable, but that is unlikely self-ownership. If self-ownership was inviolable, then all minor or relatively harmless non-consensual intrusions are

[59] This line of argument is taken by Eric Mack. See …

[60] A policy highly beneficiary to society may only be implemented by violating one person's self-ownership severely or violating different person's self-ownership mildly. If bringing the enormous benefit is worth taking any one of the options, presumably the latter option is preferable.

unjustifiable even if they are only the by-product of some personally or socially valuable activity. This is an implication found implausible not only by pluralists but also by other SO libertarians.[61] In adjudicating and deciding these trade-offs, we compare self-ownership infringements involved in different options. This intra- and interpersonal comparisons require the metric in question.

Taken for granted that SO libertarians need a metric for self-ownership infringement, I now scrutinise several proposals to develop such a metric. The first one is relating the degree of an act's self-ownership infringement to its intrusion on a body's certain function or basket of functions. This proposal seemingly borrows the idea of grading the severity of injuries to different body regions or body systems. But there is a significant difference between constructing a scale of self-ownership infringement and a grading classification of injuries. The concept of injury is defined as causing impairment of the region's or the system's function, in grading the severity we have already in mind what is the function at stake. But conceptualisation of infringement of self-ownership makes no reference to any particular function. What are inside the basket? Are different functions (e.g., function to urinate and function to communicate) equally or differentially weighted? SO in itself gives no clue to these answers.

[61] See Eric Mack's and Zwolinski's respective comments on such an implication (Mack, 2015; Zwolinski, 2016).

In detail, the proposal of giving equal weighting to all functions is not promising. If non-consensual use of the body impairs the function of growing tissues to which we subjectively ascribe the property 'malice,' is the use as bad as another non-consensual use resulting in impairment of the function to walk? If functions are differentially weighted, these differential weightings seemingly presuppose an evaluative ranking of forms of life and this ranking is independent of SO. What does it follow? For two alleged acts of self-ownership infringement, one of the acts is judged less severe if (and because) it impairs some function ranked lower than that impaired by the other act, despite stronger dissent from its victim, ceteris paribus. But the correct judgment seems to be the contrary.

Some proposals for the metric in question face the problem that some acts of using a body non-consensually do not qualify self-ownership infringements according to the metric proposed. Consider the idea of taking (expected) welfare lost as the measurement. If non-consensual use leads to no reduction in (expected) welfare, it does not count self-ownership infringement. For a similar reason, adverse impact on health is not a good metric. Non-consensual use may lead to no adverse physiological effects or mental illness. If each year I replace one of your organic organs with a perfect artificial substitute without letting you know, I do not violate your self-ownership according to the metric proposed.[62]

[62] It might be argued that a radical change of the body's parts is a substantial change of the body and so violates self-ownership. The example given avoids this issue.

The idea of measuring self-ownership infringement in terms of unfreedom in bodily movement is supposed to be more congruent with libertarianism. However, unless a satisfactory answer to the imprisonment problem is available, caging an individual is compatible with respect for self-ownership. Measuring infringement of self-ownership in terms of freedom amounts to excusing imprisonment.

My diagnosis of the above proposals is that, under the background assumption that SO is axiomatic, wrongness of self-ownership infringement cannot be explained with reference to other considerations; so, theorists making that assumption have no guide as to the metrics on which to grade self-ownership infringements. They propose metrics as if they picked the metrics out from the large pool of bodily attributes and functioning randomly. It is little wonder that the metrics proposed produce counterintuitive measurements of the prima facie infringements.

Chapter 2 Monist Right-libertarianism

2.1 Introduction

Edward Feser mentions a no-proviso right libertarian stance on the problem: Adam acquires the whole island because he has laboured on it without violating anyone's right and Zelda would trespass on Adam's land by, say, moving (2005). Without giving up his no-proviso position, Feser attempts to refuse this stance by arguing that Adam's enclosure violates the self-ownership proviso (SOP). Since SOP is arguably derivable from SO, his no-proviso libertarian position remains intact. However, as we have seen in Chapter 1, SOP fails to solve the imprisonment problem satisfactorily.

One supposition of this chapter, then, is that no-proviso libertarians could not rationally refuse to be hardliners.[63] Nevertheless, no-proviso SO libertarianism should not be rejected simply because it justifies the hardliner's stance, for the hardliner's stance is a challenge to the need to solve the imprisonment problem.

What this chapter do is to argue that no-proviso monists cannot plausibly solve the paradox of universal self-ownership (called 'Paradox' below).[64] To put Paradox in a nutshell, parents work on their offspring in the same way as people work on materials and own them according to ABL; however, SO implies that their offspring own themselves.

One approach to tackling Paradox is to reject the claim that parents work on their children in an ownership-conferring way. There are two strategies for the rejection. One is to argue that a parent's working on her child could not be done in an ownership-conferring way.

[63] No-proviso libertarians reject except SO any moral constraint on appropriation and use of natural objects. Assumed that SOP is the likely principle derivable from SO, its consistence with the hardliner's stance gives a presumptive reason for believing that all no-proviso libertarians framework?
[64] The name of this paradox is given by Hillel Steiner (1994, p. 242).

Another is to argue that a parent never works on her child but something else bearing a certain relation to her child. Section 2.3 concludes that no-proviso monists gain a pyrrhic victory by employing one or both of the strategies.

The best solutions to Paradox judged from no-proviso monists' viewpoint are restricting objects appropriable to extra-bodily natural objects or denying that a parent's ownership of her child is always full or is always weightier than the child's self-ownership. Section 2.4 constructs a test to discern whether such a qualification is ad-hoc. While pluralists and proviso monists are relatively easy to pass the test, no-proviso monists' failure to pass the test can be explained by the framework of no-proviso monism as such.

(Introduction of the second part…)

2.2 Paradox of Universal Self-Ownership

For purpose of presenting Paradox more clearly, I shall lay out the libertarian theory particularly susceptible to Paradox. I begin with borrowing the term 'i-own' from Daniel Hicks and modifying its definition as follows:

> ***X* I-owns *Y***: An individual, *X*, owns an object, *Y*, and *X* owns *Y* unless and until *X* voluntarily transfers *Y*, *X* commits wrongdoing, or 'either *X* or *Y* cease to exist'(2015, p. 40).[65]

This definition can then be used to reformulate SO and ABL.

> SO: Whoever exemplifies a feature *F* i-owns his parts.[66]

[65] Note that Hicks' definition of the term does not include '*X* commits wrongdoing.'
[66] Parthood is reflexive. Thus, a person is a part of himself.

ABL: If *X works on Y* in an entitlement-conferring way, *W*, then some sufficient condition for *X*'s i-owning *Y* obtains.

The consequent of ABL is not written as '*X* i-owns *Y*' for the purpose of emphasising that working on *Y* is not only sufficient condition for some sufficient condition for i-owning *Y*. *X* works on *Y* if and only if *X* does certain action on *Y* or *Y* is the result or consequence of the action. A way in which working on is done is an external condition satisfied by the working on. What the kind of action constitutes working on *Y* and what way is entitlement-conferring depends on the conception of ABL proposed by a theorist. Since this chapter critically review no-proviso monists' general replies to Paradox, no single (type of) conception of ABL will be the focus.[67] ABL alone leaves open two possibilities:

1. Firstcomers' ownership of *Y* is partial, and latecomers could acquire the rest of the ownership of *Y* (by satisfying some sufficient condition for i-owning *Y*);
2. Reason for respecting firstcomers' ownership of *Y* is not absolute relative to reason for respecting latecomers' ownership of *Y* (provided that latecomers also satisfy some sufficient condition for i-owning *Y*).

Assumed these possibilities, Zelda could have a reasonable complaint against the enclosure. So, adding ABL to a libertarian theory does not immediately turn the theory hard-liner.

The thesis stated as follows together with SO and ABL are among core commitments of no-proviso SO libertarians:[68]

[67] Jan Narveson might be right in asserting that '[we] should also deny that children are "made" by their parents (as distinct from influencing them quite a lot)' (Narveson, 2007, p. 234). Yet, he acknowledges that '[w]hat parents do is initiate a process that eventuates in human organisms, which grow up' (Narveson, 2007, p. 234). This is a conception of working-on and so Narveson cannot dismiss Paradox simply by making that assertion.
[68] There are other core commitments such as CA and common ownership of natural resources. ~~Besides, no-proviso libertarianism could not rationally assume that extra-bodily natural objects are unowned; else, existing~~

Exclusionary Ownership (EO): If *X* i-owns *Y* at time t_i, then anyone who does not own *Y* at t_i does not own *Y* at t_j unless and until *X* does not i-own *Y* at t_j, where t_i is earlier than t_j.

Since EO excludes those possibilities, it would be welcomed by the hardliners. Hereinafter, the conjunction of SO, ABL, and EO, is called 'Standard Libertarianism' or 'SL'.

Paradox is presented as follows:

(1) Assume for contradiction: SL.

(2) Some parent works on her child in *W*.

(3) The parent i-owns the child. (ABL, 2)

(4) It is false that the child i-owns himself. (EO, 3)

(5) The child exemplifies *F*.

(6) The child i-owns himself. (SO, 5)

(7) It is false that the parent i-owns the child. (EO, 6)

(4) and (6) contradict; so are (3) and (7). Daniel Hicks thinks Paradox reveal that libertarians were caught into what he coins 'Okin's Dilemma'(2015, p. 38):[69] either acknowledge that the child (or proto-child) is not i-owned by himself but by the parent or declare that the parent involuntary transfers the ownership to the child. The former threatens SO and the latter ABL.

2.3 Parent Did Not Work on Child

In response to Paradox, no-proviso monists might opt to reject (2). There are two

~~ownership of some natural object would be a SO-independent moral constraint on management of some natural object, falsifying no-proviso view~~.

[69] I have some reservation about this comment, not because advocates of SL do not face this dilemma, but because Hicks thinks that this dilemma confront libertarians in general, not just the advocates.

strategies for the rejection. One strategy is denying that the way in which the parent works on the child fits the description substituted for *W*. Another strategy is denying that what the parent works on in *W* is identical to the child. Subjections *A* and *B* explore the cost of employing these strategies to no-proviso monists respectively.

2.3.1 Not Working in Right Way

Suppose the parent worked on the child. But the way in which the working on was done might not fit the description substituted for *W*. Further discussion requires giving a partial conception of ABL by specifying what '*W*' of ABL denotes. I shall critically examine two different conceptions *W* within the framework of no-proviso SO libertarianism.[70]

First, '*W*' may denote the way that all factors in producing *Y* are already owned by *X*.[71] The parent did not work on the child in such a way since germ-line genetic information involved in producing the child is not owned by her; therefore, (2) is false.

Since rarely anyone has owned all factors of production involved in producing what he or she works on, the hardliner's stance cannot be justified with ABL incorporating the conception of *W* in question. Therefore, this conception of *W* is ill-suited for no-proviso libertarians, who are all hardliners.[72] Furthermore, even if the parent does not own the child fully, she might own him partially. Partial ownership of the child, in conjunction with EO, still implies (4).

[70] Some might replace '*W*' with a Lockean proviso, yet this is precluded from the framework of no-proviso SO libertarianism.
[71] This appears in Hicks' formulation of ABL (2015). Textual evidence shows that Hillel Steiner is also an advocate of this denotation (1994, pp. 233–236).
[72] Yet this may not be a problem for left-libertarianism which categorise as Lockean libertarianism. On the contrary they may be happy to make the denotation. If naturally resources are originally unowned and people who work on them, according to ABL incorporating the denotation of *W*, can never fully own them, this leaves room for other reasons for a more egalitarian distribution of natural resources. (Still, the reasons cannot be ones threatening SO.)

Second, '*W*' may denote the way that working on *Y* does not violate others' rights. But apparently the parent worked on the child in such a way. What and whose right did she violate when she worked on the zygote with herself? Hillel Steiner suggests that germ-line genetic information is natural resource. He argues that in working on the child the parent excludes others from accessing the information by using it and thereby violates the duty not to deprive others of the opportunity to have a per capita share of the total value of natural resources (provided that no compensatory payment has been given).[73]

Steiner's egalitarian view about germ-line genetic information is ill-suited for no-proviso libertarians, too. No-proviso libertarians could not rationally assume that extra-bodily natural objects are originally owned. This assumption states a SO-independent moral constraint on management of some natural object and is inconsistent with the no-proviso view.

Before the next subsection, it is worth digressing for a moment to discuss Steiner's view on its own merits. Steiner's view presupposes that germ-line genetic information is an excludable good such that one who uses the information will exclude others from using it (Curchin, 2007; Hicks, 2015). As several critics of the view have pointed out, if the information, like many intangible goods, can remain open to others when being used, one who uses the information does not necessarily violate the duty. Besides, full compensation, if possible, should legitimatise unilateral appropriation and use. Why can't the parent purchase or compensate for the information and then become a legitimate owner of what is produced with the information? A farmer who purchases seeds and other factors of production from

[73] This argument may only apply to parents who are biological.

others is entitled to the produce, ceteris paribus.[74]

2.3.2 Not Working on Child

The definition of 'child' is stipulative. A child is a being who exemplifies *F* and stands in some relation (explicated in biological terms) with something produced by the parent in and through reproduction. Since (5) is analytically true, no strategy to reject (5) will be reviewed. But the stipulative definition brings out another strategy for rejection of (2). Under this strategy, (2) is false not because the parent has never worked on something in *W*, but because the thing that the parent has worked on in *W* is not the child. How could this be?

Suppose *F* is the capacity to (acquire the capacity to) make a choice. But what a parent works on in and through reproduction, be it a zygote, an embryo, a foetus, or even a baby, (in *W*) prima facie does not exemplify such a capacity. What a parent works on *is* not the child, technically defined, but something else biologically connected to and standing in a certain relation other than (numerical) identity with the child. Following Hicks, call it 'proto-child' (Hicks, 2015).

In addition, this strategy presupposes that the proto-child does not work on the child or that working-on is intransitive. I acknowledge that it is safe to make the latter presupposition.[75] The parent nurtures the child, the child nurtures his child, and it is entirely contingent that the parent nurtures the child's child. Therefore, even if the proto-child itself works on the child, we have presumptive reason to believe that the parent, who works on the

[74] If a child is also a right-holder of an egalitarian share of the earth, then each mother owes the child a compensatory payment. A child's right over a per capita share of the earth may be a quite extensive moral constraint on matriarchy. However, the more extensive the child's right over the earth is, the severer the second horn of Okin's dilemma is for Steiner.

[75] It also depends on the conception of the relation of working-on.

proto-child, does not work on the child.

I have two critical comments on no-proviso monists' employment of this strategy. First, in view of animalism, the parent does works on the child. Second, even if, assumed for the argument's sake, the parent does not work on the child but the proto-child, Paradox changes to a different form, which it is a pyrrhic victory for no-proviso monists to debunk.

As a matter of definition, the proto-child is not the child. However, it is false to say that what the parent works on and is biologically connected to the child is only the proto-child. Chapter 3 presents an account of self-ownership that incorporates animalism, the view that we *are* animals of the type known as *Homo sapiens*. As an animal, a human's lifecycle may begin earlier than when he was literally born, perhaps at the stage of being a foetus, and gradually reach the stage of exemplifying *F*, i.e., reaching childhood. It is a cycle of *one* life of the same animal, the same human. Given animalism, therefore, it is false that a foetus is not a child. Hardliners and other SO libertarians have a reason to accept animalism because animalism relates the reference of 'self' of SO to a body through the notion of identity and the claim that they are identical, as I will show in Chapters 3 – 4, facilitates explaining and specifying CA.

For the sake of argument, assumed that the parent does not work on the child but proto-child. It may be inappropriate to add 'the' before 'proto-child' since 'the' indicates uniqueness. However, there may be many proto-children. Under the strategy in question, it is safe to assume that one of them is the child's body. After all, the strategy rejects (2) by claiming that what the parent works on is not the child but something biologically connected to him. If it is not the body, then what is it? Given that the body is a proto-child, Paradox is not debunked under this assumption but changes to a different form.

(1) Assume for contradiction: SL.

(2*) The parent works on the child's body in *W*. (ex hypothesi)

(3*) The parent i-owns the child's body. (ABL, 2*)

(4*) It is false that the child i-owns his body. (EO, 3*)

(5*) Ownership of the whole implies ownership of the part.

(6) The child, a being who exemplifies *F*, i-owns himself. (SO)

(7*) The child i-owns his parts. (5*, 6)

(8*) The child's body is part of the child.

(9*) The child i-owns his body. (7*, 8*)

I shall point out the price of rejecting (5*) and (8*) that no-proviso monists have to pay.

On the assumption that one of the proto-children is the child's body, rejection of either (5*) or (8*) may reduce usefulness of the notion of self-ownership. When the child's organ is forcibly transplanted into the parent, forcible transplantation cannot be condemned as serious violation of self-ownership since it is only about part of the child's body, not about the child himself. The concept of self-ownership is supposed to play a role in passing judgment on such cases, especially when the cases involve victims undergoing no substantial change, trauma or physiological impact. The view in question renders the notion of self-ownership failing to serve this evaluative purpose it is supposed to serve. (Besides, I acknowledge my failure to understand practical implications of the denial of (5*). How could a claim-right over a whole not be violated if some of its parts is used non-consensually?)

Besides, if (8*) is rejected, and if, as assumed under the strategy in question, the body is not identical to the self, then what is special about the body? Whatever else relation that the self bears and could bear to the body could also be heled between the self and some extra-bodily object. By adopting the strategy and also rejecting (8*), no-proviso monists should

worry that they lack theoretical resources to justify CA.

In sum, rejection of (2) is not a promising response to Paradox from the perspective of no-proviso monism. One strategy to reject (2) is denying that a parent's working on the child is done in a certain way *W*. Yet, one consequence of employing this strategy is leaving the hardliner's stance ungrounded because firstcomers rarely work on extra-bodily natural objects in *W*. Another strategy to reject (2) is denying that what the parent works on (in *W*) *is* the child. Yet, this strategy works only by assuming either that the child is not identical to the body referred to with his name or that SO is silent about the child's ownership of his body.

2.4 Qualifying ABL

If (5) is analytic, and if rejecting (2) is a pyrrhic victory, then the option left is amending some or each part of SL.

I shall first mention one suggestion for amendment so as to leave it aside. It is suggested that SO is replaced with the following: that a being exemplifying *F* owns itself as a whole. As I have argued in the previous section, keeping silence about ownership of bodily parts is not an attractive option for no-proviso monists.

