Libertarianism, Freedom, and Self-Ownership

1. Introduction

G. A. Cohen argues that the term ‘libertarian’ is a misleading label for the political philosophy expounded by Robert Nozick in *Anarchy, State, and Utopia*:

For the primary commitment of his philosophy is not to liberty but to the thesis of self-ownership, which says that each person is the morally rightful owner of his own person and powers, and, consequently, that each is free (morally speaking) to use those powers as he wishes, provided that he does not deploy them aggressively against others. ‘Libertarianism’ affirms not freedom as such, but freedom of a certain type, whose shape is delineated by the thesis of self-ownership.¹

Cohen’s point is not meant only to apply to Nozick’s position, but more broadly to the political viewpoint which bases a defense of laissez-faire capitalism and the night-watchman state (or anarchy) on robust individual rights. This viewpoint has gone by the name ‘libertarianism’ in English speaking countries at least since the 1960’s. This is due in no small part to the fact that those that hold this view see themselves as staunch proponents of the individual’s right to liberty.

But are ‘libertarians’ staunch proponents of the individual’s right to liberty? Or are they really staunch proponents of something else, something that should not be identified with liberty and may even come in conflict with it? As Cohen suggests, that something else is “the thesis of self-ownership”. My goal in this paper is to examine how libertarians might respond to Cohen in attempting to argue, not that they reject “the thesis

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of self-ownership”, but that their commitment to self-ownership in no way compromises
their commitment to individual liberty. But first, in the next section, I will spell out more
clearly “the thesis of self-ownership”. Then, in the third section, I will provide a
hypothetical scenario meant to motivate Cohen’s argument. Once these tasks are
accomplished I will critically examine three approaches a libertarian might take in
response to the hypothetical scenario laid out in Section Three. In the concluding section
I will briefly mention what I take to be the task that lays ahead for libertarians if they are
to mount a convincing case that they are the true defenders of liberty.

2. The Self-Ownership Thesis

The Self-Ownership Thesis (SOT) states that each person is the rightful owner
of herself, including her body and her mind. The ownership involved includes all the
components attendant with ownership of an object: the right to use it, exclude others from
using it, dispose of it, immunity from others expropriating it, and the right to transfer
ownership of it to someone else. This means that if I am a self-owner I have the right to
use my body and mind as I see fit, exclude others from using my body and mind, dispose
of my body and mind if I so wish (if I wish to take my own life, you may not coercively
prevent me), I am immune from others expropriating my body and mind (no one may
force me into slavery), and I have the right to transfer ownership of my body and mind to
someone else (I may voluntary make myself someone’s slave).²

² Not all libertarians are agreed on whether or not voluntary slavery is permissible. For the view that it
is permissible see Robert Nozick, Anarchy, State, and Utopia (New York: Basic Books, 1974), 331. For
the view that voluntary slavery is impermissible, see Murray Rothbard, The Ethics of Liberty (New York:
New York University Press, 1998), 40-41. None of my arguments in this paper hinge on a resolution to this
disagreement.
Although self-ownership entails a right against bodily harm, it should not be mistaken for the latter. One can think that a person has a right against others that they not subject her to bodily harm without thinking that she has the right to take harmful drugs, sell herself into slavery, or take her own life. The right to do all these things comes with self-ownership, but not with a right against bodily harm.

Among adherents of the SOT there is disagreement over the relationship between ownership of the self and ownership of parts of the world. Left-libertarians treat these types of ownership as more or less distinct.\(^3\) That people are self-owners entails little, if anything, about the right way external resources should be distributed among persons. Right-libertarians, on the other hand, do not treat self-ownership and world-ownership as distinct. If I own myself, right-libertarians say, I have a rightful claim to any income or resources I am able to acquire by exercise of my talents and abilities.\(^4\) Right-libertarians endorse a picture akin to that expressed in Locke’s famous quote:

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\text{“Every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with and joyned to it something that is his own, and thereby makes it his Property.”}\]

The view that I intend to focus on in this paper is right-libertarianism, so in the examples that follow I will assume the right-libertarian view of the connection between

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self-ownership and world-ownership. That is, trespassing on one’s external property or expropriation of their external property will be assumed to be a violation of that person’s self-ownership.

