

## CHAPTER S E V E N

# LIBERALISM

## LIBERTY AND DISTRIBUTIVE JUSTICE

## Individualism and Libertarian Rights

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### I. Introduction

This essay is a partial defense of the rights that are at the core of libertarian political theory. It provides some lines of reasoning in defense of rights-based political theory that arrives at libertarian conclusions.<sup>1</sup> To say that the theory is rights-based is to say that its most fundamental interpersonal norms are expressions of rights that individuals possess against others – rights that restrict the permissible actions of those other agents. To say that the theory is rights-based is not, however, to say that it takes those fundamental rights to be philosophical primitives or self-evident truths. Thus, the need for the defense that this essay partially provides. Even the provision of a partial defense of these rights is, to say the least, a formidable philosophical task. My hope is that this excuses the bold and highly programmatic presentation of this essay's substantive normative argument – and its neglect of meta-ethical niceties. The two fundamental rights that will come to the fore as we proceed are the right of each individual over her own person (the right of self-ownership) and the right of each individual to the practice of private property. Sometimes two versions of libertarianism are identified – “right” libertarianism which combines self-ownership and (at least almost) unrestricted private ownership of extra-personal material – and “left” libertarianism – which combines self-ownership and some form of egalitarian ownership of (at least natural) extra-personal material. This essay supports the core rights of the first version of libertarianism.

The general strategy that I employ here for the defense of such rights is to situate the affirmation of such rights within a more encompassing moral individualism. So I need to begin with a brief description of this moral individualism and of the non-question-begging bases on which its affirmation is reasonable. I take the central – and independently plausible – root idea of this individualism to be the separate, freestanding importance of each individual's life and well-being. Moral individualism is an articulation of this root idea. The more the articulation captures and clarifies

what makes it attractive in its more inchoate form, and the more the articulation yields a moral structure composed of mutually reinforcing elements, the more the plausibility of that root idea is enhanced.

If we take seriously the separate importance of persons, we should expect that individual A's own separate importance will have a different sort of directive impact on her than the separate importance of others has for A. Thus, the key working hypothesis associated with the root idea is that, for each individual, the separate, freestanding, irreducible importance of each individual's life and well-being has two distinct kinds of directive import. For each individual, the directive import of her own separate importance is that her life and well-being – her life going well – stands as the final rational end of her actions; her goal-oriented rationality consists in her choosing and acting in ways that result in or constitute her living as well as possible. In affirming the separate, freestanding, and irreducible importance of each individual's life and well-being, each individual A affirms that the rational final end for each other individual B is the advancement of B's own life and well-being. But the separateness of the importance of B blocks any inference from B's life going well standing as a final rational end (for B) to its being a final rational end for A.<sup>2</sup>

If the separate importance of B's life and well-being as such has any directive import for A, it must be different in kind than providing A with an end she is rational to promote. Intuitively, there does seem to be this second, different in kind, directive import. The most intuitively objectionable treatments of B by A are treatments in which A disposes of B as though B is a resource available for A's use and exploitation. These actions are naturally described as A's treating B as though B is not a being whose life and well-being are of separate, freestanding importance – as A's treating B as though B is not a being with rational ends of his own. If the sense that it is unreasonable for A to engage in such actions *because of the separate importance of B's life and well-being* is correct, it must be because B's separate importance has directive import for A – where that import is a requirement in reason that A not treat B as though he is not a being whose life and well-being are of separate importance. Such a requirement imposes constraints on the means by which A may transact with B in the course of promoting her valued ends.

So, the root idea of the separate, freestanding importance of each individual's life and well-being seems to have both goal-oriented (teleological) import and means-eschewing (deontic) import. The first import provides individuals with the ends that they respectively have reason to promote; the second import provides individuals with restrictions on their treatment of others which they have reason to respect. The first (teleological) import supplies the key distinctive feature of moral individualism's theory of the good, viz., the individualization or agent-relativization of the good; each individual's life and well-being is an ultimate good – relative to the agent whose life and well-being it is. The second (deontic) import supplies the core interpersonal norms of moral individualism's theory of the right, viz., rights-correlative restrictions on the means that agents may employ in the pursuit of their respective ends. Moral individualism's root idea gains plausibility as that which provides through its articulation a unifying explanation for the independently plausible view that to be rational in the pursuit of ends is to be genuinely prudent and for the independently plausible view that it is reasonable for individuals to constrain their conduct towards other persons independent of that constraint being conducive to their rational pursuit of

ends. It seeks to provide a unifying picture of the rationality of the promotion of goals and the reasonableness of constraint in the course of that promotion – a reasonableness of constraint that does not reduce to the expediency of that constraint.

Since the rationality of prudence is the most minimal and uncontroversial claim about practical rationality, it is the natural starting-point for moral theory. Normative theorizing naturally begins with the principle of choice for the individual according to which “A person quite properly acts, at least when others are not affected, to achieve his own greatest good, to advance his rational ends as far as possible.”<sup>3</sup> Much theorizing then proceeds by arguing that the rationality of prudential action is merely a special case of the rationality of promoting the general social good. The rationality of an individual imposing some sacrifice upon herself for the sake of a greater gain for herself is, according to such theorizing, merely a special case of the rationality of an individual imposing such a sacrifice upon herself for the sake of a greater gain for members of society at large. The goal of rational action is the common social good; and this common social good provides the standard for adjudicating disputes among individuals who champion conflicting actions. If individual A favors scratching her nose with her right index finger and B favors seasoning a stew with that finger, the interpersonally sound resolution of their dispute will be supplied by a determination of which action (or set of rules for picking among conflicting actions) will directly (or indirectly) more enhance the common social good.