One suggestion for amendment to SL is qualifying ABL with the clause 'except for bodily parts.' To state ABL qualified more clearly,

> **ABL***: If *X* works on *Y* that is not a bodily part, some sufficient condition for *X*'s i-owning *Y* obtains.

Clearly ABL* is silent about ownership of bodily parts. By the same token, EO may too be qualified with the clause. The qualified version, **EO***, leaves open the possibility the child may acquire ownership of his body already i-owned by the parent (whereas latecomers never

come to acquire things already i-owned by others).

Arguments for this suggestion may strike some critics of SL as ad hoc (Hicks, 2015). This charge is not concerned with the truth-value of ABL*. ABL* is true if working on an extra-bodily object, i.e., an object that is not a bodily part, suffices to i-owning the object. Even if ABL* is true, its critics would persist with the charge. Is the suggestion to add the clause ad-hoc? How do advocates of the suggestion dismiss this charge? In subsection A, I will spell out a test, which I coined 'Ad-hocness Test,' to discern whether adding the clause in question is ad-hoc. My conclusion is that no-proviso monists cannot pass the test. In subsection B, I explicate constraints on no-proviso monists, limiting their theoretical power to pass the test in the way that no-proviso pluralists and proviso monists could do. Subsection C is a diagnosis of no-proviso monists' difficulty in passing the test, given the constraints explicated.

2.4.1 Ad-hocness Test

A preliminary to constructing the test is to distinguish between using a clause 'except for…' as a disclaimer and as a refinement.

A clause 'except for …' is being used as a disclaimer to a general statement about *Y* when it is used to introduce a (kind of) case (denoted or referred to by the noun or noun phrase or the *wh*-clause following 'for') that the statement may not apply or that the speaker himself lack relevant knowledge of. To illustrate, suppose a speaker uses a clause 'except for people with certain genes' as a disclaimer to a sentence 'The vaccine works for all people.' He expresses his thought that the vaccine works for people without certain genes, yet he makes no judgment about whether the vaccine works for anyone who has certain genes.

By contrast, a clause 'except for…' is being used as a refinement to a general

statement about *Y* when it is used to introduce a (kind of) case that the general statement is false about. To use the previous example to illustrate, if by 'except for people with certain genes' the speaker expresses that the vaccine does not work for people with certain genes, he uses the clause as a refinement to the general statement. A successful communication conveys from the speaker to the listener two thoughts – not only that the vaccine works for a vaccinee if the vaccine has no certain genes, but also that the vaccine does not work for a vaccine if the vaccinee has certain genes.

In my view, the charge of ad-hocness has no force against advocates of ABL* who could explain the clause as a refinement to ABL. After all, when those advocates could explain for why, while working on an extra-bodily object suffices to i-owning the object, working on the child's bodily part does not, they owe no further explanation. By contrast, for those advocates who could not explain the refinement or who use the clause as a disclaimer to ABL, it is fair to charge them with ad-hocness. On the basis of this view about the charge of ad-hocness, I construct a test for ad-hocness as follows:

> **Ad-hocness Test**: Adding 'except for bodily parts' to ABL is *not* ad hoc under a SL theory if the theorist could coherently explain what he would substitute for the variable 'C_i' or 'C_j' in each of the following statement-form:
>
> (a) ABL*: For most extra-bodily objects, if any individual works on any one of them in an entitlement-conferring way, some sufficient condition, C_i, for her i-owning the object obtains.
>
> (b) If any individual, including the parent, works on a bodily part of the child in an entitlement-conferring way, some sufficient condition, C_j, for her i-owning the bodily part does not obtain.

An advocate of ABL* who makes no substitution into (b) uses the clause as a disclaimer. A theorist who could not coherently explain what he would substitute for (a) and (b) could not defend the refinement he makes to ABL. After all, he should show why the general statement (i.e., ABL) is false in the specific (kind of) case (i.e., body).

2.4.2 Constraints on No-proviso Monism

No rule of the test determines whether sets of conditions substituted for C_i and C_j respectively be the same. Pluralists, for example, could make the substitutions as follows:

C_i = the condition of an object Y being crucial to X's plan;

C_j = the condition of an object Y being numerically identical to X.

If pluralists substituted the same condition for both C_i and C_j, and if they do not make other substitutions, they would fail the Ad-hocness Test. If the condition of numerical identity was substituted into C_i and C_j, then (a) would be false since working on an extra-bodily object might not make the object part of oneself. If the condition of being crucial to some plan was substituted into C_i and C_j, then (b) would be false since the child might be as crucial to the parent's plan as other extra-bodily objects. Yet, the framework of pluralism allows pluralists to make different choices of substitution with coherent explanation and pass the Ad-hocness Test. (Even if the condition of being crucial to a plan is satisfied by the parent with her child after working on the child (like investment), the pluralist could say that a self's being identical to the body grounds the reason for respecting the child's self-ownership and that such a reason overrides the consideration given by the fact that the child is crucial to the parent's plan.)

No-proviso monists are not pluralists. In substituting conditions for C_i and C_j respectively, no-proviso monists as well as other monists would be unable to coherently

explain their choices of substitutions if the choices did not conform with the following rule:

(c) The child satisfies C_j with his parts, i.e., his bodily parts.

(d) $C_i = C_j$.

In a nutshell, monists are not as free as pluralists to pass the Ad-hocness Test. Failure in search for the same sufficient conditions for ownership of extra-bodily objects and self-ownership would reveal the falsity of monism.

Duncan MacIntosh's monist libertarian account passes the Ad-hocness Test. Since it is an important target in a later section, it does no harm to introduce it in more detail at this point.

> **Nozick's Libertarianism** (NL): everyone has a right to be negatively free to do her preferred activity provided it is a member of a 'maximum set of activities in which people may engage without interfering with each other's activities' (2007, p. 167).[76]

For present purpose, NL's own problems are left aside.[77] The account is monist because NL supports self-ownership and regulates ownership of extra bodily objects. Abbreviate the quote to 'maximum set.'

I suppose advocates of NL would claim that the following condition suffices to ownership and substitute it for C_i or C_j to pass the Ad-hocness Test:

> **NL Condition**: Exclusive use of *Y* plays a crucial role in success of *X*'s plan the

[76] MacIntosh uses 'NL' to stand for 'Nozick's Libertarianism'.

[77] It is unclear whether the maximum set of compossible activities must be one with equal distribution of negative liberties. If there is no constraint on the pattern of the distribution, NL is different from the classical utilitarian doctrine, i.e., the doctrine that individuals have a duty to maximise the aggregate utilities of all, only in some uninteresting aspect: NL does not imply that individuals have the duty, while the doctrine implies that.

realisation of which is compatible with a maximum set.

Substituting NL Condition in (a) yields a prima facie plausible substantive ABL. This is usually by working on something the thing plays a crucial role in success of one's plan. Given (d), if this condition is substituted for C_i or C_j, it is substituted for the other. Substituting this condition into (b) yields that by working on a bodily part this condition is not satisfied by the worker and the bodily part; substituting this condition into (c) yields that this condition is satisfied by an individual and his body. Could advocates of NL well explain these substitutions?

Consider the substitution into (b). A set of mutually non-interfering activities of only parents is smaller than and interferes with a set of mutually non-interfering activities of more people.[78] Assume that the latter is the only maximum set. The parent's matriarchic plans, i.e., planned activities that would interfere with the child's use of his own body, are not numbered among the latter set. This is the case even if the parent works on the child. NL Condition is not satisfied by the parent's matriarchic plans with the child. So, substituting the condition into (b) yield a true statement.

Consider the substitution into (c). NL Condition is satisfied by the child with himself (or his body). The body is the locus of agency. The child's body plays a crucial role in success of the child's plan. So, the child has self-ownership. [79]

Given the account's apparent success in tackling Paradox, it is interesting to research whether the hardliner's stance is derivable from NL. If the derivation holds good, then

[78] Under matriarchy only mothers' preferred activities would not be prohibited from doing, whereas more preferred activities of more people would not be prohibited under a system of property right conferring self-ownership for all (MacIntosh, 2007).

[79] I do not expect that a short paragraph presents every premise between NL and SO. I make the argument briefly only to show a direction of monist approach for qualifying ABL.

mission accomplished.[80]

Yet, it is false that NL implies the hardliner's stance. In Adam's Island, a set of activities comprising only Adam's interactions with the island might be as large as a set of activities comprising Adam's, Zelda's, and their cooperative activities. In such a case, which generally involves only two persons, NL is compatible with a practice of property right conferring firstcomers entitlement to whatever extra-bodily objects they are firstcomers to. However, it is possible that firstcomers are among the minority and work on a large portion of extra-bodily natural resources on earth. In such a case, a system of property right conferring entitlement upon firstcomers prohibits rather than protect people's liberties to do activities numbered among a maximum set. The hardliner's stance can be derived from NL, but conditionally and on certain empirical assumptions. NL is a constraint on appropriation and use of extra-bodily natural objects. MacIntosh's libertarian account is proviso-monist.

Conditions that no-proviso monists (hardliners) should substitute into the Ad-hocness Test are conditions that can be substituted into EO* to yield true statements.

(e) **EO***: For any extra-bodily object, if it is i-owned by firstcomers, latecomers cannot satisfy C_i with the object unless and until all the firstcomers do not i-own the object.

Substituting NL Condition for C_i into EO* yields the following statement:

> For any extra-bodily object, if it is i-owned by firstcomers, latecomers cannot satisfy NL Condition with the object unless and until all the firstcomers do not i-own the

[80] False impression might have been given to readers that hardliners could only be no-proviso libertarians since one supposition of this chapter is that all no-proviso libertarians are hardliners. However, from that it does not follow that all hardliners are no-proviso libertarians. As we have seen in Chapter 1, Adam's enclosure can be justified with some Lockean proviso.

object.

But this is false. As somewhat explained in the previous paragraph, when firstcomers are among the minority, NL Condition is generally satisfied by latecomers with resources which might have been worked and according to ABL* i-owned by firstcomers.

2.4.3 Diagnosis of No-proviso Monists' Difficulty

The easiness of Ad-hocness Test relative to proviso monism and pluralism together explains no-proviso monism's difficulty in passing the test.

On the one hand, plausible conditions that can be substituted into EO* to yield true statements are rare. Common conditions are *X*'s being creators, discoverers, and converters of *Y*. Substituting these conditions into (b) yields false statements since the parent satisfies these conditions with the child's body. Substituting them into (c) leads to the same results since the child does not create, transform, or discover his body. Note that EO* (or EO) is conjoined with SO and ABL in order to derive the hardliner's stance. The hardliner's stance partly explains no-proviso monists' difficulty in passing the test.

But the hardliner's stance alone does not serve the full explanation of the difficulty. Hardliners could pass the test by being pluralists. As explained in the previous subsection, pluralists are not constrained by (d) and are free to substitute C_i and C_j with different sets of conditions. Instead of the condition of being the creator, for example, no-proviso pluralists could well explain the choice of substituting the condition of numerical identity with C_j, into (b) and (c).

I acknowledge inability to demonstrate conclusively that no-proviso monists cannot search for a single set of conditions fitting all (a) – (e). But after analysing and demonstrating

difficulty in the search with examples, no-proviso monists have the burden of proof to give a set of conditions fitting them. Without giving it, they can only add the qualification in an ad-hoc manner.

In the next few sections, I demonstrate that a plausible proviso monist account will be left-libertarian and is thereby inconsistent with the hardliner's stance. Beforehand, readers are reminded that Sections II to IV is a review of no-proviso monists' performance on tackling Paradox. Although they are all hardliners, hardliners need not them. Hardliners could be pluralists or proviso-monists. Yet, both proviso and no-proviso pluralists are criticised in Chapter 1. Proviso-monists who are hardliners are often no-proviso monists disguised; therefore, they are too susceptible to Okin's Dilemma. I therefore recommend that SO libertarians resist or give up the hardliner's stance, not because its implications are implausible, but because there is no solid type of SO libertarian theory supporting it.

2.5 Four Types of Proviso Monism

2.5.1 Preliminary

One current trend in SO libertarian literature is subsuming self-ownership and ownership of extra-bodily objects under the right against being interfered with interaction with the world in a certain manner (Christmas, 2017, 2019; Mack, 2010; Mack & Gaus, 2004; Russell, 2010). Since these two kinds of ownership are accounted for by the same reason, this trend is monist. Besides, since the right of non-interference is a moral constraint on use and appropriation, such an account is proviso-libertarian.

A proviso-monist account based on the right of non-interference is apparently a promising solution to the imprisonment problem. Although one may use and acquire objects unilaterally, no one may do it in a way that constitutes interference. Since imprisonment is a

salient form of interference, objection to interference amounts to objection to imprisonment.

This section presupposes two distinctions which will be elaborated shortly. One distinction is between impure and pure conceptions of the right of non-interference. The other is moralised and non-moralised conceptions of the right of non-interference made by David Sobel (2016). These two distinctions together form a conceptual terrain comprising four types of proviso-monist accounts. The thesis of this section is that, among the four types of the accounts, the best solution to the imprisonment problem is the one based on a non-moralised, pure conception of the right of non-interference.

The first distinction. Let 'φ' range over possible specific behaviours. On an *impure* conception, an individual's right against interference with φ is violated only if φ is a step to realise an actual plan; else, the conception is *pure*.[81]

The second distinction. On a *moralised* conception, an individual has a right against interference with his φ that 'pass[es] some moral test,' i.e., that 'does not violate other people's rights or is in other ways morally unacceptable' (Sobel, 2016, p. 133). On a *non-moralised* conception, if he has the right, he has it regardless of whether φ violates other people's rights. This distinction will be fine-tuned in Subsection 2.5.4, yet it is better to begin the review with a less complicated distinction.

Two preliminaries. The first one is about planning. An occurrence is a material object or a group of material objects' occupation of a space-time region.[82] Planning is conceiving a

[81] To make this distinction, I am inspired by Hillel Steiner's pure conception of negative liberty discussed in Section III.

[82] By 'occurrence' I mean Quine's 'event' (Quine, 2013, p. 156). The term 'event' is reserved to denote change in the state of an object.

branch of mutually exclusive sequences of occurrences each of which has an end.[83] His actual plan is such a bundle of ideas as the result of his actual planning; his *possible plan* is a such a bundle of ideas as the result of the planning that he might have. An *ongoing* plan is an actual plan being in process.

The second one is about the definition of interference. Interference is either actual or subjunctive. Actual interference with an individual's φ occurs whenever someone else brings about or will bring about successfully occurrences incompatible with φ. Subjunctive interference with an individual's φ occurs whenever, if an individual endeavoured to take φ, someone else would successfully bring about occurrences being incompatible with φ. Both kinds of interference comprise the class denoted by 'interference' hereinafter.

2.5.2 Moralised & Impure Conception

On a standard version of the moralised, impure conception,

> an individual has a liberty-right to do φ conceived as a step in his actual plan if and only if by doing φ he does not interfere with plans that others have similar rights to pursue.

Call it 'Moralised & Impure Non-interference' or 'MIN.' It is a moralised conception since the consequent states a moral test that one's plan must pass such that one has a right to purse one's plan. It is an impure conception since the plan is one's actual plan, not possible plan. [84]

MIN, however, is a non-starter because it is recursive when applied to any prima facie interpersonal conflict of rights. The judgment that an individual has a right depends on the

[83] The term 'end' means not only the purpose of doing in conformity with a sequence but also the final part of the sequence.
[84] I presuppose that an agent's ongoing plan must be desired by him. Ongoing plans that an agent has a right to pursue against interference with must be plans that he desires.

judgment that others have similar rights, which, according to MIN, depends on whether the individual has the right in question – what we seek to know at the outset. The upshot of applying MIN to a conflict is not denying or affirming anyone's liberty-right; we can neither deny nor affirm solely according to MIN.

The following version, that 'MIN+' refers to below, is not recursive.

> an individual has a liberty-right to do φ conceived as a step in his actual plan if and only if by doing φ he does not interfere with others' plans that have been ongoing before the initiation of his and that others have similar rights to pursue.[85]

An ongoing plan, to wit, is a plan in process. Under MIN+, the range of others' plans is qualified not only with 'that others have similar rights to pursue' but also with the time-indexical 'that have been ongoing before the initiation of his plan' in MIN+. Note that MIN+ without the qualification 'that others have similar rights to pursue' is left aside because it implausibly implies that an individual a duty not to interfere with someone's plan to torture him (or an innocent third party) that has been ongoing before the initiation of his plan of self-defence (or his plan of defence for the innocent third party).

Suppose I have initiated my plan to survive at t_1 and your plan to poison me becomes ongoing at a time t_2, which is later than t_1. Undeniably, if I prevent you from poisoning me at t_1 or later, I interfere with your plan. Although your plan becomes ongoing now, it becomes after my plan's initiation. Ceteris paribus, by surviving I do not interfere with a plan initiated beforehand that someone has a right to pursue. Therefore, I have the liberty-right to survive

[85] I borrow Billy Christmas' idea to make this version. 'Each individual, then, prior to any political settlement, has claim to non-interference in her ongoing, non-interfering activities' (2019, p. 10).

and you lack the liberty-right to poison me.

What if MIN+ is applied to cases where conflicting plans are initiated at the same time? Since conflicting parties do not interfere with some plan that has been ongoing beforehand, they all have the liberty-right to pursue their own plan. Some might find this implication unsatisfactory as it means that the conflicting parties may interfere with each other. Nevertheless, if the conflicting parties initiate their own plans at the same time, it seems fair to all that no one is privileged. Realising all plans partially and equally amounts to privileging the egalitarian enforcer's plan to a full extent. In any case, what these two paragraphs do is demonstrating that MIN+ is not recursive when applied to interpersonal conflicts.[86]

How far can MIN+ bring us towards a thorough solution to the imprisonment problem? The key question is whether Adam's enclosure interfered with any plan that Zelda had initiated before. Note that our answer depends on whether we count the wish to lead a good life as one of the desired ends in a plan. Leading a good life might not qualify as an end because an end, it might be argued, is a conception of somewhat specific possible occurrences.[87]

We start to answer the question by making the supposition that the wish to lead a good life is not an end in any plan. Let t_1 be the time (or the period of time) that Adam fenced resources of the island and unconscious Zelda was being washed ashore. At t_1, Zelda might

[86] A variant of MIN+ might be produced by replacing 'liberty-right' with 'claim-right.' The conflicting parties, then, have duty not to interfere with each other's realisation of plan. To be morally allowed to make an impact on the earth, people can only revise their own plans until their plans are co-realisable.