3. Larry’s Predicament

Imagine that Larry, who is on a hiking trip alone, wakes up in the morning to find that while he was sleeping under the stars, all the land in sight, within a two inch radius of the sleeping bag he is in, has been appropriated by Jeff. In fact Jeff has built a fence surrounding Larry with “No Trespassing” signs hanging on it. Larry has no food, only eight ounces of water, and no device by which to contact anyone. We can call this scenario ‘Larry’s Predicament’.

If Larry was to attempt to escape from the space he is confined to he would be trespassing on Jeff’s property and would therefore be violating Jeff’s self-ownership. Larry’s self-ownership, however, has not been violated; all the components of Larry’s ownership of himself are intact. Given that Larry’s self-ownership is not at stake, but Jeff’s is, if Larry attempts to escape, then libertarians are committed to saying that Larry must stay put. But how can proponents of liberty say that Larry must stay put in what is the equivalent of a jail cell and starve to death? The answer seems to be Cohen’s: because libertarians aren’t concerned with liberty, their concern is self-ownership.

There are three approaches libertarians might take with respect to Larry’s Predicament which would enable them to refute Cohen’s conclusion. The first approach attempts to dislodge the intuition that a proponent of liberty must find Larry’s case

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6 Throughout the rest of the article, unless otherwise stated, I will use the term ‘libertarianism’ in place of ‘right-libertarianism’.
troubling. The second approach challenges the assumption that Larry’s situation is consistent with self-ownership. Finally, the third approach attempts to deal with Larry’s Predicament by drawing our attention to a rival concept of freedom to the one assumed by many contemporary political philosophers, including Cohen.

4. The First Approach

Perhaps we are too focused on Larry’s freedom. What about Jeff’s freedom? If Larry trespasses on Jeff’s property doesn’t he restrict Jeff’s freedom to do what he wants with the land he appropriated? Of course Larry isn’t free to do much. But that’s just a consequence of what it means to make liberty a right possessed by all. As Jan Narveson puts it: “the general right of liberty is a right: it has, so the libertarian intends, a normative status, the effect of which, necessarily, is to overrule certain behaviors that people really might want to engage in, and, therefore, to restrict their general liberty in those respects”.7 The right to liberty Larry and Jeff both have compels Larry to stay put. Therefore, the example does not show that the libertarian’s commitment to self-ownership is at odds with an earnest commitment to liberty.

This response contains an important truth: one person’s rights impose normative constraints on others; they limit some people’s freedom. It would make no sense if we understood the right to liberty as a right to do literally anything one wants to do. What happens when I want to do something that would prevent you from doing something you want to do? Whose freedom in this case trumps whose? In fact an important function (some would say the function) of rights is to make adjudication possible where freedoms

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But all these points about the right to liberty can be easily granted without embracing the SOT. If the point is that we need some set of entitlements to determine who is free to do what, especially in cases of conflict, any system of non-conflicting entitlements can serve that role. In fact such sets of non-conflicting entitlements need not resemble anything one would recognize as a right to liberty or self-ownership. Further, there is a popular understanding of the right to liberty that could provide a non-conflicting set of entitlements: the right to maximum compatible liberty. Narveson, and many other libertarians, profess to endorse this understanding of the right to liberty, but their mistake is to think it is equivalent to self-ownership. Suppose that we were able to measure every individual’s freedom in the way Hillel Steiner has proposed, namely by the following fraction: \[ \frac{F_i}{F_i + U_i}, \] where the number of actions an individual is free to perform is represented by \( F_i \) and the number of actions an individual is unfree to perform is represented by \( U_i \). Using this method we could, in theory, come up with measurements of every individuals’ freedom and conceive of a situation where everyone’s ‘freedom fraction’ is as large as it could be without reducing anyone else’s ‘freedom fraction’. This would be a situation where everyone’s right to “maximum compatible liberty” is respected. The problem for libertarians is that there is no reason to assume, at least not a priori, that the situation where everyone’s right to “maximum compatible liberty” is respected would be equivalent to the situation where everyone’s right to self-ownership is respected.