Moral individualism, however, fully joins John Rawls and Robert Nozick in their contention that the attempt to construe the rationality of prudence as a special case of the rationality of social optimization fails to take seriously the separateness of persons.<sup>4</sup> Yet this reaffirmation of the rationality of prudence may be thought to leave us without any principles capable of providing interpersonally sound resolutions of disputes among the champions of conflicting actions. Or, at best, such principles will be ungrounded and unconnected with the salient starting-point for normative theorizing, the rationality of prudence. The defense of rights and rights-correlative restrictions that will be offered here traverses a different route from the rationality of prudence to the affirmation of interpersonally forceful norms – a route that does not abandon its own starting-point. The first leg of the route is from the rationality of prudence and the associated prerogative of each individual to eschew imposing sacrifices upon herself for the sake of advancing the ends of others to the separate, freestanding importance of each individual; in the language we shall soon employ, this leg takes us to the *rationale* for the affirmation of this prudence and this prerogative. The second leg is from this root idea – or rationale – to the affirmation of rights-correlative restrictions. The route begins with a move from prudence and the prerogative of eschewing sacrifice to the root idea or rationale that has prudence and this prerogative as its first directive import; it then proceeds to the rights and constraints that are the second – and different in kind – directive import of that root idea or rationale.

I traverse this route by responding to a challenge that Samuel Scheffler issues in *The Rejection of Consequentialism*.<sup>5</sup> Scheffler agrees that the separateness of persons – which he casts as the natural independence of the personal point of view – has the first kind of directive import. The natural independence of each individual's viewpoint allows her to give at least some special weight to her own interests in her decisions about whether she will sacrifice her interests in service to the external impersonal

standpoint. But, Scheffler, in effect, denies that the separateness of persons has the second kind of directive import; the natural independence of the personal point of view is not a rationale for affirming rights-correlative restrictions. Scheffler challenges those who think that the separate importance of individuals has both kinds of directive import to show that a morality that incorporates the first kind of directive import – a prerogative of giving at least some special weight to one’s own interests – is unacceptable if it does not also incorporate the second kind of directive import – constraints on the means that individuals may use in their pursuit of valued ends.

In the sections that follow, I further explain and meet this challenge.<sup>6</sup> I show how meeting it supports individualism’s linkage of the goal-oriented rationality of prudence with the means-eschewing reasonableness of compliance with rights. Indeed, the conjunction of (i) the recognition that a morality that incorporates a prerogative to eschew imposing costs on oneself must also incorporate rights-correlative restrictions against interferences with the exercise of that prerogative and (ii) the affirmation of an appropriate robust prerogative yields the core libertarian rights to self-ownership and the practice of private property. Further, the fact that the argument offered here for the right of self-ownership also supports the right to the practice of private property undermines the left libertarian contention that one can coherently endorse the first of these rights without endorsing the second.

## II. Prerogatives, Rationales, and Restrictions

While the natural independence of the personal point of view is manifested in each individual’s tendency to be moved by her own core desires or commitments “out of proportion” to their significance from any impersonal perspective, what is crucial is that, for each individual, “[h]is own projects and commitments have a distinctive *claim* on his attention.”<sup>7</sup> Thus, the natural independence of the personal point of view provides a rationale for the inclusion within morality of a personal prerogative according to which it is at least morally permissible for each individual to give special weight to her own separate system of ends in her determination of how she shall act. The inclusion of such a prerogative in morality amounts to the recognition that the attainment of an individual’s good has agent-relative value and that agent’s prospective good provides her with reason to go for that good quite aside from any agent-neutral reason that agent may have to go for or to forego that good.

On Scheffler’s view, the recognition of the independence of the personal viewpoint and the associated recognition of agent-relative values and reasons for action provide a rationale for a modest prerogative; one that merely allows each individual to give *some* special weight to her own good in the determination of how she shall act. Each agent must still first identify which action available to her would be socially optimal, i.e., would most advance the overall agent-neutrally valuable social good. Only then may an individual determine whether her prerogative allows her to forego this socially optimal action. A Scheffler-style prerogative will specify some  $M$  such that, if the personal cost to  $A$  of the socially optimal action multiplied by  $M$  is equal to or greater than the impersonal gain to the world if  $A$  were to perform the socially optimal action, then it is permissible for  $A$  to eschew that socially optimal act. So, e.g., if all lives have equal weight in this calculus and  $M = 4$ , then  $A$  may decline

to donate her vital organs to save three otherwise doomed strangers; for the personal cost to  $A$  (1) multiplied by  $M$  (4) exceeds the net loss to the world (2) of her eschewing the socially optimal act. If, instead, six strangers could be saved by  $A$ ’s donation, then  $A$  would remain obligated to perform that socially optimal act. In effect, a Scheffler-style prerogative provides individuals with a limited dispensation from compliance with the demands for personal sacrifice that are issued from the impersonal standpoint.

Scheffler recognizes that theorists who favor the incorporation of a prerogative into morality are also likely to favor the incorporation of deontic restrictions that protect individuals against interference with their chosen actions even if those actions are not optimal from some standpoint external to their own. Indeed, such theorists – among whom moral individualists are the most ardent – tend to think that the basis for the incorporation of a prerogative into morality is also the basis for the introduction into morality of deontic restrictions and the rights that are correlative to those restrictions. They tend to think that the separate, freestanding importance of each individual or the separateness of persons or the natural independence of the personal point of view underwrites both a personal prerogative and rights-correlative deontic restrictions. Scheffler issues a general challenge to theorists to show that a morality with a prerogative but without rights-correlative restrictions is unacceptable. And he issues the more specific challenge to those who tend to think that the basis for the incorporation of a prerogative into morality is also the basis for the introduction into morality of deontic restrictions to show that the rationale for the former is also a rationale for the latter. Meeting this more specific challenge would, of course, also nicely meet the more general challenge. To meet Scheffler’s specific challenge, I shall defend the following *central claim*:

“The rationale for the incorporation of a personal prerogative into morality will not be satisfied unless that prerogative is accompanied by rights-correlative restrictions that protect individuals against interference with the exercise of that prerogative.”