[87] Specificity of ends admits of degrees. Suppose a PhD student aims to be a good scholar, but what type or in what academic field does she aim be a good scholar of? Still, a rather abstract end is less abstract than the wish to lead a good life in the following sense (or way): the former is a conception of possible occurrences with a certain degree of specificity, whereas the latter is not such a conception. Being a good scholar is a rather abstract aim; still, in aiming at it, the student has a conception of her lecturing, talking, discussing, publishing, about some unspecified topic with unspecified someone in some unspecified spacetime.

have no plan about the island as she was unconscious before arriving on the island. This is a reason to presume that Adam did not interfere with her already ongoing plan already initiated by enclosure at t_1.

Suppose Zelda comes up with some specific plans about her life in the island after having awaken from unconsciousness. Does Adam infringe her right by stopping her climbing over or damaging the fence? Since at t_1 Adam did not interfere with any plan that Zelda had initiated before Adam's enclosure, he has a right to enclose against Zelda according to MIN+. On the contrary, since Zelda would interfere with Adam's plan of enclosure initiated before Zelda's attempt to escape, and since Adam has a right to the plan of enclosure, Zelda lacks the liberty-right to escape.

What if leading a good life also counts as an end in a plan? To derive from MIN+ that Adam violates Zelda's right to realise her plan of leading a good life, rationally we should assume that Zelda have proceeded the plan to lead a good life at some stage of her life earlier than Adam's initiation of any plan that enclosure is a step of. Otherwise, Adam did not interfere by enclosure with Zelda's plan that has been ongoing before.

Whether Zelda have proceeded the plan to lead a good life at some stage of her life earlier than Adam's initiation of any plan that the enclosure is a step of is empirically contingent. Consider a hypothetical scenario of Adam's Island in which Adam were born much earlier than Zelda. When Adam started to strive for a good life, he did not interfere with Zelda's. According to MIN+, he has a liberty-right to lead a good life, ceteris paribus. It is not denying that Adam's maintaining the enclosure at t_2 interferes with Zelda's plan to lead a good life that becomes ongoing at t_2. Nevertheless, maintaining the enclosure does not interfere with what Zelda has a liberty-right to pursue.

Could MIN be amended differently? A suggestion is to replace the clause 'that have been ongoing before the initiation of his plan' in MIN+ with 'that is ongoing.'

> an individual has the liberty-right to φ conceived as a step in his plan if and only if by doing φ he does not interfere with others' plans that is ongoing and that others have similar rights to pursue.

This version of MIN has the problem of recursion, too. An *ongoing* plan, to wit, is a plan being in process. At t_2, both Adam's and Zelda's conflicting plans are ongoing and so they interfere with each other's ongoing plan. Who lacks the liberty-right to pursuit of the plan? The answer depends on what lacks the similar right.

In sum, either leading a good life counts as an end in a plan or not. If it does not count, then Adam did not interfere with Zelda's plan about living on the island already initiated before he fenced since she had no such a plan. If it counts, Adam might not violate Zelda's right of non-interference since under some condition (such as being younger than Adam) Zelda's plan to lead a good life was initiated later than Adam's.

Most crucially, advocates of a moralised, impure conception face the problem of matriarchy since they are no-proviso monists disguised. MIN+ is a version of the conjunction of ABL and EO. MIN+ entails a conception of ABL – if an individual works on an object by having a plan whose realisation involves the object in an entitlement-conferring way, i.e., not interfering what others have similar rights to do, then he i-owns the object. MIN+ entails some version of EO since, for those who work on the object later, they have a duty not to use the object in a way interfering the firstcomers' plans. If the abstract end of leading a good life counts as part of a plan, firstcomers are often people of previous generations. MIN+ amounts to a rule that may be suitably described as 'first-born, first-served.' When the parent initiated

her plan of a good life whose steps involve the child, the child has no reason to complaint against the parent's matriarchic right over himself.

2.5.3 Moralised & Pure Conception

On a pure conception of the right against interference, the right may be violated even if the right-holder does not desire his or her activity interfered with by others. According to a standard moralised, pure conception of the right of non-interference,

> An individual has a liberty-right to do φ if and only if by doing φ he would not interfere with others' plans, be they actual or possible, that others have similar rights to pursue.

Call this the *Principle of Moralised & Pure Non-interference* (MPN).

But the problem of recursion is severer for MPN than MIN. MIN runs infinitely when applied to cases involving at least two parties whose plans conflict; MPN runs infinitely when applied to cases involving at least two parties. Provided that there are two individuals, if one initiated the plan to φ, one would interfere with another's plan, be it actual or possible, to prevent him from φ. On MPN, the judgment that an individual has a right to φ depends on the judgment that another individual has no similar right to prevent him from φ, which depends on the former judgment.

One approach for amending MPN is proposing a moral test formed by two disjuncts – non-violation of others' similar rights *or* non-violation of other substantive rights.

What other substantive rights could be?

One approach for amending MPN is proposing a moral test formed by two disjuncts – non-violation of others' similar rights *or* non-violation of other substantive rights. Such

moral tests are manifold. A familiar one is incorporating some sort of Lockean proviso. Since several types of Lockean proviso have been reviewed in Chapter 1, I shall not go into detail. Notice that, if the test incorporates the self-ownership proviso (SOP), then MPN is monist verbally but pluralist in spirit, for SOP represents a different consideration filtering out people's behaviours that they have prima facie right not to be interfered with.

It is worth addressing another proposal on the second disjunct that Eric Mack would make because it has recently drawn several scholars' attention (Christmas, 2019; Russell, 2010; Wendt, in press).[88] Mack would point out that Adam's enclosure violates Zelda the following right:

> 'a natural right not to be precluded from acquiring and exercising discretionary control over portions of previously unowned material' in accordance with 'the procedures of a recognized and justifiable practice of private property' (Mack, 2010, p. 70, 75).[89]

Following Mack, call this the natural right *of* property.[90] Mack invites us to imagine a 'scientifically advanced and malicious Trickster' sprays on 'whatever raw material any aspiring agriculturalist sets out to acquire as property with a coating that renders it unfit for that agent's use' (Mack, 2010, pp. 69–71). Mack thinks the Trickster leaves enough, and as good, for hunter-gathers who are at moral liberty to live the hunting-gathering lifestyle. However, the Trickster violates hunter-gathers' natural right of property. And for the same

[88] Russell, Wendt, Christmas.

[89] The practice specifies what counts as a successful act of acquisition and what count as a violation of property right. For example, does my mixing a few drops of my blood with the Pacific Ocean confer my entitlement to it? Does my causing emission of exhaust gas by driving violate others' rights over their bodies and susceptible property? All these questions bring out controversial disputes and they are to be settled by the justifiable practice recognised by parties involved.

[90] Mack invites us to imagine a number of hunter-gathers who were at moral liberty to use or appropriate natural materials for their hunting-gathering style of living; suppose a 'scientifically advanced and malicious Trickster' sprays on 'whatever raw material any aspiring agriculturalist sets out to acquire as property with a coating that renders it unfit for that agent's use' (2010, pp. 69–71). Mack thinks the Trickster leaves 'enough, and as good' for the hunter-gathers. However, the Trickster violates their natural right of property.

reason Adam wrongs Zelda.

But it is debatable whether Adam's enclosure violates Zelda's natural right *of* property. First, there might not be a practice of private property recognised by them both. If such a practice is the only source of ownership, Adam did not become the owner of the island by the enclosure. It does not follow, however, that what Adam did at t_1 wronged Zelda. The absence of such a practice, on the contrary, implies that Zelda has no ownership, too. Second, on the concept of a justifiable practice given by Eric Mack, it is possible that a practice of 'first-come, first-served' is justifiable. By 'justifiable practice' Mack does not connote any idea that private property should be regulated in accordance with some patterned or end-state principle. A practice of private property is justifiable if and only if it has certain formal properties and it respects rights of individuals.[91] One formal property, for example, is coherence - 'non-compossible entitlements do not arise' (Mack, 1990, p. 535). A tailored set of rules of 'first-come, first-served' competition is seemingly coherent. When the justifiable practice is a 'first-come, first-served' competition, Zelda is not excluded from being a participant but is a loser of the competition.

The more crucial point is that violation of Zelda's natural right *of* property is not the correct explanation for the wrongness of Adam's enclosure.

Clever Adam's Island

Everything is the same as Adam's Island except that, at t_0, a time earlier than t_1, Adam recognised two options: first, build a fence at t_1 and wait for Zelda's arrival at t_2; second, finish the practice-recognised entitlement-conferring act to all pieces of resources one by one at t_1 and wait for Zelda's arrival at t_2. Fencing resources is not a practice-recognised

[91] I describe these properties as formal because exemplification of them by a practice could be compatible with many substantive principles or provisos regulating use or distribution of objects.

entitlement-conferring act.

Clever Adam, of course, chose the second option since it would maximise his expected interests.[92] According to the idea of the natural right of property, not only could Adam rightfully claim all resources, but also Adam did not wrong Zelda just because Adam chose cleverly and maliciously, despite no difference in the two options' impact on Zelda's situation.

They are no-proviso monists disguised. It follows that they are also susceptible to Paradox.

Mack:

The boundary of the right of non-interference is conferred upon by and confined to some moral test. One has the right of non-interference if and only if one meets the moral test. However, the absoluteness of the right of non-interference is not rooted in what grounds the right of non-interference. To illustrate, consider Mack's idea that individuals have what he refers to an *ur-claim* – 'to be allowed to pursue their own good in their own way' (Mack, 2010, p. 54). Since resources are essential to the pursuit, 'part of the proper codification of this ur-claim' is having the natural right of property (Mack, 2010). Firstcomers establish property right over objects. But the same objects may be essential to latecomers' similar pursuit, too. The reply that firstcomers acquire in accordance with a practice begs the question, for latecomers could ask why the practice constituted by a certain set of rules has such a moral function, a function conferring upon entitlement.

In reply, Mack could say that objects cannot be essential to an individual's pursuit of

[92] If the first option was chosen, there is possible enforcement of Zelda's natural right of property or possible guilt about violating the right.

his plan without his investing in them and that investment can be discerned only according to a justifiable practice.

This reply can be rephrased in the form of ABL: if an individual works on an object by investing in the object in a way recognized by a justifiable practice, then one acquires ownership of it. Can't latecomers invest in the object already invested? Since a justifiable practice is by definition coherent, it does not recognise two owners of the same object.

Mack would, I conjecture, suggest that when two individuals performing exactly the same action to the same an object, only the earlier action is counted investing in the object. His insistence on coherence amounts to smuggling EO into his libertarian account.

Daniel Russell:

Last, it is worth digressing into an internal tension in some moralised conception, be it pure or impure. The tension arises between the reason for the right of non-interference and confining the boundary of the right with some moral test. Daniel Russell, for example, reads the point of ownership (including self-ownership) as protecting one from others' control over one's sense of oneself, i.e., one's psychological identity (2010). A self is 'one's sense of practical and *physical* [emphasis added] possibilities' (Russell, 2010, p. 141). The point of self-ownership, Russell claims, supports one's ownership of bodily parts and one's natural right of property. Russell and Mack would make similar comments on Adam's Island.[93]

Why is there internal tension in Russell's libertarian account? We take for grant that one has a right against others' control over one's psychological identity. This thesis, together with a premise that some piece of material is crucial to one's change of psychological

[93] Clearly, he would. See n. 94.

identity, entails that one has a right over that material. This right is not conditional upon some moral test, yet Russell embraces Mack's idea of the natural right of property to determine ownership of extra-bodily objects, and this amounts to limiting the boundary of the right of non-interference with some moral test.

Russell might reply that the right against control over psychological identity is conditional upon the natural right of property mentioned above. This reply not only begs the question, but, more crucially, affirms that *firstcomers* to an object have a privilege of enjoying the point of ownership. This privilege is not based on the point of ownership itself. The idea of the natural right of property, which requires latecomers to follow a practice of private property, conceals interpersonal conflict of prima facie rights in a way that no-proviso libertarians do.[94]

2.5.4 Non-moralised Conceptions

Similar to the division between impure and pure moralised conceptions, non-moralised conceptions can be either impure or pure. I shall briefly discuss the impure conception so as to leave it aside. On non-moralised, impure conceptions, the correlative duty is to avoid preventing people from living according to plans that they actually have, 'whether or not those lives pass some moral test' (Sobel, 2016, p. 132). Impure conceptions all have the same problem. It is empirically contingent that actual plans that Adam and Zelda have respectively are incompatible with each other. If, luckily, the actual plans are co-realisable,

[94] Russell conjectures that Jan Narveson, a prominent no-proviso libertarian, would claim that Russell's right-libertarianism has no 'real-world-divergence' from his no-proviso libertarianism (Narveson, 1999, p. 225; Russell, 2010, p. 164). In response, Russell gives a thought experiment in which a person whose land is hemmed in by his neighbour's is not allowed by the neighbour to bring things onto his property. Russell argues that the person is wronged by his neighbour. However, the case of Clever Adam's Island shows no implicational divergence between no-proviso libertarianism and the natural right of property. I also hope that the case reveals conflict of prima facie rights and firstcomers' privilege hidden in Mack's comment on Trickster and Russell's on Neighbour.

then no one's right of non-interference is infringed. Suppose Zelda is contented with living on the beach. Her body, the medical cabin, and the beach are all that she needs to pursue her actual plan. We cannot complain on Zelda's behalf.

On a non-moralised conception that is pure, the correlative duty of the right against interference is to avoid preventing individuals from living according to plans that they have or *might* have if the individuals attempted to implement. In any world with two or more individuals, interpersonal conflict of violable rights arises. A possible plan to φ that one individual might have could not be realised simultaneously with a possible plan to prevent his φ that another individual might have.

In view of prima facie interpersonal conflict of rights, theorists of substantive right may concede moral deadlock, debunk the appearance of conflict, or propose some higher-order principle of resolution to the conflict of rights.

The view that interpersonal conflicts of rights are all moral deadlocks is not a satisfactory response to the imprisonment problem. A conflict of rights is formed by two claim-rights dictating performance or forbearance that cannot be co-fulfilled. If both Adam and Zelda have claim-rights against each other that the other not use any resource on the island, they each lack liberty-rights to interact with the resources. This accounts for one of the intuitions about Adam's Island, that is, that Adam wrongs Zelda by enclosure, yet it is inconsistent with another intuition one might have – that Zelda herself does not wrong Adam by unilateral use of some portion of the resources fenced.

The view that some interpersonal conflict of rights is prima facie may be true, yet the next step is to figure out which party's right is only prima facie. There is some higher-order

principle of resolution to the conflict of rights.[95] But a question arises once this view is taken. If what a person has a right against being interfered with is confined by such a higher-order principle, is the conception non-moralised apparently but moralised in essence?

This question can be taken as a challenge to the distinction between the moralised and non-moralised conception. A moralised conception, as I defined above, is one entailing that an individual has a right against interference with his φ-ing provided that φ-ing passes some moral test. If there is a higher-order principle according to which conflicts of rights are settled, then the set of possible φ-ing that an individual has rights to do will be confined by that principle. The place of that principle in the conception is as if it was a moral test. As a matter of definition, isn't a non-moralised conception containing such a principle a moralised conception?

In the face of this challenge, the distinction in question requires refinement. On a non-moralised conception, an individual has a *violable* claim-right against interference with φ, period. To say that an individual has such a right is to say that there is a *pro tanto* reason for others not to interfere with his or her φ. As a violable right, it is subject to a higher-order principle generating resolution to its possible conflict with similar violable rights of others. The principle confirms some of the conflicting parties' compossible inviolable rights. An individual has an *inviolable* claim-right against interference with φ and a liberty-right to φ if and only if φ passes the moral test as follows: some reason against interference with φ

[95] I conjecture Hillel Steiner would point out that conceding an interpersonal conflict of rights implies contradiction and therefore such a conflict is impossible (Steiner, 1994, pp. 86–101). But I contend that that is incoherent only if one of the two claims are added to the set of beliefs: first, that all duties we owe to each other are duties whose fulfilments are together categorically compossible; second, whatever is obligatory is permissible. The former is a substantive claim about what rights we have and, perhaps, about an ideal of our living together; the latter is what Matthew Kramer calls the Permissibility Theorem, a theorem in standard deontic logic (De Wijze et al., 2009, Chapter 12). I find these two claims controversial as they both preclude the possibility of moral dilemma. Besides, I could accept both of these claims but restrict their scope to inviolable rights.

outweighs all pro tanto reasons to perform whatever is incompossible with φ.[96] In contrast, on a moralised conception, an individual has a violable claim-right against other's interference with his or her φ if and only if it does not violate others' violable or inviolable claim-right against interference.

It is fair to wonder if we should also be concerned with violable rights. There is some potential danger of neglecting the conflict of violable rights. A theorist might make a mistake of taking some of the rights or the absence of conflict as the higher-order principle of conflict resolution, that is, as the moral test. But since *ex hypothesi* the rights conflict, it is necessary that some of or even all the rights fail to pass the moral test and are thereby not accepted by the theorist as rights. This potential danger is implicitly explained when examining the moralised conception. Since Zelda's plan conflicts with Adam's, and since the moral test is non-interfering, Zelda's violable claim-right against non-interference is not acknowledged by a theorist who makes that mistake.

Advocates of the moralised conception might reply that perhaps Zelda really has no right in the case of Adam's Island. In my view, the rationale for Zelda's lack of a violable claim-right against interference is unclear. Consider the following case:

Adam's Late Arrival

It is a case like the case of Adam's Island except that Adam arrived later than Zelda and

[96] Introducing violable and inviolable claim-rights may require us to supplement the Hohfeldian conceptual scheme. Originally, under the scheme, that *A*'s claim-right against *B* that *A* φ entails that B lacks a liberty-right to interfere with *A*'s φ-ing. I suggest that *A*'s *violable* claim-right against *B*'s interference with φ-ing can exist with *B*'s having a liberty-right to interfere with A's φ-ing. Liberty-right is a moral licence, the holding of which is a conclusion of considering all pro tanto reasons relevant to a case at issue. There is no such a distinction between violable and inviolable liberty-rights. Only inviolable claim-right against *B*'s interference with φ-ing entails moral impermissibility of *B*'s interference with φ-ing.

has not fenced anything.