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respected. It certainly doesn’t appear that Larry’s situation is one where everyone’s right to maximum compatible liberty is respected.

As a response to Larry’s Predicament, the libertarian might do better by asking us to focus more on the very nature of being free to act. Narveson takes this approach when he says:

To act is to *use oneself* in some way – to put oneself into motion in some direction or other. Being at liberty means that one acts as one’s own self directs, rather than as some other self directs; it therefore means that one *uses oneself* as one directs. The moral thesis of self-ownership asserts that this liberty is rightful. But if one wants to claim that people “by nature” *own themselves*, then one is simply proclaiming their general freedom to do as they please – which is exactly the libertarian principle itself, neither more nor less.10

“Acting as one’s own self directs” is ambiguous. It could mean several things. It could mean that what one does is what one would like to do. After all, Narveson says that if you proclaim the self-ownership thesis, you are endorsing the general freedom of people to do as they please. But as we’ve seen, this can’t be quite right. After all, as even Narveson himself has pointed out, a *right* to do as one pleases makes little sense. Another way to understand “acting as one’s own self directs” means that the choice one has made and/or will make is part of a sufficient set of attractive options. But a sufficient set of attractive options does not seem to be available to Larry. Maybe “acting as one’s own self directs” means not having one’s options arbitrarily limited. The problem with this construal is how exactly to hash out what ‘arbitrarily’ means. I suspect the only way to hash that out that will be acceptable to libertarians will appeal to the very notion of self-ownership, in which case the libertarian will be caught in a circle. Given Narveson’s

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quite literal language concerning putting oneself “into motion” perhaps the best understanding of “acting as one own self directs” means that one’s bodily movements originate from herself – what I do is not the result of being pushed, pulled, having my body manipulated by an evil scientist, etc. But in this case “acting as one’s own self directs” is compatible with not being free to do anything at all. Acting as one’s own self directs, understood in this very literal way, may be necessary for freedom, but it should not be identified with freedom.

5. The Second Approach

Some libertarians will reject the assumption that, fenced in by Jeff, Larry’s self-ownership is intact. According to these libertarians, self-ownership should be understood in a richer way such that it entails what Eric Mack has labeled ‘The Self-Ownership Proviso’ (SOP). According to Mack “The SOP requires that persons not deploy their legitimate holdings, i.e., their extra-personal property, in ways that severely, albeit noninvasively, disable any person’s world-interactive powers.”11 Mack explains the rationale behind the proviso:

A person’s rights over herself include rights over her talents and energies. Talents and energies are at least largely “world-interactive powers,” i.e., capacities to affect her extra-personal environment in accord with her purposes. But such world-interactive powers are essentially relational. The presence of an extra-personal environment open to being affected by

those powers is an essential element of their existence. For this reason, an agent’s rightfully held world-interactive powers can be negated by noninvasive means, as well as by invasive ones. By invasive means, e.g., by assaults upon the agent, an individual’s powers can be destroyed or appropriated; but an agent’s world-interactive powers can be comparably negated…by noninvasive means. This can be done by negating (to a sufficient extent) the presence of an extra-personal environment open to being affected by the agent’s powers.  

The type of disablement of world-interactive powers that the SOP rules out, on Mack’s account, are severe forms of disablement, for instance, of the kind Larry suffers or the kind suffered by a shipwrecked person who is denied permission to come ashore on an island owned by someone else. Poverty, joblessness, working for a low-wage, etc. are not, per se, violations of the SOP.

If a proper understanding of self-ownership includes the SOP, then Larry’s self-ownership has been violated. There is no burden on the part of the libertarian to explain how she can be a proponent of liberty and endorse Larry’s situation because her normative commitments are not consistent with an endorsement of Larry’s situation.