The introduction of a naked prerogative will not satisfy the rationale for its introduction; the rationale will be satisfied only if the prerogative is protectively clothed in rights-correlative restrictions. That is why a prerogative without accompanying restrictions is unacceptable. And that is why, if it is reasonable to incorporate a prerogative into morality, it is also reasonable to incorporate rights-correlative restrictions against interference with the exercise of that prerogative.

A modest Scheffler-style prerogative reflects the view that there are some agent-relative values and value-oriented reasons for action and that these provide a bit of counter-weight for each individual against the requirement that she devote herself as much as is possible to the service of agent-neutrally best outcomes. Accordingly, the rationale that Scheffler locates for this prerogative is comparably modest. That rationale is the partial (perhaps quite marginal) liberation of the individual qua agent of her own system of ends from the authoritative external demands of the impersonal point of view – the impersonal standpoint being, for Scheffler, the salient external standpoint. In contrast, what we might label the “individualist prerogative” reflects the view that all values and all value-oriented reasons for action are agent-relative; the idea that the agent-neutral value of (purportedly) optimal social outcomes summon

the individual to their promotion so that, at least sometimes, the individual has all-things-considered reason to sacrifice her good for the sake of the social good, is entirely repudiated. The much more robust rationale for this much more robust prerogative is the total liberation of the individual qua agent of her own system of ends from the demands of standpoints external to the agent. This includes liberation from the supposed, but specious, demands of the impersonal standpoint *and* liberation from the now emancipated standpoints of other individuals. The more robust a prerogative is, the greater the range of actions that will be at least morally permissible for individuals. For this reason, if the central claim is correct, the more robust the prerogative is, the more extensive will be the range of moral immunity that individuals enjoy in virtue of the rights-correlative restrictions to which others are subject.

So what is the argument for the central claim and, *a fortiori*, for the instance of it that concerns the individualist prerogative and its robust rationale? The argument is that there are two distinct crucial dimensions along which the rationale of liberation from external viewpoints can be satisfied or left unsatisfied and that a prerogative can only provide satisfaction of this rationale along one of those dimensions. A prerogative without accompanying rights-correlative restrictions against interference with exercises of that prerogative will, therefore, leave the rationale for the prerogative entirely unsatisfied along a crucial second dimension and, thus, will fail to satisfy the rationale for that prerogative. Those two dimensions can be designated as the “self imposed subjugation” dimension and the “other imposed subjugation” dimension.

Consider individual A who is faced with the choice between action E that most serves an external viewpoint – either the impersonal standpoint insofar as that standpoint is still in play or the personal standpoint of another individual insofar as this has come into play – and action P that better serves A’s interests. Suppose also that A possesses a prerogative that allows A to choose P rather than E. This is to say that, given the costs from that external viewpoint of A choosing P and the personal costs to A of her choosing E, A’s prerogative protects A from the requirement that she herself subjugate herself to the external viewpoint that E best serves. Any prerogative will, in this way, provide A with some degree of liberation from self-imposed sacrifice in service to some external viewpoint. Nevertheless, however robust A’s prerogative is, however extensive is A’s liberation along this self-imposed subjugation dimension, A’s bare prerogative leaves A entirely subject to other-imposed subjugation in the service of the relevant external standpoint.

Suppose that A, in the exercise of her prerogative, chooses action P over action E; but suppose, further, that B, an agent for the relevant external standpoint, can intervene without significant cost from that external standpoint to override A’s choice and get A to perform E. Nothing about A’s prerogative protects her against such intervention by B; and everything about the external standpoint that agent B serves calls upon B to subjugate A to that external standpoint. Although it is within A’s prerogative to do P rather than E – if A can get away with doing P under the watchful eye of the relevant external viewpoint – nothing precludes agents of that external viewpoint from suppressing A’s choice and subjugating A to the demand that she optimally serve that external viewpoint. Although A’s prerogative liberates A to some degree from the requirement that she impose sacrifices on herself for the sake of the relevant external viewpoint, it does nothing to limit the sacrifices that others may impose upon her in the name of the external viewpoint.

Of course, if the intervention to override A’s choice itself has significant costs from the external standpoint that is in play, it may be that the agent of that standpoint ought not to intervene. But, in such cases, the reason for non-interference with A’s exercise of her prerogative is simply that interference is not optimal from that external viewpoint. The fact that sometimes, from some external viewpoint, it will not pay to suppress A’s exercise of her prerogative does not indicate any degree of liberation of A from other-imposed subordination to that external viewpoint. The absence of restrictions against interference with the exercise of that prerogative leaves A totally unliberated from the relevant external standpoint along the other-imposed subjugation dimension. Given that the rationale for the prerogative is the liberation of the individual from external standpoints, a prerogative without accompanying restrictions fails to satisfy that rationale. A morality provides A with little liberation from the demands of an external standpoint if, as agents of that standpoint drag her off to the sacrificial altar, it at most requires those agents to assure A that she was not morally required to volunteer for this fate.