In considering that Adam has not worked on anything on the island, it is difficult to deny Zelda's violable right against interference, at least when we agree that people have some sort of natural right against interference. Suppose for argument's sake that Zelda did not have the right in the case of Adam's Late Arrival. The difference in Zelda's right between these two cases could only be explained by the fact that Adam had worked on the resources in the case of Adam's Island, for this is the only nonmoral difference between these two cases.[97] I am not denying the view that working on the resources constitutes a pro tanto reason for Adam's property right in them, my argument is that that Zelda has no right at all is only one position among many consistent with that view. One can, for example, hold that view and consistently take the position that Zelda has a violable right to use the resources, though less important than Adam's entitlement grounded by his work.

Once one recognises that Adam's enclosure infringes Zelda's right (though it is a violable right), this infringement is a reason to demand compensation from Adam or other resolution to the conflict between Adam's and Zelda's respective violable rights. Hence, a non-moralised conception may be better in handling the imprisonment problem, compared to a moralised conception denying Zelda's (violable) right at the outset.

Nevertheless, all impure conceptions have the same problem. If, luckily, plans made by Adam and Zelda respectively are compossible, then no one's right of non-interference is violated. Suppose Zelda is contented with living on the beach. Zelda has control rights over all that she needs to implement her plan of living there, such as her body, the medical cabin,

[97] I confess that I cannot defend the belief that moral facts supervene on non-moral facts.

and space where her body occupies.[98] We cannot complain on her behalf.

The thesis of the section, to repeat, is that, among the four types of the conceptions, the non-moralised, pure conception is the best for answering the imprisonment problem. First, note the advantage of the non-moralised conception over the moralised conception. Despite suggesting trade-offs between rights, a non-moralised conception does not embrace zero tolerance of interference and its advocates are therefore not self-restrained from arguing for interference with ongoing projects amounting to someone's imprisonment. Second, note the advantage of the pure over the impure conception Advocates of the former can consistently object to imprisonment independently of desires of the imprisoned. Even if Zelda is, on due reflection, content with her live on the beach, there is still a reason to complain on her behalf. These two advantages together support the thesis.

2.6 Towards Left-libertarianism

This section I view MacIntosh's monist account as one that embraces a non-moralised conception of the right of non-interference. Everyone has a pro tanto natural right of non-interference in his preferred activities. As an empirically contingent matter, people's preferred activities are not co-exercisable, so people are in conflict over the rights. NL is a higher-order principle stating the resolution of such a conflict. Activities that people have the conclusive right to do are activities compatible with a maximum set of co-satisfiable preferred activities of all; if there is more the one maximum set, the community selects one of them as the basis of guiding and constraining people's living in the community.

Here is a problem with NL. It is unclear whether the maximum set of co-exercisable

[98] The right of non-interference, on Christmas' account of it, may not always imply full control right over an object. For explanation for this point, see footnote no. 60.

activities must be one with equal distribution of negative liberties. If there is no constraint on the pattern of the distribution, NL is different from the classical utilitarian doctrine, i.e., the doctrine that individuals have a duty to maximise the aggregate utilities of all, only in some uninteresting aspect: NL does not imply that individuals have the duty whereas the doctrine implies that.

Why is it a problem from the perspective of SO libertarians? Recall the solution to Paradox given by MacIntosh. The largest set of co-exercisable activities that include parents' enslaving their children is smaller than some set of co-exercisable activities that do not include that. But the question of what a maximal set is available to a particular society cannot be answered *a priori* since it depends on the empirical situations of the society. Whenever a society has some minority, a set of co-exercisable activities that include interference with the minority population's activities may be larger than a set that does not include them.

2.7 Monism's Failure to Thesis of Comparative Asymmetry

This section explains any monist's difficulty with justification for the thesis of comparative asymmetry (CA). Before explaining the difficulty, CA should be reformulated in view of a defect in its initial formulation. CA was initially stated as follows: … Critics would find it easy to reject by giving counterexamples that are comparisons of minor self-ownership violation and serious external-ownership violation (or significant improvement in certain interests). For example, since forcible collection of tiny tissues cannot be worse than confiscation of entire life savings, CA is false.

This line of rejection should be resisted since the counterexamples are unfair comparisons. A comparison of two groups of entities as regards a respect is fair only if conditions for the two groups are as alike as possible. Suppose at a dinner I can only choose

between a jar of orange juice and a glass of whisky. My choice of the former is a bad indicator of orange juice being tastier for me than whisky, for I would prefer an equally sized jar of whisky if available. Likewise, it is unfair to conclude that self-ownership is less important than external-ownership just because a severe(r) violation in the latter is worse than a slight(er) violation in the former. A fair comparison between these two kinds of violations as regards moral wrongness excludes intervention from the disparity in degrees of violation. How can it be done?

The idea of comparing violations of self-ownership and of external ownership fairly is to develop a metric system according to which they are commensurable with each other. I can coherently prefer a jar of orange juice to a glass of whisky and a litre of whisky to a litre of orange juice. The version of CA defended in this dissertation is the following:

> **CA rev.**: Provided the same unit of measurement, wrongness per unit of self-ownership violation is greater than that of external-ownership violation, other things equal except for necessary differences between them.

CA rev. is not refuted by those counterexamples. Confiscation of entire life savings may be worse than forcible collection of tiny body issues, yet this is consistent with the claim that wrongness per unit of self-ownership violation in the forcible collection is greater than wrongness per unit of external-ownership violation in the confiscation, which confirms CA rev.

Some SO libertarians might find CA rev. too weak. When it comes to cases involving a choice between an act violating self-ownership and an act constituting a slightly more serious violation of external ownership, SO libertarians would (and should) contend that the latter act is worse (, other things equal except for necessary differences between them). CA

rev. at best implies that wrongness per unit of violation in the former act is worse. I agree. But CA rev. is an appropriate starting point of developing stronger versions of CA. I believe that any version of CA inconsistent with CA rev. undermines rather than defends SO libertarianism.

Two remarks about CA rev. First, violations of self-ownership and extern-ownership may necessarily differ in some respect. Therefore, the clause 'other things equal' is further qualified. Such a difference, if any, may be a clue to the greater wrongness per unit of self-ownership violation. Chapter 3 argues, roughly speaking, that violation of self-ownership is worse because interference with patiency is peculiar to violation of self-ownership. Second, Chapter 4 elaborates the proposal to measure degrees of violations of rights in specific unfreedoms; in particular, degrees of self-ownership violations are measured in bodily specific unfreedoms.

To illustrate and support the thesis that monists cannot provide a justification for CA rev, consider the following hypothetical case:

…

In my view, SO libertarians should judge that prohibition of donating the biological organ is worse than that of donating the artificial one. This comparative judgment has support from CA rev. conjoined with two assumptions.[99] First, the unit of measuring degrees of violations of ownership is specific unfreedoms. Second, enforcing either of the restrictions causes unfreedoms to an equal degree.

[99] It is false that this comparative judgment is a material implication of CA rev. CA rev. is concerned with wrongness per unit of violation, so in principle it is silent about the aggregate wrongness of all units of violation constituted by an action and about how bad the action is relative to others. Be that as it may, I contend that CA rev. strongly supports the judgment.

Can that comparative judgment be supported by monists? According to monism, there is one and the same principle such that it explains why a fact about the body and a similar fact about the extra-bodily object respectively ground similar reasons for respecting self-ownership and extern ownership. The principle does not explain a different fact grounding a different reason for respecting ownership of one or both of the kinds. When violations of self-ownership and external ownership are equal in degree, the principle does not explain why the former is worse than the latter.

On MacIntosh's monist account, for example, the fact that φ is a member of a maximum set of co-doable activities of all grounds a reason for forbearing interference with φ. Suppose both the donations are such members. NL explains why the (supposed) fact that donating the biological organ is co-doable with a maximum set grounds a reason against interference with it. NL accounts for the reason against interference with donating the artificial organ by the same token. But when the two donations are interfered to the same degree, NL is consistent with the claim that they are equally wrong, which is inconsistent with the comparative judgment in question.

Another illustrating monist account is Fabient Wendt's. The fundamental premise is that '[p]ersons should be able to live as project pursuers' (Wendt, in press, p. 2). Together with the assumption that 'control over one's body is necessary for the ability to live as a project pursuer', the premise entails self-ownership (Wendt, in press, p. 6).[100] Together with

[100] The conclusion does not follow because the premise in question 'does not talk about rights at all, be it positive or negative rights' (Wendt, in press, p. 3). If it is a positive right, the conclusion should affirm the right to have capabilities such that persons 'are able to live as project pursuers' (Wendt, in press, p. 4). Fendt only claims that the premise is 'an appropriate starting point for a theory of rights' (Wendt, in press, p. 3). This account of self-ownership is too weak for several reasons. First, some physiological influence on the body may not decrease the ability to be a project pursuer. The account should be silent about actions leading to these influences. In response, Wendt himself accepts soft paternalism, according to which interferences promoting people's project pursuit or the ability to be a project pursuer are permissible only if communication is impossible or infeasible and people would agree or would not reject if they could be communicated. This response brings

the assumption that people 'need some stock of external resources that allows them to start caring about projects at all', people have the natural right of property (subject to some sufficiency proviso) (Wendt, in press, p. 13). The premise explains why the fact that something, *x*, is useful for maintaining an individual's ability to be a project pursuer grounds a reason for respecting the individual's control over *x*.[101] Suppose both the biological organ and the artificial organ are useful for the maintenance. The premise, in my view, is consistent with the claim that both prohibitions are equally wrong, which is inconsistent with the comparative judgment in question.

Besides, consider a different scenario – instead of prohibiting donations, the government launches a forcible scheme of redistributing organs, be they artificial or biological, and the artificial organ is slightly more useful for the scientist's ability to be a project pursuer than the biological one. The fundamental premise of Wendt's account supports that forcible collection of the artificial organ is better than forcible collection of the biological one.[102] The premise also supports that wrongness per unit of violation in the former is lesser compared to that in the latter. Not only is this implication inconsistent with CA rev., but also it should be rejected by SO libertarians.

bout the second reason. Soft paternalism is not implied by the premise. If interferences really improve the ability to be a project pursuer, and if the improvement is compatible with people's specific projects, others may have a duty to make the interferences or be allowed to do so even if communication is feasible. Third, even if the entailment holds, soft paternalism is implausible relative to the conception of the right of independence. Critical examination of soft paternalism will be given in Chapter 3.

[101] As far as I understand, Wendt does not adequately elaborate the concept of the ability to be a project pursuer. He merely suggests that 'some sort of institutionalized safety-net or minimum income will arguably be necessary to satisfy the proviso [of being able to live as a project pursuer]'(Wendt, in press, p. 15). For present purpose we may take it to be the concept of having a set of capabilities of doing a wide range and number of options.

[102] Wendt claims that an interference with self-ownership in the name of third parties' benefits is permissible only if 'the interference with self-ownership is relatively insignificant' (Wendt, in press, p. 10). This claim might be his reply to the case being discussed. But I do not think he has given an argument for that claim; more precisely, I do not think he has shown that the claim is supported by the fundamental premise. Besides, even if the forcible collection of the biological organ is impermissible, the question is whether it is worse than the forcible collection of the artificial organ.

2.8 Conclusion

(Part of Conclusion: It worries me that the reviews of these four types of accounts lack generality over all proviso-monist theories. Below is the reason not being much beset by this worry. Introduction of this dissertation brings focus to theories of libertarianism clustering around the claim that it is non-derivatively bad when an autonomous body is subject to the will of another. To put it in a nutshell, subjection is defined in terms of and exists in virtue of control over the body's agency and patiency. The agency-patiency account of self-ownership is better than monism and pluralism in justifying and explicating CA. But it is possible that, solely for the sake of defending the 'SO' part of SO libertarianism, the role of the concept of control can be replaced with the concept of interference.[103] More importantly, one could construct and review four types of proviso-monist accounts resting on the right against control by imitating what I do in this section. Reviews of the four types of account, therefore, should not be overlooked simply because they do not cover the whole proviso-monism.)

[103] The reason for my using the concept of control rather than interference is that only with the former can Chapter 3 provide a better framework for further development of a theory of freedom. Further explanation for this reason, however, goes beyond this dissertation.

Chapter 3 Agency-Patiency Account of Self-Ownership

3.1 Introduction

The latest literature on self-ownership shows that one line of argument supporting SO is regaining scholars' attention: a person has self-ownership because a person is the normative authority over his life.[104] To claim that he has normative authority over his life is to claim that the deontic status of others' behaviours depends on his will to the extent that their behaviours fall within domains of affairs about his life. Phrasing this explanation with H.L.A. Hart's words, each person is 'a small-scale sovereign' over himself. (Hart 1982, 183)

The claim of personal sovereignty is not beyond doubt, and it seems complicated to mark its boundaries.[105] In Section II, I first set forth my presupposition about the human nature as the ground of personal sovereignty. In view of that presupposition, I agree the claim that control is disrespectful to the controlee—with two qualifications. An account of control as well as an account of respectful control will be given.

3.2 An Account of Control

Before elaborating the two qualifications, I shall propose two conditions jointly sufficient for *A*'s controlling *B*, where *A* and *B* are two different persons.[106]

First, *A* has a power to influence *B*. More specifically, the likelihood of *B*'s (not) making

[104] (To cite some recent literature …)
[105] See Brenkert, *Journal of Ethics*, 1997
[106] I take it as an assumption because I am uncertain about whether the power constitutive of the control must be a *two-way power*, viz., a power to ϕ or $\sim\phi$.

or undergoing a specific or a certain kind of change increases with *A*'s mere possession or *A*'s exercise of a causal power to perform some doings (or *A*'s refraining from some doings). In some case, possession rather than an exercise of a power to influence suffices to have a control. A political fraction need not command an army to fire to consolidate control over the people as regards their choice between uprising and compliance.[107]

Second, *A* has a considerable degree of *disposition to control B*. More specifically, *A* is disposed to exercise or consolidate the power to influence *B*, when *A* desires, however minimally, to exercise or consolidate the power.[108] The concept of disposition is particularly useful to analyse character traits. We say that a person bad-tempered because he shows certain manifestations of his anger frequently or he is disposed to make the manifestations when he, say, encounters what is contrary to his expectation.[109] 'Disposition' is a technical term and at least many dispositions come in degrees. But I shall postpone giving an analysis and a measure of dispositions and instead focus on the account of control proposed.

A good example illustrating this account, as well as illuminating the strength of it, is Mathew Kramer's counterexample to Philip Pettit's account of domination.[110] Suppose a gigantic

[107] I acknowledge that the first condition may need a refinement in view of the following challenge. Even if the second condition is met, a political fraction who commands an army without impressing on the people the physical force of the army fails to establish control over the people. A political fraction controls the people because the fraction exercises another causal power—the causal power to impress on the people its control over an army. (And the political fraction has the control because it makes the impression successfully!) It is the exercise of the power of impression that is the crucial part of controlling the people. This challenge brings up the suggestion that I should not regard the mere possession of a causal power to influence as a disjunct of the first condition for control in my account.

[108] ~~We may regard 'when …' as stating a stimulus condition for the manifestation of the disposition to control. See below and footnotes no. x and y for talks about disposition-manifestations and stimulus conditions. The object of the desire includes not only holding and exercising the power to influence, but also consequences which *A* believes exercising or holding the power to influence is conducive.~~

[109] Must character traits manifest if they are dispositions? See Alvarez, M. (2017). Are Character Traits Dispositions Royal Institute of Philosophy Supplement, 80, 69-86. doi10.1017S1358246117000029.

[110] Kramer 2008 in *Republicanism and Political Theory*, p.47

person, G, born with the physical power to rule over a community, loathes the idea of being a tyrant and so lives alone. Is G a dominator? On one version of the account, having the sheer causal power to interfere in a person's choice at will and with 'impunity', say, by having access to 'the ring of Gyges', amounts to being in a position of dominating the person.[111] One sufficient condition for impunity is the absence of external checks such as punishment, sanction, and penalty, that the person subject to the power can influence. Given that, *ex hypothesi*, G's power cannot be checked externally, by the community, this version implies, implausibly in Kramer's view, that G dominates everyone in the community. On another version of the account, to be a dominator is to be an alien controller, defined as the powerful having actual 'desires, however implicit, over how … [another] chooses'.[112] Since G has no desire whatsoever for influencing the community, the version implies that G is not a dominator.

On the account of control proposed, whether G controls the community depends on whether G has the disposition to control, given that G obviously satisfies the first condition. Consider two scenarios of the case. In one scenario, G stays away from the community because G realises that, although he has no actual desire to interfere in the community's affairs, he might interfere if he desires. Suppose that, in *many of* the nearby possible worlds that are *relevant* to evaluating the degree of his disposition to control, he interferes because of the desire. (The relevant worlds are worlds where he has a desire to interfere, the strength of his power of

[111] Pettit 1997, p.158; also see 2012, p.58,

[112] I am inclined think that this version is inconsistent with Pettit's overall republican stand on negative freedom. Pettit thinks that 'I may not be disposed to interfere in any way but even so I remain in a position where I can and will interfere in the event of a change in my disposition. As a result of this invigilation, … you will be subject to my will; you will be dependent on my goodwill for retaining the capacity to exercise choice.' (Pettit, 2012, p.61) Pettit might rebut that internal check suffices to republican freedom. But republicans should worry that this rebuttal exempts a benevolent master from being a dominator. Pure external checks, on the other hand, seem to imply the impossibility of an individual's republican freedom in a modern society comprising the state and the people. For this line of objection to Pettit's republican theory of freedom, See THOMAS W. SIMPSON, 'The Impossibility of Republican Freedom', *Ethics*, p. 30.

interference is close to his in the actual world, and his subjective motivational set is minimally different from his actual set due to variations in external circumstances and the inclusion of the desire to interfere.) We have presumptive reason to judge that he has a considerable degree of disposition to control. It follows that he controls the community members (, though he may not control the community disrespectfully). In another scenario, G has no disposition to control if, in many of relevant nearby possible worlds, he refrains himself from exercising or holding the power by staying away from the community.