But the advocate of the SOP faces a major objection. Insofar as the SOP is seriously meant to be an extension of the concept of self-ownership it is committed to a very bizarre conception of what ownership entails. Suppose George, who rents a house from Jerry, frequently mows the yards outside the house with his lawnmower. One day, as

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12 Ibid., 186.
Jerry had informed George would happen, a landscaping company, hired by Jerry, removes all the grass that George, up until now, has mowed, and replaces it with stones (Jerry has eccentric aesthetic sensibilities). Assuming there is no other yard that George could mow with his lawnmower, Jerry has nullified and disabled the powers of George’s lawnmower. But clearly George still owns his lawnmower. By parity of reasoning, although Larry’s world-interactive powers have been nullified – there is little, if anything, he can do – he still owns himself.

Mack considers an objection like this but responds that it is unclear that his view commits him to saying, in our case for instance, that George’s property right in his lawnmower has been violated. Unfortunately Mack does not explain why that is the case. But Mack also responds by saying he has provided strong reasons for a right not to have one’s world-interactive powers nullified or disabled, in the form of intuitions concerning hypothetical cases and in the form of a specific argument: “That argument is that if an individual’s status as a purposive being with rational ends of her own does provide a rationale for her claims against others’ behavior, then the fact that her pursuit of those ends necessarily is a matter of her bringing her world-interactive powers to bear on the world, also provides a rationale for her claim against the severe nullification of those powers – whether that nullification is achieved invasively or noninvasively.”

It may be the case that Mack’s argument provides a sound justification for a right not to have one’s world-interactive powers nullified or disabled. But the point still stands that such a right has nothing to do with self-ownership. If it is a right, then it is something above and beyond the right to self-ownership and may come into conflict

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13 Mack attributes the objection to Cohen. Ibid., 201, n. 21
14 Ibid., 201.
with it. Interestingly Mack is not uncomfortable with the possibility that the right not to have one’s world-interactive powers nullified is not a component of the right to self-ownership:

But nothing essential hinges on categorizing the claim against severe nullification as a claim of self-ownership. This categorization is certainly not required by the concept of ownership.¹⁵

For the purposes of arguing that persons do possess a right against severe nullification of their world-interactive powers, Mack is right. But for the purpose of avoiding having to acquiesce to Larry’s situation by appealing to the SOP, something essential does hinge on whether or not the claim against severe nullification is a claim of self-ownership. Recall that the reason we are discussing the SOP is to see if it is a possible way for the libertarian, who holds that self-ownership exhausts justice, not to be committed to endorsing Larry’s Predicament as just. If the libertarian wants to say that Larry’s situation is unjust because, although his self-ownership is intact, his right against severe nullification isn’t, then he is committing himself to a view of justice that includes more than the SOT. In addition, the right against severe nullification may come in conflict with the right to self-ownership. (One might say that that is precisely what happens in cases where the right against severe nullification is invoked, e.g., Larry’s case). If an alleged libertarian endorses the right against severe nullification in certain cases of conflict with self-ownership, then she is endorsing infringements of self-ownership. If she thinks self-ownership can be justly infringed in certain cases, why could it not be infringed for the

¹⁵ Ibid., 202.
sake of other considerations besides a right against severe nullification? So to conclude this section, this second approach does not appear to be a promising way for libertarians to handle Larry’s Predicament because it involves introducing a normative notion that undermines a strong commitment to self-ownership.

6. The Third Approach

The third and final approach still left to discuss, unlike the second approach, does not challenge the assumption that Larry’s situation is consistent with self-ownership, but, unlike the first approach, does not attempt to deny that Larry’s liberty is at stake, at least not in the way liberty has been implicitly understood so far. Rather than leaving that implicit, let’s make it explicit.

The way that liberty has been implicitly understood so far is in terms of options available to an agent. If all the options available to Larry are also options available to Jeff, and vice versa, then Larry and Jeff are equally free. Using a term borrowed from Philip Pettit, we can call this understanding of freedom option-freedom. This is the type of freedom people are talking about when they speak of some having more or less freedom than others.