These points can be made more concretely and vividly by considering for a moment Scheffler’s modest prerogative and the sort of liberation it would provide or fail to provide for individual A from the impersonal standpoint (which remains the relevant external standpoint within Scheffler’s moral scheme). Suppose that the socially optimal action E is A’s surrender of four of her vital bodily organs the transplantation of which into four dying strangers will save those four persons, and that the personally less costly action P is A’s retention of those organs. Suppose further that through its specification of M a Scheffler-style prerogative makes it morally permissible for A to chose P over E. The crucial point is that the permissibility of A’s declining to sacrifice herself for the four strangers is entirely consistent with its being permissible or even obligatory for an agent of social optimization (e.g., the government) to impose that sacrifice upon A. Indeed, it will be permissible and obligatory for this agent to impose that sacrifice upon A unless there are very substantial peripheral social costs – costs from the impersonal standpoint – associated with the imposed organ transfer.<sup>8</sup>

So A’s Scheffler-style prerogative does not at all liberate her from other-imposed subjugation to the external viewpoint that remains salient within Scheffler’s scheme. And being subject to other-imposed subjugation to this external viewpoint pretty much makes a mockery of A’s modest liberation from the requirement that she herself choose that subjugation. This should be no surprise, as Scheffler repeatedly emphasizes that, within a code that includes a prerogative but no restrictions, it always remains permissible to engage in socially optimal action.<sup>9</sup>

My sense is that, when Scheffler says this, he is thinking of individual A remaining morally free, despite her prerogative, to choose to engage in the personally sacrificial and socially optimal action. Yet the more striking implication of everyone remaining morally free to engage in socially optimal action is that B, the agent of the impersonal standpoint, remains morally free (and usually obligated) to engage in socially optimal action by imposing socially optimizing sacrifices upon A. It is because of this absence of restrictions against interference with A’s exercise of her prerogative that the liberationist rationale for a Scheffler-style prerogative is unsatisfied along the other-imposed subjugation dimension.

The moral individualist is, of course, particularly interested in the instance of the central claim that concerns the individualist prerogative and its rationale. This is the more specific claim that:

“The rationale for the incorporation of the individualist prerogative into morality will not be satisfied unless that prerogative is accompanied by rights-correlative restrictions that protect individuals against interference with the exercise of this prerogative.”

To affirm this instance of the central claim is to affirm that, if it is reasonable to endorse the individualist prerogative, it is also reasonable to endorse individual rights against interference with the exercise of that prerogative. Given the moral individualist’s endorsement of the antecedent in this conditional proposition, the individualist arrives at the reasonableness of endorsing those rights. Furthermore, to affirm this more specific claim is to affirm individualism’s contention that what underwrites the teleological directive import of the separate importance of individuals – an import that appears within the present argument as the individualist prerogative – also underwrites the deontic directive import of the separate importance of individuals – an import that appears within the present argument as those rights-correlative restrictions against interference with the exercise of that prerogative.

As I have just said, the conjunction of the reasonableness of the individualist prerogative and the claim that the rationale for the prerogative will be satisfied only if that prerogative is accompanied by rights-correlative restrictions yields the reasonableness of affirming those restrictions and the rights that are correlative to them. Yet we can seek and should be pleased to find further explanation for the reasonableness of this affirmation. The further explanation proposed by moral individualism is that the root phenomenon of the separate, freestanding importance of each individual’s life does have both kinds of directive import. While the directive import for individual A of the separate importance of her life is the rationality of her promotion of her good, the directive import for others of the separate importance of A’s life and well-being is the reasonableness of their being circumspect in their treatment of A in the course of their respective pursuit of valued ends.

### III. The Individualist Prerogative and Self-Ownership

What is included within the individualist prerogative and *a fortiori* protected by rights-correlative restrictions against interference with the exercise of that prerogative? Personal prerogatives are incorporated into morality to liberate individuals at least to some degree from the requirement that they impose sacrifices on themselves to make the world better from some external standpoint. This is why a prerogative is always cast as making it at least morally allowable for the individual to decline to surrender her good for the sake of advancing the ends of others. There is no reason to understand any such prerogative as including the permissibility of the individual imposing sacrifices upon others in order to achieve gains for herself. (To say that such prerogative does not include the permissibility of imposing sacrifices on others is not to say that it includes the impermissibility of imposing such sacrifices.) Indeed, a prerogative’s non-inclusion of the permissibility of the imposition of losses on others is an *implicit* condition of our taking its incorporation into morality to be reasonable.

Shelly Kagan nicely points out that Scheffler’s explicit formulation of his prerogative has symmetrical implications for the permissibility of A’s declining to impose sacrifices upon herself and the permissibility of A’s attaining gains through imposing

sacrifices on others.<sup>10</sup> As far as the explicit formulation goes, a Scheffler-style prerogative in which  $M = 4$  allows healthy A to decline to surrender three of her vital organs even if this would save the lives of three strangers; but it equally allows sick A to extract organs from three healthy strangers in order to save herself. My point is that Kagan’s point is nicely *surprising* precisely because, given the liberationist role of a prerogative, we implicitly take a reasonable prerogative to allow individuals to eschew sacrifice and *not* symmetrically to allow their imposition of sacrifices.

Here is another way of making this point about the role of personal prerogatives. Prerogatives are incorporated into morality to allow each individual to devote *herself* to their own valued ends and not the valued ends of others; they are not incorporated into morality to make it permissible for each individual to devote *others* to her valued ends. If we think in terms of *who*, according to a specific prerogative, each individual may especially devote to the service of her separate system of ends, we presume that this prerogative says that each individual may especially devote herself (not others) to that end. Upon inspection, this implicit presumption is evident even in Scheffler’s own discussion of his proposed prerogative. Scheffler repeatedly casts his prerogative in terms of the permissibility of A devoting “attention and energy” to her own favored ends out of proportion to the impersonal importance of those ends. Scheffler never explicitly says *whose* attention and energy A may especially devote to her own ends. However, anyone who reads these passages in Scheffler with the question in mind, “*Whose* attention and energy may A especially devote to her own ends?” will take Scheffler to be saying that it is A’s attention and energy that A may especially devote to advancing her ends. Had Scheffler meant that A’s prerogative also operates over others’ attention and energy, he would have seen immediately that *ceteris paribus* his proposed prerogative just as much allows A to extract vital organs from each of three healthy strangers to save her life as it allows her to decline to surrender three of her vital organs to save the lives of three (otherwise) fatally ill strangers.