3.3 Respectful Control

3.3.1 Why is control prima facie disrespectful?

A human being is a purposive material being—a being that can occasionally interact with the world in a way explainable by reference to its purposes.[113] Personal humans have the capacity of will, that is, the capacity to motivate themselves to pursue their rational plans of life.[114] Material objects of the world are given ends if they have a place in persons' rational plans of life.[115] Since a personal human is also a material object, his rational plan of life 'determine[s]

[113] As Eric Mack stresses, 'almost all human life, almost all human goal-pursuit, takes place in and through the purposive acquisition, transformation, and utilization of objects in the extrapersonal world.' (Mack 2010, "The Natural Right of Property", p.55) Similarly, Helen Steward writes that 'agency itself' is 'the capacity to move oneself about the world in purposive ways.' (2012, p.4) Notice that agency, so understood, may be found in non-human animals since, for example, a spider's building a nest is explainable with reference to the purpose of catching prey. But a personal human is characteristic of its peculiar will. See the next footnote for further discussion.

[114] The capacity of will is a capacity to have various kinds of mental states (not mental acts), such as intending, desiring, deciding, etc., in favour of a particular course of behaviour. The capacity of will is a rational two-way capacity. It is two-way in the following sense: it is 'a power to will or to refrain from willing any particular course of action'. (E. J. Lowe, 'Substance Causation, Powers, and Human Agency.' P.169) In other words, it is a power to have or not to have a certain mental state in favour of a particular course of behaviour. It is rational in the following sense: it is a capacity whose exercise is '*responsive to reasons*'. (E. J. Lowe, ibid., p.165; also see Anthony Kenney, *Will, Freedom, and Power*, p. 26.) Given these characteristics of human will, although many non-personal animals are also purposive beings, human animals are of a particular kind.

[115] Having a plan of life is intending a chain of (non-)occurrences as steps towards his ends. Having a plan of life, then, is not the same as fancying that something would happen without corresponding intention. Not all plans of life

his good,' too.[116] Once realising the form of personhood, human beings can make valid claims about their ends. (Animals (including unmature human beings *qua* animals) are beings whose ends are as if they were predetermined naturally.)

The rationale behind control is *prima facie* demeaning to the controlee who is a person. To have control is to be in a position of power to secure certain patterns of changes or sameness. Subduing a person is needed since otherwise he might make or follow a plan of life, judged improper from the controller's perspective. This rationale implies a denial of the human person's potential to give his own life meaning. The claim that control is disrespectful requires two qualifications. First, the demeaning rationale is behind only some modes of control. Second, the notion of consent plays a role in excusing control. Third, the control is reciprocal.

3.3.2 Preventive Control

The first qualification added to the claim that control is disrespectful is that only some modes of control show disrespect to controlees. A professional surgeon controls a patient by having the power to sustain the patient's life. A good teacher controls a student by having the power to enable the student to know. A dedicated fireman controls a resident by having the power to allow the resident to escape. Although sustaining, enabling, allowing, etc., are modes of controls which aim to secure some course of events, the rationale behind these controls *as such* is not the demeaning one discussed above. The reason is that, since the controlees remain in power

are rational ones. I am inclined to agree with the procedural view of a rational plan of life, according to which a rational plan of life is a plan of life that the agent would have after undergoing a procedure ideal for deliberation. For this view, see Rawls *TJ* rev., p. x. Rawls might not agree with the definition of a plan of life given in this footnote, though.

[116] (TJ rev., p.358). Things may serve telos given by nature. For human persons, however, ends for the sake of which they exist can be given by themselves.

to decide what happens next to them, the controllers do not deny the controlees' potential to be an originator of their value.

Controls in the modes of *activation* and *prevention* are different. Suppose a government carries on fluoridation irrespective of the will of citizens. The government controls what capacities of the citizens are activated (the capacity to form fluorapatite) and prevent them from undergoing some change (decaying of the teeth). The rationale behind carrying on the fluoridation is that a plan to have tooth decay possibly made by citizens does not determine citizens' ends. Controls in other modes are disrespectful because they are related to controls in activation or prevention mode. In sustaining an unwanted pain that a patient suffers from, a doctor may repeatedly activate the patient's nociceptors. A warden prevents a criminal from getting discharged from prison soon by allowing him to attempt an escape deemed unsuccessful. For simplicity's sake, from now on 'control' means control in the mode of prevention or activation.

3.3.3 Disposition to Seek and Follow Will

The second qualification is that the notion of consent plays a role in excusing control. Yet, it is disputable that a benevolent dictator respects the people even though he exercises his power over various domains of society in conformity with the people's will. If consent plays a role in excusing control, their relation should be more complicated than mere conformity.

> *A*'s *disposition to respect B* is *A*'s disposition to (1) seek *B*'s consent to acquisition, exercise and consolidation of a power to influence *B* and handle the power accordingly when (2) *A* receives the sign that a channel of communication with *B* is available, where (3) by

'consent' is meant actual consent given genuinely.

The *Thesis of Respectful Control*: Possession and exercise of control is respectful towards the controlee only if (a) the controller has what I coin as 'disposition to respect' towards the controlee to a high degree *and* (b) the disposition manifests when (2) is the case, provided that the manifestation is consistent with manifestations of similar dispositions towards others.

The clause 'provided that…' qualifies (b). It is added to the thesis because I leave aside discussion of conflict between the same moral agent's duties to comply with different persons' claims against disrespectful control.

Could one have dispositions to respect and to control another at the same time? Notice that a disposition comes in degrees and these two kinds of dispositions inversely vary with each other. One may have a high degree of the disposition to respect and a low degree of the disposition to control. One may have cultivated oneself or one's power is externally checked to the extent that one has a low degree of the disposition to control. In such a case, the thesis of respectful control is trivially true of one's 'control' since one has no control over another.

Before elaborating the disposition to respect, at this stage, two questions need be answered immediately to avoid profound misunderstanding of the *Thesis of Respectful Control*. First, how is the thesis different from the much simpler claim that consent is a sufficient (or necessary) condition for justifiable control? Second, is the thesis silent at cases where controlees, who are often patients, cannot be communicated?

In answering the first question, note that the proposed account of control is what Paul

Kleingeld describes as 'agent-focused': the criterion governing an agent's treatment of another has 'its focus on the agent's practical reasoning' than conditions on the side of the person being treated. (2020, p. 404) The mere fact that consent is genuinely given does not excuse control. Whether control is excusable depends on the controller's disposition to handle his power to influence others in response to the possibility of communication. To illustrate, suppose a serial rapist meets someone who, despite knowing that he is a serial rapist, gives genuine consent to his treatment of her. But his lack of the disposition to respect her implies that the control is disrespectful. This implication is clearly different from the claim that any consensual control is a permissible control.

It is worth comparing the account of respectful control that incorporates the disposition to respect with Kleingeld's reading of treating another as a mere means to some end. An agent uses another person merely as a means if and only if an agent uses her 'without, as a matter of moral principle, making this use conditional on the other's … [genuine actual] *consent*.' (2020, p.398) However, a person's character trait, or our judgment about it, does not depend on her performance in one or a few occasions. A person of incredible generosity may meanly refuse to donate. Suppose the serial rapist occasionally takes the absence of his potential target's consent as a moral constraint seriously. Accordingly, he does not treat her as a mere means to his end. In contrast, the notion of disposition provides us with a different perspective on such a case. Since the rapist lacks the disposition to respect (or has it at a low level), he controls her disrespectfully.

We now move on to the second question. The *Thesis of Respectful Control* states only a necessary condition for respectful control because there may be other conditions for controlling another respectfully in cases where (2) is false. Yet, at these cases, the thesis is not wholly silent.

An emergency physician who lacks the disposition to respect a casualty in coma controls the casualty disrespectfully according to the thesis.

To digress for a moment, about cases where (2) is false, the thesis's implications are different from Kleingeld's reading of the Formula of Humanity, which she shows superior to those given by other contemporary scholars. In explaining why a passer-by who gives a jogger in a coma CPR does not treat the jogger as a mere means to the end of saving the jogger's life, Kleingeld argues that the act of giving CPR is not using the jogger as a means at all.[117] Her point is that giving CPR as using the jogger and saving the jogger as the end are one and the same event (, action, process, and the like).[118] The former is not something else conducive to the latter. However, counterexamples are available. Suppose an authoritarian regime has a plan of seizing a land by sending troops to enter the land. The end and the means are one and the same event. On the account of respectful control proposed, whether giving CPR is disrespectful partially depends on whether the by-passer has a disposition to respect the jogger.

3.3.4 Elaboration of the Disposition to Respect

Communication is a process of reaching genuine agreement on one party's treatment of another party. Communication may be infeasible such as in case of avoiding accident. The thesis expresses a necessary condition for respectful control because it is silent at other conditions that must also obtain if control is respectful when communication is infeasible

[117] (2020, p.399)

[118] Consider the following passage given by Kleingeld. 'Here it seems that, if the police officer's end is to arrest criminals in accordance with legal procedures, then she is not using them as means: in making the arrests she is realizing her objective *directly*, rather than requiring their arrest as a means to her end. (2020, p. 412) On my understanding, in making the arrests the police officer is realising her objective directly in the sense that arresting criminals and complying with legal procedures are (different descriptions of) one and the same event.

Genuine consent is consent made intentionally, not under intense compulsion, insufficient relevant credible information, unauthentic motivations, and so on. We could debate what are the criteria for qualifying a controlee's situation as an actual act of expressing genuine consent; the point is that genuine actual consent matters in some way.

(1) breaks down into two parts—seeking another's consent and handling one's power to consent—which are now explained one after another.

'Seeking another's consent' is meant to be bringing out consent from another or, in other words, making another's consent appear. It is not simply meant asking for another's consent especially when the kind of consent in question is consent genuinely given. When you know that another is in a condition unfavourable for giving consent genuinely, say, in a lot of pain, asking her for consent does not amount to seeking her genuine consent. To seek her genuine consent, one creates for her the favourable condition in which she can give genuine consent. This creation is part of the process of establishing a channel of communication.

There are three kinds of cases of handing power in conformity with another's consent. They are about acquiring, exercising, and consolidating power. In the absence of consent to acquisition (exercise) of the power, the would-be powerful refrains from acquiring (exercising the power). In the presence of another's refusal to subjection to the power, the powerful relinquishes the power. What if the power is inalienable? In such a case, the powerful refrains from exercising the power in the absence of another's consent. This is not a second-best solution. The fact that the power is inalienable provides an excuse for having control that is not the demeaning rationale explained above.

The *Thesis of Disrespectful Control* specifies what is the external and internal checks to the governmental power and the kind of civic virtue deemed ideal for a democratic regime.

For having the disposition to respect, the powerful must be one that will seek consent of controlees in various scenarios where communication is feasible; when genuine consent has not been given, the powerful disposed to respect will act to facilitate the formation of the will to give genuine consent. These scenarios include, inter alia, those that the powerful is neither pleased by the controlees nor motivated to behave kindly by strategic considerations.

Could a benevolent dictator show respect to the ruled? A truly benevolent dictator, as I shall define in this way, is a dictator who has no disposition to control as regards affairs unrelated to the strength of his power. A dictator, however benevolent, is a dictator only if it is disposed to oppress any overt or covert resistance. On my account of control, although a truly benevolent dictator does not have control over people as regards activities that do not destabilise his control, a benevolent dictator has control as regards activities that appear rebellious. A democratic government secures (sincere) compliance partly by law, but an ideal democratic regime, in my view, must have a disposition to respect, which a dictator by nature lacks.

3.4 Is Soft Paternalism Always Justifiable?

Steven Wall wrote,

> The first case illustrates "hard" paternalistic interference. The interferer interferes with the man's informed choice to consume the drug. The second case illustrates "soft" paternalistic interference. Assuming that the woman is unaware of the rotten planks and that she does not intend to risk her life by walking on them, the interceptor's interference

does not thwart her informed desires … [that] she genuinely desires to do. (2009, p.403)

Wall argues that FSO is unduly restrictive as soft paternalistic interferences are all unjustifiable from the perspective of FSO.

I define hard-paternalistic control as control aimed for the controlee's good incompatible with the controlee's genuine desires and soft-paternalistic control as control aimed for the controlee's good (including satisfaction of the genuine desires) and not being hard-paternalistic.

Here is a remark about soft paternalism. If a soft-paternalistic control is really soft, it is compatible with the genuine desire not to be under the control. This compatibility exists only if the controlee lacks such a genuine desire. I believe that people in a liberal society genuinely prefer voluntary schemes to laws, *ceteris paribus*. So, in theory and in practice, soft paternalism poses no threat to advocates of non-stringent self-ownership whose stand is no more than preferring voluntariness to coerciveness, other things being equal.

Yet, there is some air of implausibility in soft paternalism. Besides believing and disbelieving, we may have no belief. Likewise, besides preference for voluntariness over coerciveness and the other way round, we may have no preference or find that they are equally attractive. When people have no genuine preference as to whether vaccination is voluntary or forcible, and they are likely to choose vaccination if the scheme is voluntary, non-stringent self-ownership supports the voluntary scheme, whereas the forcible one is neither approved nor disapproved from the perspective of soft paternalism. When people are genuinely indifferent about different vaccines roughly equal in all relevant respects, and when people do not love their freedom, soft paternalism recommends forcible injection of a slightly more efficient vaccine. In

the first scenario, having choice calls for no protection; in the second scenario, having choice contrary to minor efficiency calls for prohibition.

Wall criticises FSO by restricting the debate to cases where communication is unavailable. (some textual support …) Readers may not find this restriction of the debate problematic because of the impression that all interferences in cases where communication is available are hard paternalistic interferences, which are apparently morally objectionable. But this restriction covers up soft paternalists' preference for slightly more useful coerciveness in society where the people do not recognise that they are free beings.

Regardless of whether it is soft or not, control is unjustifiable if the controller lacks a high degree of the disposition to respect or the disposition does not manifest when communication is available, according to the account of respectful control proposed.

Rather than researching under what conditions control is respectful in cases of unavailability of communication, a question that should be addressed more primarily is whether approving any non-consensual control sacrifices personal sovereignty.

The account of respectful control proposed is a variant of the will theory of right according to which a person has the sole normative authority to decide what others may permissibly control as regards her life. It is a variant because it does not confirm the normative authority over cases where communication is unavailable. The ultimate ground of the normative authority is others' duty to respect the person as a potential source of valid claims about her ends. As pointed out earlier, the account of respectful control proposed is 'agent-focus.' To respect is a matter for others, not a condition of the person. Control is unjustifiable if the rationale behind it

is demeaning. When others cannot communicate with a person, they are ignorant about whether their control over her is in full conformity with her will. The ignorance is at least part of an indication that the demeaning rationale is absent. Paternalistic control exercised or consolidated under ignorance may be compatible with the duty to respect her.

It is false that *A*'s whatever treatment of *B* is morally permissible when communication is unavailable. I propose that, in such cases,

1. *A*, who attempts to exercise *A*'s power to influence *B*, has a duty to establish a channel of communication, provided that (i) the establishment is feasible and (ii) the risk of establishment to *B* is acceptable.
2. If the establishment is infeasible (~(i)) or the risk of establishment to *B* is unacceptable (~(ii)), then *A* is at moral liberty to promote *B*'s genuine desires.

In the case of soft paternalism given by Wall, (i) is false due the lack of time to inform the woman. According to the item no.2, the interceptor is at moral liberty to promote the woman's genuine desires by interfering with her moving forward. Notice that the moral liberty to promote the woman's genuine desires is consistent with the moral duty to do so.

Consider another example. A surgeon discovers a tumor the removal of which is not part of the planned surgery genuinely desired by the patient currently in coma. The tumor is not a body part, but removal of it will remove surrounding tissues which are. There is an option of finishing the planned surgery and later consulting with the patient about another surgery to remove the tumor.

Suppose the tumor is reasonably judged benign and the expected cost to the patient of

another surgery is low. The cost of establishing the communication channel (i.e., consultation) is presumably acceptable to the patient. What the surgeon should do, according to the item no. 1, is to seek consultation about another surgery.

Suppose the tumor is malignant or the expected cost of having another surgery to the patient is high. (ii) is presumably false. He is at moral liberty to perform the patient's genuine desires. Since a surgeon has a (overridable) duty to ensure the patient healthy, he ought to remove the tumor during the surgery.

3.5 Animalism

Here is the hallmark claim of *animalists*: we are animals, where 'are' signifies the relation of numerical identity.[119] Since animals are organisms, we are organisms.[120] That we are organisms is reflected by our commonsensical judgments. An organism now sits on a chair; I now sit on the same chair; if I am not that organism, isn't the chair too crowded?

The species that we qua animals belong to, of course, are *Homo sapiens*. But isn't a person essentially human? Concurring with Eric Olson's animalism, I regard the concept of personhood as *a phase sortal concept*. (Olson 1997, pp.27-31) It refers to a phase of something's development of certain capacities. A person is anything that 'is rational, … ordinarily conscious

[119] To list some prominent animalists' work, Olson, Eric T., 1997, *The Human Animal: Personal Identity Without Psychology*, New York: Oxford University Press; Snowdon, Paul F., 2014, *Persons, Animals, Ourselves*, Oxford: Oxford University Press; van Inwagen, Peter, 1990, *Material Beings*, Ithaca, NY: Cornell University Press; Wiggins, David, 2016, 'Sameness, Substance, and the Human Person' in *Continuants: Their Activity, Their Being and Their Identity*.

[120] P1 is supported by rather than is the hallmark of animalism because, even to animalists, it is an open question whether the relation of numerical identity is held between an animal and its body. See Snowdon, Paul F., 1995, "Persons, Animals, and Bodies", in *The Body and the Self*, José Luis Bermúdez, Anthony Marcel, and Naomi Eilan (eds.), Cambridge, MA: MIT Press, pp. 71–86.

and aware of itself as tracing a path through time and space, … [and] morally accountable for its actions.' (1997, p.32) On this view, it is logically possible that there exists a being exemplifying personhood without a body.[121] It is just by happenstance or by predetermination that some humans are 'personal' and we are them.

A dominant objection to animalism is that, since a person can survive without the survival of the animal allegedly being him or her, a person is not an animal. This objection is well supported by neo-Lockeanism, the view that the persistence of a person through time consists in some sort of psychological continuity.[122] For the present purposes, I need not defend animalism fully but to point out that animalists have given plenty of replies to this objection.[123] Neo-Lockeanism's implications are highly questionable. Suppose your brain is divided into half and each half is then transplanted into two other different bodies. Neo-Lockeanism, implausibly in my view, implies that you are diachronically identical with both the bodies (or both the two bundles of psychological states respectively depending on the two bodies). (Lockeanism may also imply synchronic identity of the two bodies, an implication that I find implausible.)