We should note a further argument for why a prerogative – in particular, the individualist prerogative – should not be understood as encompassing the permissibility of the individual’s imposition of sacrifices upon others to achieve gains for herself. If the individualist prerogative did include the permissibility of the individual imposing such sacrifices, then given the unacceptability of a prerogative without accompanying rights-correlative restrictions against interference with the exercise of that prerogative, we would arrive at rights against interference with the eschewing of such sacrifices *and* rights against interference with the imposition of such sacrifices. B would have a right against interference with his exercise of his prerogative to decline to be subject to sacrifices imposed by A and A would have a right against interference with her exercise of her prerogative to impose sacrifices upon B to advance A’s good. We would, then, arrive at a set of deeply impossible rights. To avoid this theoretically unattractive conclusion, we need to avoid the misstep that consists in taking the individualist prerogative to include the permissibility of imposing sacrifices on others.

Let us continue to think of the individualist prerogative as a specification, for each individual, of whom that individual may devote to the attainment of her own good. Unlike less robust prerogatives, the individualist prerogative says that each individual may *always* devote her own person to the attainment of her greater advantage. If we cast matters this way, we arrive at an alternative statement of the rights that are correlative to the restrictions that must accompany the individual prerogative if

the rationale for that prerogative is to be satisfied. The rights that are correlative to the restrictions against interference with individuals' respective exercise of this prerogative are their respective rights over their own person. If one (i) incorporates the individualist prerogative into morality; (ii) specifies the range of actions that are rendered permissible by that prerogative in terms of whom each individual may always deploy as she sees fit in service of her ends; (iii) recognizes that it is unacceptable to incorporate this prerogative without also incorporating restrictions against interference with its exercise, one will arrive at each individual's rights over her own person, i.e., over personal resources that constitute her person. That is, one arrives at the familiar libertarian right of self-ownership.

#### IV. The Individualist Prerogative and the Right to the Practice of Private Property

Rights-oriented libertarian theorists commonly first go for self-ownership and then employ the premiss of self-ownership within a further and discrete argument for individual rights over extra-personal objects. Locke, qua proto-libertarian theorist, first establishes each individual's property in his own person, infers from this that each has a property in his own labor, and affirms property in extra-personal objects on the basis of each individual retaining his rights over the labor that he has invested in extra-personal objects. Nozick, while seeking to avoid Locke's mixing of labor metaphor, grounds his Lockean entitlement doctrine of property rights in the claim that all alternatives to entitlement doctrine require the violation of individuals' rights of self-ownership. In contrast, I want to explore the possibility that the argument that I have presented as yielding a right of self-ownership will, if more broadly construed, also yield rights with respect to extra-personal objects. I say "rights with respect to extra-personal objects" because the rights I have in mind are not particular rights to actual holdings but rather the abstract right possessed by each individual that others abide by norms under which that individual is protected in her acquisition, transformation, deployment, and consumption of extra-personal objects. I refer to this abstract right as *the right to the practice of private property*.<sup>11</sup> Particular rights to actual holdings will obtain in virtue of individuals acquiring those actual extra-personal objects in accordance with the norms compliance with which fulfills individuals' rights to the practice of private property.<sup>12</sup>

As I have presented it, the argument from the individualist prerogative to rights takes that which the individual may devote to her valued ends to be the mental and physical components and capacities that constitute her person. But, on reflection, we should see that this construes too narrowly and too statically the ambit of what, under that prerogative, each individual may dedicate to the service of her system of ends. Few actions and no extended course of action involve only the agent's deployment of components or capacities of her person. Almost all actions and all extended courses of action involve also the deployment of extra-personal resources. Action rarely is performed entirely within the space defined by the outer surface of the agent's skin; and even when such action is performed, it is almost always made possible by other performances of the agent that require the deployment of extra-personal resources and is almost always in service of yet further action that involves the

deployment of extra-personal resources. It would be much closer to the mark to say that, under the individualist prerogative, each individual may devote her *life* – as it develops through her ongoing purposive engagement of her person with diverse extra-personal material – to her valued ends.

So, rather than explicating the individualist prerogative merely in terms of *who* each individual may devote to the attainment of her good, we should explicate it more broadly in terms of *what* each individual may devote to the attainment of her good – where, for each individual, the specified resources for permissible action will *include* her person. What is also within the ambit of any given individual's prerogative are the extra-personal materials that she has purposively incorporated into her life or that she can purposively incorporate into her life without thereby interfering with any other individuals' disposition of extra-personal materials that they have incorporated into their own lives. What is not within the ambit of a given individual's prerogative are other persons *and* the extra-personal materials they have respectively incorporated into their own lives. The individualist prerogative permits her to direct her life – not merely to direct her person – to her own ends. She need not diminish that life in order to enhance the lives of others. But, since the prerogative does not encompass the permissibility of any individual diminishing the lives of others in order to enhance her own, the ambit of the prerogative does not include other persons and the extra-personal material that they have integrated into their respective lives. Intuitively, the picture is simply that of the permissibility of individuals out there in the world, living their lives as they see fit in large measure through the acquisition, use, transformation, retention, exchange, consumption, and disposal of extra-personal material. It should, on reflection, be no surprise that a personal prerogative – especially a robust personal prerogative – will affirm not just the moral liberty of each to dispose of her person as she sees fit but will, more broadly, affirm the moral liberty of each to live her world-interactive life as she sees fit.