Certainly, there are other counterexamples to P1, such as the existence of a dicephalic being, and many of them are related to the debate over diachronic personal identity.[124] Eric T.

[121] On the other hand, a human body that is a person might remain the same body even after it is no longer a person but a human being in persistent vegetative state.
[122] See Shoemaker in *The Oxford Handbook of the Self*, p.358.
[123] Olson's, Snowdon's replies to this objection. Olson 2007, *What Are We? A Study in Personal Ontology*, New York: Oxford University Press, chap. 6. Snowdon 2014, pp. 93-4.
[124] A dicephalic being is a being with one body but two brains. It is argued that such 'a being' consists of two distinct persons. (Cecile Fabre 2008 p.15) Why is it an objection to animalism? Suppose Ann and Betty are two distinct persons residing in such a body. According to animalism, Ann is identical to the body and the body is identical to Betty. If numerical identity is transitive, Ann is identical to Betty. But *ex hypothesi* they are distinct persons. Rather than rejecting the transitivity of numerical identity, the objection goes, animalism is given up. Perhaps animalists have no option but to bite the bullet, insisting that Ann and Betty are never distinct persons. But one implicit assumption is hidden in the objection: it is not simply that there is only one body, there is only one *organismal* body,

Olson, a prominent animalist, is right in distinguishing the question '*What are we?*' from the question '*What must be the case for a person to persist through time?*'.[125] To Olson, animalism is an answer to the former and any criterion of diachronic personal identity such as neo-Lockeanism is an answer to the latter. Unless some deeply plausible criteria of personal identity are inconsistent with animalism, advocates of animalism need not involve themselves in answering the former.

Answering both questions are of interest to self-ownership libertarians. An answer to the former question may have bearing on identifying our parts. Changes in and of our parts are our changes, be they accidental or substantial to us. If we have the right of independence as regards how we are to make changes *and* undergo changes, we have specific rights over our parts. For this reason, by spelling out conditions for diachronic personal identity, we complete more the list of specific rights against being subject to anyone else's will as regards how we undergo a substantial change. Nonetheless, since a substantial change of an organism is explained by accidental changes of parts in the organism (at least in most cases), a list of specific rights of independence concerning our accidental changes amounts to a list of specific rights of independence concerning our substantial change.[126]

which is said to be identical to both Ann and Betty. What animalism supports is that we each are an organism, not just a material compound. Recall the *Self-Producing Function* account of organism. An organismal body is one whose parts functionally integrate to form a self-producing system with a mechanism to reduce opportunities for one element to gain at the expense of others to a tiny level. But there is no such a mechanism which reduces potential conflicts between Ann's and Betty's respective acts of will to such a tiny level. So, I find that the implicit assumption is weaker than animalism; rather than rejecting the latter, I reject the former.

[125] See Olson 2015, p.85.

[126] One might argue that an organism *constitutes* but is not numerically identical to a human person. Even if this is true, given that changes made by and in/of the organisms are changes made by and in/of us, the right of independence can be specified with specific rights against being subject to anyone else's will as regards changes made by and in/of the organisms that constitute us.

3.6 Respecting Patiency and Promoting Abilities

3.6.1 A Distinction Between Agency and Patiency

Having control over an object, roughly speaking, is having a causal power to influence the course of events in which an object is involved.[127] A human person is involved in a course of events, not only when he does an *action* defined as causing a change (not the change caused), but also when he does a *passion* defined as undergoing, or suffering, a change, successfully.

The concept of action is correlative with the concept of *agency*: it is agents who acts. In contrast, the concept of passion is correlative with the concept of *patiency*: it is patients who is changed. Active capacities are *abilities* to make change and passive capacities are *liabilities* to undergo change.[128]

It is important not to divide the world into agents and patients. One is an agent only in relation to an action; one is a patient only in relation to an action or in the case of a spontaneous change.[129] For example, when one billiard ball causes the motion of another ball—by hitting—the former ball is an agent, and the latter is a patient, in relation to the hit. But the former ball is hit by something else to undergo change in location and so is a patient in relation to something else's hitting it. It is also possible that one and the same substance is an agent and a patient in

[127] An event is a change in the state of an object. For the discussion of this concept of an event and individuation of events, see CAROL CLELAND Synthese 86: 229-254, 1991.
[128] That an agent is the cause of an event and the ontological commitment of capacity are two presuppositions of this article. For the distinctions between action and passion, between ability and liability, and between agent and patient, see John Hyman *Action, Knowledge, and Will*, chap. 2.
[129] When radioactive atom undergoes decay, nothing *causes* the decaying of the atom. But the atom is a patient in relation to the change—its decaying.

relation to an action. When a human commits suicide, he performs an act of killing and undergoes change (from life to death). John Hyman succinctly summarises this point: "'agent' and 'patient' do not refer to kinds of beings, but to rôles" (Hyman, 2013).

So, the right of independence is about disrespectful control not only over agency but also over patiency:

1) a human life = the largest sequence of events that a human life is involved in beginning from his birth and ending in his death
2) a human life is involved in a sequence of events when the human exercises its abilities and liabilities
3) having control over a human life = having control as regards exercises of its abilities and liabilities (at some point of time or during some period of his lifetime).
4) In conjunction with the claim that a personal human has the right of independence, it follows that a personal human has the right against any moral agent that the latter does not disrespectfully control over him as regards exercises of his abilities and labilities.

3.6.2 An Argument for Thesis of Moral Asymmetry

The thesis of Moral Asymmetry states that there is an intrinsic difference, which is morally relevant, between human bodies and extra-bodily objects. A line of argument in defence of the thesis of Moral Asymmetry A relates a personal human's agency to the body that he is or is constituted by. But I am pessimistic about such defence. First, a personal human exercises agency by means of the body, but he may do the same through external resources. I doubt that

those who embrace this answer could refute the *Possible Dispensability of Body* (a thesis that I ascribe to Lippert-Rasmussen in Chapter 1) since replacements of body parts might be everywhere. Second, consider the distinction between basic and non-basic actions. True, negative freedoms of basic actions are extensionally equivalent to freedoms of bodily movements, freedoms of other actions are nevertheless freedoms of his actions. A soldier pressed a button, the bomb detonated, and then the enemy was injured; the causing of the latter two events are no less his actions. The soldier's agency extended to the bomb whose agency was triggerable in his power. Third, diminishing the body's agency or preventing its exercise (say, paralysing his fingers temporarily) often leads to a greater reduction in his *overall* agency, measured in terms of overall freedom, than diminishing his extended agency in external resources (say, making the bomb fail to detonate), but that is not always the case and this difference is not qualitative but quantitative.

Agency can be extended to external resources, but patiency cannot. Change in the human animal is change in the personal human, but change in the external object, defined as the object that is not part of the human animal, is not change in the personal human. Change in surroundings, of course, may result in change in a human animal, but the former change is not a kind of the latter change.

Agency matters, but it is not the only consideration. My defence of CAT rests on the right of independence and the following two claims:

Patiency Claim: Disrespectful control over a personal human's liabilities is by itself morally objectionable.

Location Claim: A personal human's patiency does not extend to external objects.

Advocates of the *Patiency Claim* argue that, avoiding disrespectful control over agency and over patiency are not only two aspects of respecting a personal human, but also two different demands to be met non-derivatively, or 'for its own sake'. Justice is concerned not only with others' control over our acting onto the environment, but also with others' control over the environment's acting onto us.

3.7 Two-tier Comparative Moral Asymmetry

The Comparative Asymmetry Thesis (CAT) states, to wit, that self-ownership is weighed heavier, morally, than ownership of external resources. This statement is to a certain extent ill-formulated. It presupposes no scale on which self-ownership violation is measurable or commensurable with violation of external resources. It is also ill-formulated in another aspect—the type of external resources. Some version of CAT can be about weighing self-ownership against ownership of external resources that ground the power as part of control over only agency.

1) Two CAT:
    a) CAT_1: ownership of the overlap between agency and patiency> ownership of resources outside the overlap
        i) [e.g.] touching Achilles' body versus blocking Achilles' spear
        ii) We may combine with the version of CAT, which focuses on measuring the degree of violation of self-ownership, developed in Chapter 1:
            (1) If we assume that Achilles plans to spear an important target, then the combined CAT is at least silent at this case.

(2) If we assume ceteris paribus, since touching Achilles' body reduces greater specific freedoms to the body's possible occupying of space-time regions, it is worse, all things considered

b) CAT_2: *generally,* ownership of the body > ownership of other physical entities falling within the overlap

c) CAT_2 is not an *ad-hoc* assumption since violation of self-ownership often indicates a greater non-consensual control over both agency and patiency.

i) [e.g.] the example about the soldier: paralysing the finger versus detonation of the bomb

(1) presumably control the latter is a far greater control over both agency and patiency of the soldier

(2) we could safely judge that the latter is worse all things considered

(3) Control over use of some external resource may not involve control over human patiency. Consider again the abovementioned example about a soldier. If his enemy were only able to make the bomb break down, the enemy would only control his agency. But control over use of the soldier's body is not only control over his agency but also control over his patiency. Disrespectful control over use of the body commits an additional wrong—disrespectful control over a personal human's patiency. We deny that this is an additional wrong as well as the Patiency Claim if we judge that disrespectful control over agency involving no control over patiency is as bad as disrespectful control over both, all things considered. So, if the Patiency Claim is true, there is asymmetry in moral weight between self-

ownership of a human body and ownership of external resources that do not consolidate others' control over the right-holder's patiency, ceteris paribus.

2) This two-tier moral asymmetry is very close to the lexically-ordered set of real-freedom-for-all principles of justice proposed by Philippe Van Parijs.

Chapter 4 Self-owning Organism

4.1 Introduction

A foundationalist critique of SO does not convince libertarians. SO is justified with its coherence with our moral intuitions about cases involving bodily incursion.

Another strategy for refuting SO. In this strategy, critics disprove the coherence by searching for various single cases about which our intuitions diverge from SO's implications. There is a lacuna in the literature on libertarianism: there is rarely a non-question begging defence of libertarianism against this strategy.

By means of adopting this strategy, Lippert-Rasmussen rejects the *Asymmetry Thesis* (AT): '[o]wnership of external resources is intrinsically different, morally, from ownership of one's mind and body.' (2008, p.88) What is the morally relevant intrinsic difference between these two kinds of ownership? Different libertarians have different answers.

i) right-libertarians (including Nozick, Narveson, and Mack): self-ownership is a natural right, whereas ownership of extra-bodily resources is acquired (except space where the body occupies).
ii) left-libertarians: ownership of external resources is subject to some version of egalitarian proviso whereas self-ownership is not.

2) The alleged intrinsic difference that Lippert-Rasmussen refutes is that SO is fact-insensitive while a rule of distribution telling how external resources are distributed is fact-sensitive.
   a) A fact-sensitive moral principle 'is derived from a combination of nonmoral facts … and one or more basic moral principles.' (2008, p.90)

b) A moral principle is fact-insensitive if (and only if) it is justified without being sensitive to some nonmoral facts.

3) In my view, whether a principle is fact-sensitive or not is relative to a theory or the speaker's system of beliefs.[130] On this construal of the fact-sensitive/insensitive divide, for Lippert-Rasmussen, the claim that SO is fact-insensitive is implausible. Two problems for SO libertarians arise if SO is merely fact-sensitive:
   a) If those non-moral states of affairs did not obtain, SO would not be justified.
   b) If SO is fact-sensitive *only* to the same more foundational principle to which a rule of distribution is fact-sensitive, one could hardly justify the thesis of comparative asymmetry (CA): 'the absolute or relative weights assigned to self-ownership … [are greater than] ownership of external resources.' (2008, p.89)
      i) Assuming that CAT is false, '[i]t is doubtful whether non-stringent self-ownership can in fact account for the constraints normally endorsed by libertarians.' (2008, p.106)
4) Lippert-Rasmussen's strategy:
   a) SO has pros and cons. Although SO's implications for some cases are plausible, it is implausible for some other cases.
   b) To preserve its pros and get rid of its cons, it is more plausible to view SO as fact-sensitive. SO is derived from a combination of some other normative principle, *P*, (e.g., promoting personal autonomy) and certain nonmoral statements, *F* (e.g., that

[130] As far as I know, Cohen never explicitly defines what is a fact-insensitive principle. If a principle that is not fact-sensitive must be fact-insensitive, then the definition would be: a fact-insensitive principle is one that is not derived from a combination of nonmoral facts and one or more basic principles. But, on this definition, there exists no fact-insensitive principle. For any P, I can construct a principle 'if F then P' and with F I can derive P from that principle. But Cohen himself criticized this understanding of his fact-in/sensitive divide, which I take as an account of normative structure of our practical reasoning. But this means that whether a principle is fact-sensitive or not is theory-relative.

forcible vaccination against non-infectious disease decreases personal autonomy). Cases about which SO's implications are plausible are mostly cases where *F* is true. For some case where *F* is false, SO's implications about them are implausible. Since the truth of *P* does not depend on *F*, we derive a different principle from the conjunction of *P* & ~*F* and apply it rather than SO to those cases (e.g., that forcible vaccination against non-infectious disease increases personal autonomy).

c) The upshot of this strategy is that the rigorous libertarian claim against violation of self-ownership is rejected.

5) a full response to Lippert-Rasmussen's strategy:
   a) a positive argument for SO, be it foundationalist or coherentist
   b) Last chapter focuses on the former
   c) This chapter focuses on the latter. In particular, this chapter argues that the fanciful cases given by Lippert-R are not really counterexamples to SO.

6) Despite Lippert-Rasmussen's emphasis on the fact-sensitive of SO, in Section VI, I argue that the talk about fact-insensitivity clouds rather than illuminates his ultimate claim that the mere fact about bodily parts is morally insignificant. Thus, until that section, the focus will not be on the fact-sensitive & insensitive divide. Section II explains his fanatical counterexamples to SO and shows that the counterexamples rest on a folk account of organism. Drawing on recent literature of biology and philosophy of biology, Section III provides an alternative physiological account of organism, on the basis of which I show that those counterexamples rest on dubious presuppositions of organism. Section IV rebuts his argument based on personal autonomy against that ultimate claim. Section V discuss marginal cases as counterexamples to AT.

7) A remark. Recently scholar suggests that indeterminacy in the boundaries of a human body should not be a fatal argument against advocates of the thesis of self-ownership (Farag… 2019). I agree but have two comments. First, it does no harm to precisify the boundaries especially when the precisification helps to defend SO or yield practical implications. Second, it is crucial to note that Lippert-Rasmussen's account of the human body organism is a folk understanding of it. Counterexamples built on it rather than some controversial account rationally compel us to give up either our understanding of the body or our default positions on cases involving bodily incursion. Defenders of SO have the burden of proof showing that such counterexamples are false.

4.2 An Error Theory of Physical Integrity of Person

4.2.1 The Mere Derivative Value of Body

I construe Lippert-Rasmussen's rejection of the Asymmetry Thesis as an error theory of physical integrity of the person. This error theory has two central claims:

> *Moral Insignificance of Body* (MIB): '[T]he mere fact that some physical object or substance is part of one's body' is morally insignificant (2008, p. 106).

Moral significance is predicated of a fact that has 'principle-grounding' or 'reasoning-providing power'(Cohen, 2008, p. 234).

> *Mere Derivative Value of Body* (MDVB): Anything that is a person's body part is morally owned by her *merely* because others' respect for the ownership is conducive to some other goal, judged important from an impersonal point of view, such as promoting her personal autonomy.

The value of an entity is derivative if and only if it is grounded by the fact that the entity is causally or non-causally conducive to something else that is valuable; else, the value of the entity is non-derivative.[131] (As a matter of definition, a thing can be both derivatively and non-derivatively valuable.) SO libertarians mistakenly assert that body parts by themselves are different from external resources in some morally significant respect. Both kinds of things are valuable for us simply because and when they are conducive to some other moral goal.

In principle, Lippert-Rasmussen needs not deny that, although all body parts are merely derivatively valuable, *necessarily* they are indispensable for some moral goal. But I suppose that he would accept without hesitation the following claim, which strengthens his criticism of SO libertarianism's practical implications:

> *Possible Dispensability of Body*: a person's body part indispensable for a moral goal *might* be dispensable for the goal so long as removal of the body part does not change the person's (diachronic) identity.[132]

To illustrate, some organ may be indispensable for health due to the level or direction of technological development, yet it is dispensable for health in a possible world where artificial organs are readily available. As mentioned in Section I, '[w]ere those non-moral facts not obtained, self-ownership would not be justified.'

4.2.2 Arguments for MIB and MDVB

Lippert-Rasmussen's strategy for refuting SO, as I highlighted in Section I, is to describe fanciful counterexamples to SO. One counterexample vindicates the following

[131] explain why the term 'non-derivative' is better than 'intrinsic' in expressing for-its-own-sake value…
[132] At this point cross-world identity does not matter.

argument for the *MIB*:

> A1. If ~*MIB*, then, *ceteris paribus*, one case involving a higher degree of self-ownership violation is worse, all things considered.
>
> A2. There are counterexamples to the consequent of P1.
>
> AC. Therefore, MIB.

The counterexample is a pair of cases as follows.

> *Biological Case*: Half the population of the world were born with one (and only one) pair of eyes functioning normally. The other half were born with no eyes due to no one's fault.
>
> *Non-biological Case*: Half the population were born with one pair of non-biological eyes. The other half were born with no eyes due to no one's fault.

A forcible scheme for redistributing eyeballs is carried out by the government for the purpose of ensure equal sight among all. Under the presupposition that non-biological eyeballs could not be a person's body parts, the degree of self-ownership violation is higher in Biological Case. These two cases are similar in all respects, e.g., the importance of eyeballs for the donors' personal autonomy, except the degree of self-ownership violation. According to (A1), if ~MIB, Biological Case is worse all things considered. Lippert-Rasmussen contends that this comparative judgment is highly implausible. This pair of cases constitutes a counterexample to the consequent of (A1). So, MIB.

Mere Derivative Value of Body (MDVB) is not derivable from MIB since MIB is consistent with the claim that body parts are valueless. But we can compare the Biological

Case with another fanciful case given by Lippert- Rasmussen to support MDVB.