Although each actual person is within the ambit of her prerogative to live her life as she sees fit, what particular extra-personal material will come under the ambit of her prerogative will depend upon what extra-personal material that agent actually permissibly incorporates within her developing life. The prerogative is a prerogative to acquire, use, transform, retain, exchange, consume, and otherwise dispose of extra-personal material that is not already – or not until the point of some voluntary exchange – within the ambit of any other's like prerogative. There is no pre-ordained share of extra-personal material – not even any preordained share of *natural* extra-personal material – that defines the scope of each individual's permissible endeavors. There is no more some antecedent rule about the proper or fair or rightful distribution of extra-personal material – even natural extra-personal material – than there is an antecedent rule about the proper or fair distribution of personal resources.<sup>13</sup>

Recall, however, that even as we construe the individualist prerogative as liberating not merely persons but persons' world-interactive lives, that liberation is only from the moral requirement that they themselves forego gains in their lives in order to promote gains in the lives of others. As we have seen, by itself this liberation from *self-imposed* losses, leaves each individual entirely subject to the same or similar *other-imposed* losses. The bare prerogative leaves each individual entirely subject to interferences with the exercise of her prerogative. So, the prerogative by itself fails to satisfy its rationale of thoroughly liberating the individual from subordination to

external viewpoints. What is also needed for that rationale to be satisfied are rights-correlative restrictions against interference with the exercise of that prerogative. What is needed is a structure of rights that immunizes the individual in her chosen life-constituting world-interactive endeavors. Such a structure of rights will include both the right of self-ownership and the right to the practice of private property. The former protects the person – from the outer surface of her skin inward – in the course of her endeavors. The latter protects her life endeavors by morally securing for her the results of her prerogative-sanctioned acquisitions, transformations, retentions, exchanges, and dispositions. So, e.g., A need not keep that gathered acorn within her sweaty grasp in order for others to be required not to seize it, and B need not introduce his body between the object he has traded for and those who covet it in order for them to be required to respect his dominion over it. This moral protection of agents' world-interactive endeavors is accomplished through a system of rules that specify just what processes of acquisition, transformation, exchange, and so on confer ownership on the part of the agent to the resulting holdings. The right that individuals have which accomplishes their moral liberation as world-interactive agents from subordination to external viewpoints is the right to others' respect for the entitlements that the rules comprising such a practice of private property confer.

The argument heretofore has focused on the need to include such a right to the practice of private property for morality to accomplish the liberation of individuals from other-imposed subordination to external viewpoints. In addition to this moral liberation, there are the excellent *consequences* of general recognition and compliance with the rules constitutive of such a practice. That general recognition and compliance provides individuals with actual, predictable liberation from other-imposed subordination. It thereby provides individuals with the incentive to engage in the protected endeavors of acquisition, transformation, exchange, and so on. Further, this structure of private rights extends the liberty to determine how any particular resource will be used to the agent who has the most specific information about the useful properties of that resource – or enables the agent with that information to become the party with the protected liberty of choosing its disposition. This is good for the individual whose world-interactive endeavors are protected; and it is good for those comparably shielded individuals who interact directly or indirectly with the protected individual. To put it as contentiously as possible, it is good for the agents to have their capitalist acts protected; and it is also good for those similarly shielded individuals who interact with those capitalists as, e.g., employees or customers or suppliers or imitators. The contention is that the protection of capitalist acts releases a rising tide that at least strongly tends to elevate all (who are willing to swim with it or whom swimmers are willing to tow along).

It is worth mentioning one additional connection between the teleological and deontic facets of moral individualism. The teleological facet with its focus on the agent-relativity of value and its endorsement of the individualist prerogative involves the rejection of any agent-neutralist measure of alternative social states. It thereby undercuts any attempt to adjudicate disputes about which of two or more incompatible actions – e.g., A scratching her nose with her right index finger and B using that finger to season a stew – by determining which of those actions yields (or is expected to yield) the agent-neutrally better overall outcome. In the absence of such a teleological adjudication of such disputes, how can there be any public,

interpersonally sound adjudication? The answer is, by determining who has the right over and, hence, the right to dispose as she or he sees fit of the resource at the root of the dispute – e.g., who as the right over A's right index finger. A comprehensive structure of individual rights provides a comprehensive alternative approach to the adjudication of such disputes by disaggregating the decision-making authority over the resources over which there is contention. Under this disaggregation of decision-making authority, one particular deployment of a given resource can be said to be favored by morality – but only in the sense that it is the deployment chosen by the agent who has title over that resource. A dispute between A and B about which of them *should* have authority over some currently unowned object will, of course, not be resolvable by appeal to existing titles. Such a dispute can only be resolved by one of the parties acquiring (through initial acquisition or exchange) the sought after object in accordance with the rules of the applicable practice – which will include rules against acquisition through conduct that violates the already existing rights of others.