> *Modified Biological Case*: Half the population of the world were born with two pairs of eyes, one of which functions normally, another of which is inside the shoulder. The other half were born without eye due to no one's fault. The spare eyeballs inside a person's shoulder will be expelled from the body naturally once she reaches her twenty years old and then, unfortunately, become waste.

What is forcibly redistributed by the government in this case is the pair of spare biological eyeballs that remain inside the shoulder.

What would SO libertarians say about the comparison between *Biological Case* and *Modified Biological Case*? They would hold the view that

> if one case involves a higher degree of self-ownership violation, then it is morally worse in some respect, i.e., self-ownership value.

For the sake of argument, let us make two presuppositions. First, spare biological eyeballs are body parts. Second, forcible removal of two eyeballs as body parts is severer violation of self-ownership than forcible removal of one eyeball. Together with these two suppositions, the view implies that forcible redistribution in *Modified Biological Case* is morally worse than that in *Biological Case* in some respect.

Lippert-Rasmussen, I suppose, would contend that that comparative judgment is implausible. The implausibility can well be accounted for by MDVB. Since the value of respecting self-ownership is merely derivative for some moral end, violation of self-ownership is preferable in any respect when it better promotes the moral end, ceteris paribus. (Notice that comparison of *Modified Biological Case* and *Biological Case* does not confirm

(A2). The condition '*ceteris paribus*' is not met since forced donors in the Biological Case suffer greater loss of sight than forced donors in the Modified Biological Case.)

4.3 Folk Account of Organism

The above arguments for MIB and MDVB are based on dubious presuppositions about body parts. The argument for MIB is based on the presupposition that

> non-biological entities could not be a human's body parts.

The argument for MDVB is based on the presupposition that

> what 'cannot perform any … bodily function' may be a human's body part (Lippert-Rasmussen, 2008, p. 98).

For example, the spare pair of eyeballs in the Modified Biological Case. In support of these two presuppositions, Lippert-Rasmussen proposes what he calls the *Human Organism* account, according to which our body is an organism (2008, p. 111). What makes something identical to or part of an organism?

> Involvement in metabolic processes of an organism is a sufficient and necessary condition for being a part of the organism.[133]

This organismal-part criterion well accounts for the two presuppositions. On the one hand, since 'no metabolism takes place between the [non-biological] eyes and the human organism in which they are located', non-biological entities could not be human parts (2008, p. 112). On the other hand, whatever takes part in metabolic processes of a body is part of the body. Since those spare eyeballs presumably take part in metabolic processes of a body, they are

[133] The criteria he proposes is more complicated than this. I do not find the complicated version is not relevant.

parts, though functionless parts.

A transitional paragraph. Lippert-Rasmussen does not explain what metabolic processes are and how parts get involved metabolically. The question of criteria for being an organismal part is not one I can adequately address in this dissertation. That said, there is no necessity to devote too much space to working on it since, given the goal of undermining his challenges to SO libertarianism, the current task is to give a defensible view of organismal parts by means of which SO libertarians could reject those two presuppositions.

4.4 What Constitutes Organism?

4.4.1 Self-producing Functional Account of Organism

Cymothoa exigua is an isopoda attaching itself to the tongue of a fish, causing the tongue to undergo necrosis, and then becoming, functionally speaking, the new 'tongue' of the fish and surviving through feeding on the fish blood. Is it part of the fish?

Drawing on the literature of philosophy of biology, I elaborate what I coin as the *Self-producing Function* account of an organism and accordingly question the presuppositions. To put the account in a nutshell, a group of elements constitute an organism if and only if they functionally integrate to form a self-producing system in which they stand in the relationship of reciprocity.

What makes something a part of an organism? According to a usual physiological (in contrast to evolutionary) definition of an organism,

> 'the organism is a functionally integrated whole that undergoes continuous changes and is made up of interconnected elements characterized by causal dependence' (Pradeu, 2012, p. 243).

I narrow this definition by adding two qualifications.

First, the functional integration (hierarchically structured) between the elements constitutes the whole as a self-organising system for its persistence over time through 'ongoing reconstruction of *many* [emphasis added] of its … parts' (and engaging in sensing and adapting the surrounding environment) (Godfrey-Smith, 2016, p. 777). Since their normal co-functioning results in the system under which they grow, develop, and reconstructed (or repaired), in this sense they co-produce not only each other and the whole but also themselves dynamically. In contrast, artefacts only 'show some capacity to prevent their own break down, but do not *rebuild* themselves' (Godfrey-Smith, 2016, p. 778).

Second, the functional integration is a reciprocal interaction among elements. As J. Baedke notes, it is 'a common idea in the history of biological reasoning, at least since Immanuel Kant, that reciprocity as a form of organisation is distinctive of *organisms*' (Baedke, 2019, p. 278). Among elements of an organism, there must be 'high cooperation and very low conflicts' (Queller & Strassmann, 2009, p. 3144). The elements form a stable 'virtuous circle of benefits'—their characteristic activity patterns benefit each other and, in turn, benefit themselves (or their offspring) (Queller & Strassmann, 2016, p. 862) There also exist mechanisms that reduce opportunities for one element to gain at the expense of another to a tiny level (Queller & Strassmann, 2016).

The *Self-Producing Function* account supports the following organismal-part criterion:

> *X* is an element of *Y* which is an organism if, first, *X* is repaired under *Y* as a self-producing system that *X* is integrated into functionally and, second, *X* stands in reciprocity to other elements.

Two remarks. First, the question of whether *X* is *Y*'s element admits of degrees if being reciprocal is a gradable concept. That 'being a body part' is gradable provides us with a presumptive reason for believing that violations of self-ownership vary in degree. Second, I confess that I am uncertain if there exists some *X* that fails to meet the criterion and yet is part of *Y*. Thus, what I propose here is not a necessary but sufficient condition for being an organismal part. Still, I would contend that mere functional integration is far from being a sufficient condition since some artificial objects or even natural objects could satisfy this condition and clearly not body parts.

The relevance of the Self-Producing Function account to the debate over SO is not difficult to discern. It might be argued that SO implies the right over malignant tumours. But this is false because tumours, be they malignant or not, are not body parts. First, if functional explanations of them in relation to the whole were available to us, we would have no ground for calling them 'tumours.' Second, they do not cooperate with other cells reciprocally. Causal (inter)dependence is not enough; few would consider parasites to be part of the same organism as their 'host'. *Cymothoa exigua*, which is assumed by biologists to be functionally replacing the tongue, looks more like a parasite than part of the host fish.

4.4.2 Rejecting the Dubious Presuppositions about Body Parts

By referring to the *Self-Producing Function* account, I see no reason why libertarians must accept the two presuppositions in question. We shall begin with scrutinising the second one, to wit, what has no 'bodily function' may be a human bodily part (2008, p. 98). Consider again the spare eyeballs in the Modified Biological Case. If we cannot explain the function of them in relation to the human organism as a self-producing system, we should judge that they are not parts of the system. They are in no difference from parasites living inside their host's

shoulders, provided that they consume energy of the human.[134]

We return to the first presupposition—non-biological entities could not be part of a human organism. This presupposition is derivable from two claims: (i) only biological entities could get involved in metabolic processes; (ii) necessarily, every organismal part gets involved in the organism's metabolic processes.[135]

We shall distinguish between two senses of metabolism. In a narrow sense, an organism's metabolism is all its cellular processes (anabolism and catabolism). In a broader sense, it is all the processes that 'maintain and continually rebuild organisms, contributing in turn to the distinct capacities of growth, development, and reproduction' (Godfrey-Smith, 2016, p. 777). As a matter of definition, possibly, some non-cellular entities can participate in the metabolic system understood broadly. Furthermore, possibly, some non-cellular complex, viz., substance composed mostly of non-cellular elements, is self-producing so long as at least many of its elements are interconnected with each other in a metabolic manner understood broadly. According to the Self-Producing Function account, such a complex is an organism, though a non-cellular one.

If we read 'metabolic processes' in the narrow sense, the claim (i) is true. Metabolic processes narrowly understood are cellular reactions. Since cellular reactions could only exist in or between cells, non-biological entities could not get involved in cellular reactions. But, given the possibility of a non-cellular organism, the claim (ii) is plainly false because possibly some non-cellular organism experiences no metabolic processes narrowly

[134] Lippert-Ras must agree that the eyeballs partake of some energy or components produced by catabolism of the whole; the eyeballs would otherwise not get involved in metabolism of the whole and not qualify as organismal parts according to the *Human Organism* account.
[135] Doubtlessly, the presupposition can be derived from many other sets of claims. But (i) and (ii) supports his view explicit claim that the non-biological eyes are not body parts given no metabolism are there.

understood. If we read 'metabolic processes' in the broader sense, the claim (ii) seems true. However, the claim (i) is apparently false since presumably a non-cellular organism's metabolic system would involve many non-cellular parts.

Lippert-Rasmussen suggests that those advocating non-derivative SO 'may be trafficking in moral intuitions that really only bear on the derivative case' (2008, p. 90). I suspect that his examples may be trafficking in moral intuitions that really only bear on cases about body parts. Consider again the comparison of non-biological eyes to biological eyes. Suppose we share Lippert-Rasmussen's intuition, that is, that forcible transplantation of former is no worse than forcible transplantation of latter in any respect. Are we inclined to think so purely because of the thought that the former is functionally equivalent to the latter? Or are we influenced by the misrepresentation that the former is a body part caused by the former's functionality, a typical feature of a genuine body part?

Compare two models of non-biological, artificial eyeballs. One deteriorates gradually but can be healed by the organism as a self-producing system and is driven by energy released during catabolism.[136] Another is unbreakable and is wholly driven by solar energy. Eyeballs of the first model meet the organismal-body criterion proposed and so are organismal parts. Notice that the absence of involvement in metabolism in the narrow sense, as I just demonstrated, gives no sufficient reason for denying that artificial eyeballs could be organismal parts. Eyeballs of the second model do not meet the organismal-body criterion proposed. Although the criterion is not a necessary condition, Lippert-Rasmussen would agree that eyeballs of the second model are not organismal parts.[137] The fact that the

[136] Suppose the model is designed to absorb and transform chemical energy into electric energy and molecule compounds into materials required to reconstruct the broken parts of the model.
[137] Otherwise, the comparison of forcible transplantation of non-biological eyeballs to that of biological eyeballs would not threaten SO.

unbreakable second-model eyeballs cannot be repaired by our body signifies their being mere instruments in relation to us. I contend that forcible transplantation of the first model is worse with respect to self-ownership.

Besides regarding those two dubious presuppositions, what are other differences between the *Human Organism* account and the *Self-Producing Function* account? Lippert-Rasmussen seemingly thinks that being attached to an organism as a whole and being what an organism was initially born with are both sufficient conditions for being part of the organism. He describes 'a case of a person born with a dysfunctional organ that is connected to the rest of his body by no more than a small lump of skin' and finds it implausible to invoke in this case a stringent self-ownership of the organ (2008, p. 113).

But this folk understanding of an organism is deeply flaw and the *Self-Producing Function* account does not incorporate this folk understanding. First, if our bodies are fundamentally atoms (or something smaller) appropriately arranged, and they are not spatially adjacent to each other, then components of our bodies are not attached to each other, strictly speaking (Wilson, 1999). Second, constant material turnovers of components taken place inside an organism always happen as results of the body's metabolic processes (broadly or narrowly understood). Current components of an organismal body may not be initially attached to the body. The moral insignificance of these accidental features of organismal body components does not pose a threat to the moral significance of the fact that they are body parts.

I conjecture a rejoinder to my defence of SO. Lippert-Rasmussen objects to SO since it implies (natural) self-ownership of dysfunctional organs, which are unimportant for one's personal autonomy. On the Self-Producing Function account, dysfunctional organs are not one's parts, and it is thereby false that SO implies self-ownership of such organs. It is then

unclear why Lippert-Rasmussen must reject SO.

Those who give this rejoinder mistakenly assumes that whatever is physiologically functional is important for *or* indispensable for autonomous living. The following case illuminates two reasons for which Lippert-Rasmussen must reject SO.

> *Achilles' Kidney*: No one can cause injury to Achilles' body parts (including his left heel) except his left kidney. Fortunately, if that kidney is extirpated or malfunctions, the invulnerable right kidney will cope with the increased workload at the cost of consuming extra energy slightly higher than the left kidney consumes.

First, presumably the choice about the extra consumption is irrelevant to Achilles' autonomous living, so the physiologically functional left kidney is unimportant for personal autonomy. It might be assumed that the choice is relevant to Achilles' autonomous living. But the corresponding principle which dictates protection or promotion of personal autonomy and SO would converge on implications. It should worry advocates of such a principle that they must then accept SO's implications depicted by them as implausible. Second, the principle of personal autonomy is silent at damaging the left kidney even if others do that for no good reason. In contrast, SO implies that Achilles has a non-absolute right against the damage from others. In fact, if Lippert-Rasmussen holds the *Possible Dispensability of Body*, he must accept the second reason.

4.4.3 Boundaries of the Person & Personal Sovereignty

Before next section, I shall respond to a complaint that the talk of organism is irrelevant to making (comparative) normative judgments; what matter to making the judgments are views on important interests. The complainant fails to discern the underlying debate—the debate over the function of right. Lippert- Rasmussen would agree that

autonomy is in everyone's interest and so everyone has a right whose function is to protect or prosper autonomous living. In contrast, many libertarians embrace the choice theory of the right. To put it roughly, the function of a person's right is to alter the deontic status of others' interference in or control over a certain domain of affairs. To SO libertarians, the domain of affairs is the life of a person. A person is 'a small-scale sovereign' of his life (Hart, 1982, p. 183).

A conception of the person has crucial bearing on demarcating the territories that a person is a sovereign of. If a person is a pure mind, it is highly doubtful that he has a right against others' interference in *all* changes in and of the body where he intimately 'resides'. He may have to a certain extent stringent derivative right over body parts via which he can have perception of surroundings, not because having perception is his important interests, but because he has a right to permit or disallow others' interference in or control over his life understood as a bundle of thoughts, impressions, emotions, feelings, etc. In my view, the substance of the complaint is rather that personal sovereignty is by itself not a consideration in making moral judgments.

When does an account of important interests matter to making normative judgments? We may weigh a person's personal sovereignty against any one of the following considerations:

> (a) another person's important interest, (b) another person's unimportant interest, (c) another person's personal sovereignty, (d) the person's important interest, (e) the person's unimportant interest, and (f) the person's personal sovereignty.

An account of important interests matters to making normative judgments about cases (a), (d), (c) and (f). As regards cases (a) and (d), the weakest stringency of personal sovereignty

that libertarians could accept, though reluctantly, is that personal sovereignty is conditional upon its compatibility with protection of important interests. As regards (c) and (f), the consideration of looking after important interests breaks the tie formed by conflicting but equally weighty claims of personal sovereignty. ((f) is possible when there is a choice between two options that both constitute violation of the same person's personal sovereignty to an equal degree.) As regards cases (b) and (e), is protection of important interests the only consideration? If personal sovereignty does not matter, I wonder what reason we would have to criticise extirpating Achilles' left kidney for fun, non-consensual sex without any physical or physiological effect on the 'victim', forcible injection of a particular vaccine that is slightly more effective than other methods of treatment, and so on.

The complainant may have two options to respond. The first option is pointing to a set of important interests the protection of which converge with SO's implications. There are two problems with this option. First, the complainant may have no option but to accept SO's implications that he finds implausible. If one insists that the body cannot be touched without (genuine consent), how is the insistence different from advocating self-ownership? Second, in specifying the protection, the complainant cannot avoid drawing the outer confines of a human being. In other words, he cannot avoid doing what he originally complains about. Physical integrity of the person, for example, may be such an important interest, yet specification of its protection requires a conception of a human's boundaries.

Besides these two problems, in Chapter 5, I criticise various arguments for full physical integrity of the person resting on John Rawls' theory of justice. The complainant who attempts to defend full physical integrity of the person has the burden of proof justifying the protection.

The second option is insisting that a person has no personal sovereignty over choices

unrelated to important interests. This complainant begs the question of why we must reject any non-stringent view of personal sovereignty that accounts for our moral intuitions about cases (b) and (e) and instead embrace a view contrary to those intuitions. The next section canvasses an argument from autonomy that attempts to deny the non-derivative value of personal sovereignty.

4.5 Personal Autonomy & Self-Ownership

4.5.1 Lippert-Rasmussen's autonomy-based conception of justice:

1) The Principle of Autonomy: we ought to ensure that a person's life is autonomous (and valuable) enough (or to the extent that is feasible).
2) Lippert-Rasmussen does not explain much his view of personal autonomy. His discussion on the following case is a clue to it. There is a world where people are born with huge bodies they can barely move and their ability to control their lives is best promoted if 99 percent of their own body is removed. Lippert-Rasmussen suggests that '*forcible* interventions' are required by concern about autonomy. (2008, p.108; my emphasis) In response to the objection that people may plan to have his or her body of a certain sort, he asserts that 'the absence of self-ownership … does not prevent them from controlling and planning their lives in general, and this is what matters' (2008, p.109).
3) Below is a reconstruction of his argument for the forcible amputation:
    a) Living autonomously requires a certain sort of environment. A wide variety of objectively valuable life forms are available. Moreover, ceteris paribus, autonomy and its value increase when the chances to realise several objectively valuable life forms increase.
    b) The people's chances to do so increase when 99% of their own body is removed.

c) Therefore, according to the principle of autonomy, forcible amputation of their limbs is justifiable despite their loud voices of dissent, for autonomy, to recall, is 'what matters' (2008, p.109).

4) The following assumption strengthens the second premise: a life form without abilities to make changes to the world is objectively bad. Were this life form objectively good, people would have good chances to realise some, or perhaps several, of objectively valuable life forms despite the inability to move.

5) Suppose the people (would ideally) identify with their own current body on the basis of defensible beliefs that they were not manipulated to acquire. Isn't the condition 'ceteris paribus' unmet when their chances are increased at the expense of their preferred life form? In response, Lippert-Rasmussen needs not deny the role of psychological autonomy in leading an autonomous life. He could claim that a life is non-autonomous or worthless if the lifetime is spent on pursuing objectively bad life form, irrespective of whether his intention to realise the life form is autonomous.

6) Lippert-Rasmussen may have other conceptions of personal autonomy in mind. But what matters is that there is a discrepancy between improvement in (other) contributory factors to autonomy, such as abilities to make changes to the world, and respect for the right of independence. Could those sympathetic to Lippert-Rasmussen reject this discrepancy? An infringement of the right of independence makes a life less autonomous (or an autonomous life less valuable) no matter how minor the infringement is and how big the improvement in (other) contributory factors to autonomy is.

7) Even if infringement of the right of independence leads to a decrease in personal autonomy, ceteris paribus, the negative relationship between them is extremely weak. (Also see J. Quong's criticism of Raz.) Compare two cases as follows. Suppose as a matter of nature most of the life forms are objectively bad. An autonomy-promoting

demon will intervene in your life (without letting you know) once you appear to embrace an objectively bad life form. By happenstance, you identify with and are highly determined to realise the only objectively valuable life form available in society. So, the demon never intervenes in your life. In the second case, everything is the same as the first case except that the demon does not exist. I do not see a noticeable difference in the degree of your autonomy despite severer violation of your right of independence by the demon in the first case.

8) Lippert-Rasmussen might make the rejoinder that decrease in independence without decrease in autonomy does not make things worse since independence is merely derivatively valuable for autonomy. (Here is a variant of this rejoinder: violation of the right of independence for your own good does not diminish (the value of) your autonomy, whereas violation of the right of independence not for your own good does.) I find no conclusive argument or example for this rejoinder.
   a) Consider four possibilities:
      i) voluntary scheme of amputation + the people are willing.
      ii) voluntary scheme of amputation + the people are unwilling.
      iii) forcible scheme of amputation + the people are willing.
      iv) forcible scheme of amputation + the people are unwilling.
   b) According to the rejoinder, (i), (iii), and (iv) are equally good in every respect. Yet I suppose that, when being told these four possibilities, you would immediately agree with libertarians that (i) is better than (iii) and (iv) in every respect. The difference in the voluntariness, in my view, can be explained by the non-derivative value of independence, so the rejoinder is false.

c) In addition, given that the voluntariness grounds the preferability, Lippert-Rasmussen at best persuades us that (ii) is in some, not all, respect worse than (iii) and (iv), which is a judgement that advocates of non-stringent self-ownership could agree.

4.5.2 Specification of Comparative Asymmetry Thesis

1) To recap, the Comparative Asymmetry Thesis (CA) states that the absolute or relative weight assigned to self-ownership is greater than that assigned to ownership of an external object.
2) Consider a marginal case given by Lippert-Rasmussen.[138] Suppose a person's limbs could move as ours normally do only on a particular area of land and artificial limbs are readily available to him. Lippert-Rasmussen contends that prohibiting entry into the land is morally worse than forcible amputation all things considered. CA implies the contrary since only the forcible amputation involves self-ownership violation. But the contrary is implausible.
3) Notice that other normative theories may face similar challenges. For example, should we improve someone's life prospect slightly closer to some sufficiency threshold at the cost of a huge economic inequality between two groups in society?
4) But why is it believed that the challenge be deemed fatal to SO? The reason, I suppose, is the belief that violation of self-ownership admits of no degree. Hurting a person's heart and inflicting a minor wound are both action that violates self-ownership. If the former is worse than preventing a person from moving, so is the latter. We may construct a scale of self-ownership violation, but degree of the violation may only be pegged to the damage done to health. If damage to health is what matters, it is more plausible to accept Lippert-

[138] Marginal cases are cases in which a key ethical notion viewed as worthy of consideration in many other cases is appears to be relatively (or absolutely) negligible.

Rasmussen's view about self-ownership—we have the right over the body merely because the body is valuable for some other moral goals.

5) Last section I pointed out that the more basic right from which self-ownership is derived is independence of bodily behaviours. A proper scale of self-ownership violation is sensitive to the extent of unfreedom of bodily behaviours led by a self-ownership violation. We need a measure of freedom that differentiates unfreedom of bodily behaviours from unfreedom that is not. How is such a measure to be constructed?
6) I make a distinction between bodily specific freedoms and specific freedoms that are not.
    a) an elaboration of Ian Carter's measure of specific (un)freedoms …
    b) The extent of a person's bodily unfreedom to do a specific act (or a set of compossible acts) = the number of spacetime units occupied by the act's physical components which are her body parts.
        i) [E.G.] You intend to open a gate by pressing a button. If I prevent the gate from opening without interfering with your pressing the button, I make your unfree without making you 'bodily' unfree, ceteris paribus. If the opening of the gate would further allow your body to escape, then my prevention would make your bodily unfree.
    c) Freedoms of inactions and changes in the body can similarly be measured. The extent of such a freedom is the number of spacetime units that would be occupied by the body parts during the inaction or the change.
    d) The degree of a self-ownership violation is the extent of bodily unfreedoms as consequences of the violation.
7) On the basis of the above measure, I create a formulation of CAT as follows:

φ is worse than ψ all things considered if:

(1) *C*'s bodily specified unfreedoms as consequences of φ is higher than *D*'s bodily specified unfreedoms as consequences of ψ, and

(2) ceteris paribus.

Notice that a tiny difference in the degrees of bodily unfreedoms may not justify differential treatment of *C* and *D*. But this issue is about theories of distributive justice in general, so I shall leave aside.

8) Both (1) and (2) are false in the marginal case given by Lippert-Rasmussen. A ban on entry to an area only in which a person can move is expected to cause a far greater decrease in both bodily and non-bodily specified unfreedoms than violation of his self-ownership by cutting off his limbs when perfect substitutes are readily available. It follows that the above formulation has no implication about the marginal case; at least the formulation does not imply that the forcible amputation is worse all things considered.

9) Two limitations of the formulation:

   a) The condition (2) is not met when an option of respecting self-ownership is worse than an option of violating self-ownership in other morally relevant respects. So, the formulation represents a position only advocates of non-stringent self-ownership may accept. Nevertheless, the formulation suffices to represent a sense in which self-ownership is weightier than extra-bodily ownership, despite in some case the latter might overrides the former. Lippert-Rasmussen who deny any degree of asymmetry must reject it So, the formulation helps achieving the purpose of this chapter—undermining his challenge.

   b) It presupposes a conception of independence that supports some area or amount of *freedom of bodily movement*. Else it would be unclear why violation of self-ownership is measured in terms of bodily specific unfreedoms. Still, given that motion of the

body is a kind of bodily behaviour, presumably the right of independence of bodily behaviour implies freedom of bodily movement. Such a conception of independence may imply that the ban on the entry is worse than the forcible amputation.

4.6 The Asymmetry Thesis and Fact-in/sensitivity Distinction

In this section, I argue that the talk about whether SO is fact-insensitive or not clouds rather than illuminates the error theory of physical integrity of the person. How does the fact-sensitivity of SO bear on the error theory? Below I examine two arguments whose conclusions are both the Moral Insignificant of Body (MIB), to wit: the fact about bodily constitution is morally insignificant.

The first argument rests on the following premise:

If SO is fact-sensitive, then SO is sensitive to certain nonmoral facts other than facts about bodily constitution.

From the consequent we cannot derive MIB because it might be that nonmoral facts about bodily constitution is morally significant in virtue of their grounding moral principles other than SO. Nevertheless, what moral principle, if not SO, is sensitive to nonmoral facts about bodily constitution? If none, these facts are morally insignificant.

SO libertarians could agree the antecedent, viz., that SO is fact-sensitive, and reject the consequent. On Lippert-Rasmussen's formulation of SO, '[e]ach person enjoys moral ownership of himself or herself (his/her body and mind).' (2008, p.86) On the face of it, there is only one thesis. But there are two.

i) Each person has ownership of himself or herself.

ii) Each person has ownership of his/her body and mind.

The first thesis is SO. The second thesis can be derived from the combination of SO and certain facts about bodily constitution, and so it is fact-sensitive.[139] These facts can be that a person is numerically identical to or is constituted by a mental and material substance that others point to when referring to the person. Some libertarian theory implies not only the second but also the first are fact-sensitive. Consider what Eric Mack calls the 'ur-claim': 'to be allowed to live in a way as one sees fit.' In conjunction with the nonmoral fact that interference in a person's use of his own body makes his plan of life unsuccessful, the ur-claim generates some qualified version of the first and second theses. In Chapter Two, I defend a more basic principle that a person has the right against disrespectful control, or 'domination', over his capacities to undergo changes in (and of) himself. From this principle and the fact that a person is an organism, we can derive some qualified version of these two theses. Anyway, be SO fact-insensitive or not, SO libertarians would not be persuaded to accept the consequent of that premise, but what plays a major role in supporting MIB in the argument in question is the consequent. Thus, we should bypass the debate about whether SO is fact-insensitive.

We proceed to discuss another argument.

1) If a moral principle, *Q*, is fact-sensitive, then complying with *Q* is merely derivatively valuable for complying with the more basic moral principles, *P*.
2) SO is fact-sensitive.
3) If non-violation of self-ownership is merely derivatively valuable, then MIB.
4) Therefore, MIB.

We realise this argument's force by observing body parts' instrumental values. When a more

[139] Lippert-Rasmussen acknowledges this possibility. Those nonmoral facts can be about 'the relationship between a person and his or her body and mind.' (2008, p.90)

basic principle explains the instrumental value of complying with a less basic fact-sensitive principle, only facts related to the instrumental value play a role in the explanation. Suppose a heart is merely instrumentally valuable to health. That a heart is conducive to a person's health is a fact grounding the derivative duty not to hurt a person's heart; the grounding relation is explained by a more basic principle that we ought to ensure people healthy. The fact that a heart is a body part plays no role in this explanation for the duty. That it plays no role confirms MIB. I shall now question the first and the third premises.

The first premise is falsified when *Q* is a conception of *P*. This point can well be illustrated by the theory of justice developed by John Rawls, who originates the distinction between the concept and the conception.

> P_1: Justice requires that no arbitrary distinctions between members of society are considered in achieving proper balance of their competing claims to social advantages.
>
> F_1: Natural and other resources are moderately scarce, 'men suffer from various shortcomings of knowledge, thought, and judgment', each member has his or her life to lead, there are 'general facts about human society', and so on. (TJ, rev., p.110; 119)
>
> Q_1: Justice requires that the basic structure of society be effectively regulated in accordance with the two principles of justice including the difference principle.

P_1 states the concept of justice and Q_1 states a conception. Why is Q_1 sensitive to the F_1 according to P_1 or some intermediate principle between P_1 and Q_1? Consider, for example, the rule dictating that special labour burdens be compensated. F_1 contains, among other facts, the fact of shortcomings of knowledge. Given F_1, the public knowledge sufficient to calculate even the rough amount of compensation may be unavailable or available but costly. Some

intermediate principle between P_1 and Q_1 defines the notion of proper balance as harmony between equality (as the default distribution insensitive to arbitrary distinctions) and other values such as publicity and efficiency. According to this intermediate principle, in view of F_1, the difference principle (in the lax sense) is preferable to the rule in making proper balance between different values.[140] For the present purpose, it is unnecessary to discuss if consideration of F_1 would only make contracting parities compromise justice and other virtues.[141] Suffice it to say that, in a society for which F_1 is true, following the two principles of justice is not conducive to achieving the proper balance because they are *one and the same thing*. The former, though derived from the latter and F_1, is not derivatively valuable to the latter. Therefore, P_1 and Q_1 together constitute a counterexample to the first premise.

The third premise is questionable as well. Consider a fundamental moral principle stating that a person has a right against domination over what changes happen to himself. For the sake of presenting this objection, let us assume that a person is or is constituted by a body. Effective enforcement of claim-rights over fingers is conducive to the non-domination and so is derivatively valuable. Further assume that the effective enforcement is not valuable for its own sake. So, the effective enforcement is valuable, but only derivatively. Contrary to the third premise, the derivative value in no way supports MIB. Whether or not we ought to enforce the claim-rights remains sensitive to the fact that the fingers are the person's body parts and the principle explains the sensitivity.

[140] Andrew Williams
[141] (Cohen, RJE, chap. 7)

Conclusion

In this dissertation, I elaborated a characteristic difference between parts of the body that a human individual is and objects that are not. Changes to the body parts are mostly changes to the human individual, whereas changes to other objects are not. This account is part of the foundation of the thesis that one's discretion over his body is morally weightier than someone's ownership of extrabodily objects. Controlling use of his body disrespectfully is disrespect for not only his rational capacity to make changes but also his rational capacity to undergo changes. Self-ownership libertarians, that is, libertarians who agree with the thesis, can find this account an alternative solution to the worry that libertarianism is consistent with legitimate acquisition of natural resources amounting to imprisonment of the innocent.

I started with introducing a new taxonomy of self-ownership libertarianism by combining the divide between proviso and no-proviso libertarian theories and the divide between self-ownership libertarian theories that are pluralistic and those that are monistic.

In Chapter 1, I explained what the problem of imprisonment is and why the thesis of self-ownership is consistent with the claim that acquisition effecting imprisonment of others is justifiable. I criticised proviso pluralists by showing that three types of Lockean provisos – welfare type, self-ownership type, and non-subjection type – either are not breached by imprisoning acquisition or are too strong to qualify right-libertarian. In addition, I argued that either advocates of a Lockean proviso presuppose other moral principles in explaining the baseline of comparison they select or their selection is arbitrary such that they deny prima facie conflict of individuals' claims to demand improvement or not being worsened.

I also argued that no-proviso pluralists as well as proviso pluralists faces a dilemma.

Either the thesis of self-ownership axiomatic or it is not. Various proposals to grade self-ownership violations were under scrutiny and shown unsatisfactory. My diagnosis of their being unsatisfactory was that, if the thesis is axiomatic, no purpose of having self-ownership can be taken for reference to indicate the proper dimension of grading self-ownership infringements. On the other hand, in Chapters 2 and 3 I showed that the principle of non-interference and the principle of independence, both of which the thesis can be derived from, both imply interpersonal conflict of violable rights; an appropriate resolution to such conflict, be it left or right, regulates a considerable area of the society's economic domain. This is evidence supporting that taking the thesis as non-axiomatic is in tension with the pluralist framework.

In Chapter 2, I argued that no-proviso monists cannot defend themselves against the charge that rationally they should support a matriarchic society. If mothers do not own their children because factors in producing and rearing children are not fully theirs, then legitimate unilateral acquisition is rare. If mothers own their children's bodies without owning their children, then children's self-ownership is of no practical import. The best strategy to cope with this challenge is excluding individuals' bodies from the list of appropriable objects in the world; however, I argued that this theoretical exclusion is an ad hoc assumption within the framework of monism. The reason is that labouring activities that trigger off the power of acquisition can be done to both bodies and other objects.

In Chapter 3, I develop the idea of the natural duty not to control the living of others disrespectfully. *A* control *B* with respect to a course of events if and only if *A* has a power whose exercise or existence influences B's involving or getting involved in the course of events and *A* is disposed to exercise or consolidate the power. Control is not disrespectful if and only if any of the conditions is true: the mode of control is neither preventive nor

activating and is not conducive to someone's preventive control; *A* is disposed to seek and follow *B*'s genuine actual consent to handle the power when *A* receives the sign that a channel of communication with B is available; if A's control is preventive, *B* gains reciprocal preventive control over *A*. I discuss a challenge to the full conception of self-ownership that it is unduly restrictive as it rejects any soft paternalistic interference. Soft paternalism is implausible because it may support a coercive scheme that is slightly more beneficial to individuals indifferent to voluntariness. The account of disrespectful control is insusceptible to this problem and, contrary to what it appears to be, has procedure-related bearing on cases where communication between parties is unavailable. Animalism is introduced. Its hallmark claim states that we are human animals. And since animals are organic bodies, we are organic bodies.

I defended the thesis of Moral Asymmetry: there is an intrinsic difference, which is morally relevant, between human bodies and extra-bodily objects. A human animal lives in a world by interacting with objects qua agent as well as qua patient. The right of independence calls for not controlling disrespectfully a human animal's exercise of abilities and labilities. Note that there is an asymmetry between a human animal's body and other objects: a human body is the locus where the human animal's liabilities exercise, whereas an extra-bodily object is not. I contend that this asymmetry is moral: the fact that the body is the locus of patiency is itself a consideration in favour of certain treatment and there is no such a similar fact about an extra-bodily object and so no such a reason. Yet, the body is not only the locus of patiency but also one of the loci of agency. I defended two tiers of comparative asymmetry. First, ownership of objects which agency and patiency overlap is morally weightier than ownership of objects that is a locus of only agency or patiency. This is what Feinberg describes as "breathing space" around one's body.' Second, *generally*, self-ownership is morally weightier than extra-bodily ownership. Controlling an extra-bodily object

disrespectfully wrongs a human animal because the controls is disrespectful control of the human animal's agency, but controlling the human body disrespectfully not only controls the animal's agency disrespectfully, but also controls the animal's patiency disrespectfully – this is an additional consideration, which under certain condition serves a tie-breaking function. I examined an important objection. If the fundamental normative principle is one and the same, such as the principle of independence, then how is there a different consideration in favour of certain treatment of the body? In response, the dual-aspect view is introduced. A reason is grounded by a set of facts; reasons are different if facts grounding them are different. Despite the normative requirements of respecting agency and patiency are both fact-sensitive, foundationally, to the principle of independence, the fact that something is a locus of agency and the fact that something is a locus of patiency grounds different reasons for treatment.

In Chapter 4, I reply to the strategy for refuting SO is disproving SO's coherence with moral intuitions about cases involving bodily incursion. Critics of SO searching for various single cases about which our intuitions diverge from SO's implications. There is a lacuna in the literature on libertarianism: there is rarely a non-question begging defence of libertarianism against this strategy. Taking this strategy, Lippert-Rasmussen argues that SO is fact-sensitive to some more foundational principle which principles regulating extra-bodily objects are also derived from. This raises the difficulty of the thesis of comparative asymmetry since no intrinsic difference explains why self-ownership is relatively weightier. Despite Lippert-Rasmussen's emphasis on the fact-sensitive of SO, in Section VI, I argue that the talk about fact-insensitivity clouds rather than illuminates his ultimate claim that the mere fact about bodily parts is morally insignificant. Thus, until that section, the focus will not be on the fact-sensitive & insensitive divide. Section II explains his fanatical counterexamples to SO and shows that the counterexamples rest on a folk account of organism. Drawing on recent literature of biology and philosophy of biology, Section III provides an alternative

physiological account of organism, on the basis of which I show that those counterexamples rest on dubious presuppositions of organism. Section IV rebuts his argument based on personal autonomy against that ultimate claim. Section V discuss marginal cases as counterexamples to AT.

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