Circumventing of the need for a shared social evaluation of contentious action by this disaggregation of decision-making authority defuses social conflict by allowing each to dispose of himself and his own without the presumption that all endorse the chosen dispositions. B can concede that A has the right to determine by her choice how A's finger will be used without at all betraying his belief that it would be far better for the finger to be used in seasoning that stew than in scratching A's nose. B can concede that A has the right to determine by her choice how any of her bodily parts are employed without at all traducing his conviction that A's chosen employment is wicked. B can concede that A has the right to sacrifice *her* calves – the bovine sort – in the course of her religious rites without at all betraying his belief that God abhors such sacrificial rites.<sup>14</sup> An abiding feature of liberal individualism – and more specifically of moral individualism – is the deep-seated rejection of the idea of a shared substantive social end or hierarchy of ends to which all members of society are to be devoted. The more serious this rejection of a shared social end that is supposed to order and coordinate our lives, the more serious must be the turn to a structure of rights that protects individuals in the pursuit of their own valued ends, of their own conceptions of the good, and – not accidentally – that provides a framework within which individuals can non-sacrificially coordinate their own chosen endeavors.<sup>15</sup>

## V. A Self-Ownership Proviso

Locke and Nozick following Locke attach a *Lockean Provisio* to their doctrines of self-ownership and private entitlements. Such a proviso renders impermissible some actions that would otherwise count as legitimate exercises of rights, e.g., certain instances of owner A excluding individual B from drinking from A's waterhole. Such a proviso takes some of the sharp edge off of libertarian doctrine. I believe that Locke and Nozick are correct to adopt such a proviso, but that they do not properly tie their provisos to the claims of self-ownership. The adoption of a proviso with a specific grounding and character is an important issue for libertarian theory – and for the relationship between “right” and “left” libertarianism. For this reason, I pause before

my concluding section to indicate briefly how a proviso may be founded upon the same recognition of individuals as world-interactive agents that grounds the right to the practice of private property.<sup>16</sup> Here I will consider only the most obvious and simple application of a proviso, viz., its application to the exercise of property rights that have arisen through the initial acquisition of natural material.

The crucial intuitive idea is that, because individuals are world-interactive agents, their self-ownership rights can be contravened not only by trespasses upon their persons but also by some actions that block them from purposively bringing their self-owned powers to bear on the extra-personal world. If A gently encases sleeping B within a capsule composed of A's moldable plastic and refuses to release B, A nullifies B's self-owned world-interactive powers and contravenes B's self-ownership. The question is, what other dispositions of rightful holdings by some individuals *similarly* contravene the self-ownership rights of other individuals? I think the roughshod, but correct, libertarian answer is, dispositions that on net leave individuals with an environment less open to their bringing their powers to bear in pursuit of their ends than those individuals would face were individuals unable to establish private property rights. Solely as a rough illustration, consider the case of first arrivers to a previously unowned region and their subsequent disposition of the property they obtain through initial acquisition.

The first arrivers' establishment of property rights blocks later arrivers from bringing their powers to bear *by way of initial acquisition*. However, that initial establishment of property may well, *in other ways*, increase the later arrivers' opportunities to bring their powers to bear in the service of their ends over what those opportunities would have been had first arrivers and later arrivers not been morally empowered to establish property rights over those natural materials. Without their intending their actions to have this result, the pioneers and their establishment of initial entitlements may well create a world that is on net more hospitable to the endeavors of the individuals in the subsequent wave than those individuals would encounter were individuals in all waves precluded from establishing private titles. It is very misleading to think that those who arrive first and engage in initial acquisition do well in their pioneering endeavors at the expense of those who get to follow in the paths they have blazed. Surely all (or almost all) of us path-followers are better off than we would have been had we – not others – had to be the first acquiring pioneers.<sup>17</sup> (Think of how much more hospitable Hong Kong was in the last decades of the twentieth century to innumerable waves of later arrivers than it would have been had earlier arrivers not been able to establish private property rights.)

Nevertheless, still focusing on the easy cases of first versus subsequent arrivers, the first arrivers *might* so act as to render the world they have entered less hospitable on net to later arrivers bringing their powers to bear in the service of their ends. The first arrivers *might*, e.g., devote much of their time and energy to building barriers to prevent the landing of second and third waves. If they do so, they would act in violation of the self-ownership proviso; the blocked immigrants would have a case on the basis of their libertarian rights against such blocking actions. A well-developed rights-oriented libertarian theory would spell out how such a proviso would apply to the historically complex world in which we live – as it would address all those questions about what sort of political and legal institutions that worked out theory would legitimate.<sup>18</sup>

## VI. Conclusion

I have maintained that the rationality and moral permissibility of individuals pursuing their own distinct ends in their own chosen ways and the possession by individuals of the rights of self-ownership and private property that characteristically protect individuals in their chosen pursuits are two distinct directive imports of the root idea of the separate, freestanding importance of each individual's life and well-being. The linkage between the first (teleological) import and the second (deontic) import has been supported by showing why a normative code that includes a robust prerogative that allows the individual to eschew imposing sacrifices on herself must be also include broad restrictions on others that forbid them from interfering with the individual's exercise of that prerogative. The rights that are correlative to those restrictions are the libertarian rights of self-ownership and private property. Moreover, the linkage between that robust prerogative and those rights is their shared rationale – which is nothing but the separate importance of each individual's life and well-being. Finally, I have gestured toward a complication within libertarian rights doctrine – the self-ownership proviso – which allows the libertarian theorist to explain the impermissibility of certain dispositions of holdings that otherwise appear to be permissible on libertarian grounds.

## Notes

- 1 I gratefully acknowledge support for portions of the work on this essay that I have received through grants from the Earhart Foundation and the Murphy Institute of Political Economy at Tulane University.
- 2 Of course, for *some* As and *some* Bs, enhancements of B's good are instrumentally or even constitutively conducive to A's good. The good of particular individuals does not obtain in atomic isolation.
- 3 John Rawls, *A Theory of Justice*, 1st edn (Cambridge, MA: Harvard University Press, 1971), p. 23.
- 4 See *A Theory of Justice*, 22–7 and Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), pp. 32–3.
- 5 Samuel Scheffler, *The Rejection of Consequentialism* (Oxford: Clarendon Press, 1982).
- 6 My response to Scheffler appears in more lengthy form in Eric Mack, "Prerogatives, Restrictions, and Rights," *Social Philosophy and Policy* 22 (1) (Winter 2005): 357–93. For an earlier and similar criticism of Scheffler, see Lawrence Alexander, "Scheffler on the Independence Agent-Centered Prerogatives from Agent-Centered Restrictions," *Journal of Philosophy* 84 (1987): 277–83.
- 7 *The Rejection of Consequentialism*, p. 57, emphasis added.
- 8 If there are significant personal costs for agent B who would be imposing the sacrifice upon A, then B's prerogative will render it permissible for B to eschew imposing the sacrifice upon A. However, it still could easily be the case that agent C, the back-up agent for social optimization, should step in and impose upon B the costly (to B) act of imposing costs upon A.
- 9 Aside from his denial that the rationale for any prerogative would also be a rationale for accompanying restrictions, Scheffler offers a number of grounds for disbelief in rights-correlative restrictions. One is his unshakeable conviction that it is *always* at least permissible to engage in socially optimal action. From this it follows that there can be

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- no right against being subject to such action. Another ground for Scheffler is his belief that deontic rights are paradoxical because – as every friend of deontic rights insists – they forbid acts that violate those rights even if those acts would minimize the overall violation of rights.
10. Shelly Kagan, “Does Consequentialism Demand Too Much?,” *Philosophy and Public Affairs* 13 (1984): 239–54.
  11. See Eric Mack, “Self-Ownership and the Right of Property,” *The Monist* 73 (4) (October 1990): 519–43.
  12. When I say that individuals have a right to the practice of private property I do not mean that individuals have a right that such a practice be invented and delivered to them. Rather, I mean that, should such a practice have come to exist within an individual’s social order, that (lucky) individual will have a right to others’ compliance with its constitutive norms. Furthermore, had a somewhat different set of norms evolved in that social order – but still a set that qualifies as a practice of private property – the individuals inhabiting that order would have rights to others’ compliance with the norms constituting that practice.
  13. Here I mark my opposition to the “left-libertarian” attempt to combine a doctrine of self-ownership with a doctrine of original rights to equal shares – or equal joint ownership of – natural extra-personal objects. For advocacy of this view see Peter Vallentyne’s contribution to this volume. For some criticism of it, as it has been advanced by Hillel Steiner, see the section “Against Left-Wing Liberalism” (pp. 12–20) in Eric Mack, “Right-Wing Liberalism, Left-Wing Liberalism, and the Self-Ownership Proviso” in Karl-Heinz Ladeur, ed., *Liberal Institutions, Economic Constitutional Rights, and the Role of Organizations* (Baden-Baden: Nomos Verlagsgesellschaft, 1997), pp. 9–29.
  14. John Locke, *A Letter Concerning Toleration* (Indianapolis, IN: Hackett Publishing, 1983), p. 42.
  15. On how a system of “rules of just conduct” that largely operates to specify what is mine and what is thine is the culturally evolved solution to the problem of how individuals who radically differ from one another in their values, preferences, beliefs, skills, and circumstances can live together to mutual advantage, see the first two volumes of F. A. Hayek’s *Law, Legislation, and Liberty – “Rules and Order”* (Chicago: University of Chicago Press, 1973) and “The Mirage of Social Justice” (Chicago: University of Chicago Press, 1976), esp. pp. 107–13 of the latter.
  16. A case for this self-ownership proviso is developed in Eric Mack, “The Self-Ownership Proviso: A New and Improved Lockean Proviso,” *Social Philosophy and Policy* 12 (1) (Winter 1995), 186–218 and further developed in Eric Mack, “Self-Ownership, Marxism, and Egalitarianism: Part II” *Politics, Philosophy, and Economics* 1 (2) (June 2002): 237–76, esp pp. 243–51.
  17. See David Schmidtz, *The Limits of Government* (Boulder, CO: Westview Press, 1991), Ch. 2.
  18. Rights-based libertarian theory must also address the issue of the absoluteness of rights. For one preliminary discussion, see Eric Mack, “Non-Absolute Rights and Libertarian Taxation,” *Social Philosophy and Policy* 23 (2) (Jul. 2006): 109–41.

I shall formulate and motivate a left-libertarian theory of justice. Like the more familiar right-libertarianism, it holds that agents initially fully own themselves. Unlike right-libertarianism, it holds that natural resources belong to everyone in some egalitarian manner. Left-libertarianism is, I claim, a plausible version of liberal egalitarianism because it is suitably sensitive to considerations of liberty, security, and equality.

### 1. Justice

I shall be formulating a left-libertarianism theory of justice, but the term “justice” is used in several different ways. Here I shall understand duties of justice to be *duties that we morally owe someone*. Justice in this sense is concerned with avoiding *interpersonal wrongs* (i.e., actions that violate someone’s rights), but not with *impersonal wrongs* (i.e., actions that are wrong whether or not they wrong anyone; e.g., perhaps, destroying cultural relics when no one is harmed and everyone consents). As long as rights are understood broadly as perhaps pro tanto and highly conditional constraints protecting the holder’s interest or her will, justice in this sense is a broad topic. It is sensitive to all moral issues affecting the moral permissibility of actions, except those issues that are relevant only to impersonal duties (which, by definition, are not sensitive to the interests or wills of individuals).

In what follows, references to what is permitted should be understood as references to what is permitted *by justice*. An action is so permitted if and only if it violates no one’s rights.

### 2. Libertarianism

Libertarianism is sometimes advocated as a derivative set of rules (e.g., on the basis of rule utilitarianism or contractarianism). Here, however, I reserve the term for the