Contemporary political philosophers typically ignore the possibility that there is any other way of understanding the concept of freedom except as option-freedom. This is odd if Pettit is correct that throughout most of history a different understanding was taken for granted by political philosophers. This different notion of freedom Pettit calls agency-freedom. Pettit explains:

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In the longer history, the antonym of freedom is slavery or, more generally, subjection to the will of another... And when freedom is cast as the antonym of subjection, then freedom is taken to be, in the first place a property of agents… It is an ideal that turns on how a person relates to their fellows, not something that is fixed just by the quantity of choice they enjoy. It is a matter, essentially, of social standing or status.\textsuperscript{17}

Agency-freedom may be what libertarians are primarily concerned with. First, it is striking that Pettit uses the example of a slave as a prototype of someone who lacks agency-freedom given that libertarians typically use a slave as a prototype of someone whose self-ownership is not respected. Second, it appears apparent, if we rule out appeal to the SOP, that libertarians are not all that concerned with the amount of options available to a person. If the libertarian insists that Larry is free, then, given the extremely small amount of options available to Larry, it makes sense of the libertarian’s position to think that freedom, understood as option-freedom, is not what the libertarian is talking about when she says that Larry is free. Even though Larry has little in the way of options, he still possesses the requisite social standing that comes with the \textit{title} he has over his body and mind. We can then make sense of the right to liberty being identical with self-ownership if the former is understood in terms of agency-freedom. But if the right to liberty is understood in terms of option-freedom such identification fails.

Of course the plausibility of this approach will rest on the plausibility of self-ownership being the appropriate conception of agency-freedom. I do not intend to make that judgment here but it is worth highlighting what libertarians are up against. To do that

\textsuperscript{17} Ibid., 394.
I will briefly summarize the differences between self-ownership and Pettit’s republican conception of agency-freedom: non-domination.

Pettit says that persons will possess agency-freedom to the extent that they have guaranteed protection from arbitrary interference by others. Pettit contrasts his account of freedom as non-domination with the liberal notion of freedom as non-interference. Non-domination, Pettit says, does not merely require that it just so happens that a person is not interfered with arbitrarily. It does not even require merely that it is improbable that a person will be interfered with arbitrarily. Rather, it requires that it be as near as impossible for a person to be interfered with arbitrarily. Whereas, according to Pettit, on the liberal view it is sufficient that it just so happens that someone is not interfered with in order for that person to count as free. I imagine libertarians will take a side similar to that of the liberal’s (assuming Pettit is correct that this is the liberal view). As long as it happens to be the case that someone’s self-ownership is not violated, that person will count as free. Any institutional guarantees against violations of self-ownership would count as a bonus (as long as they themselves do not involve violations of self-ownership).

A major difference between the republican’s ideal of non-domination and the libertarian’s ideal of self-ownership is the use of the qualifier ‘arbitrary’. According to Pettit, non-domination does not require a guarantee against all interference, only against interference that is arbitrary. By that Pettit means interference which is not forced to track my avowed interests. Pettit uses the example of Ulysses tied to the mast. Because Ulysses’ sailors are tracking his interests, his being tied to the mast does not count as

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19 Ibid., 63-64.
20 Ibid., 65-66.
a violation of his agency-freedom. As far as the case of Ulysses goes, libertarians are unlikely to see the case as problematic because Ulysses gives his consent to being tied to the mast. But, as Geoffrey Brennan and Loren Lomasky point out, Pettit’s account of agency-freedom includes no requirement for consent.\textsuperscript{22} As long as a person’s interests are taken into consideration and there is a procedure available for her to contest an act of interference, then that interference does not count as arbitrary. These requirements are hardly sufficient for the libertarian.

The final difference between the republican and libertarian accounts of agency-freedom is that what count as instances of domination on the republican line, and hence a violation of agency-freedom, include relationships between people that do not necessarily involve any violations of self-ownership.\textsuperscript{23} Whereas on the libertarian account, such relationships, although perhaps unfortunate for other reasons, will not count as violations of agency-freedom, because they do not involve violations of self-ownership.

7. Conclusion

In this paper we have looked at possible ways libertarians might respond to Cohen’s argument that they are not all that concerned with liberty, but rather with an entirely different value, namely self-ownership. I have argued that the first two approaches are unsatisfactory. The first approach seems impotent to dislodge the intuition that Larry’s liberty, understood in terms of opportunities to act, is at stake, even when we take into account that we should expect to see people’s liberty constrained when we make liberty a


\textsuperscript{23} Petit mentions employment relationships (\textit{Republicanism}, 163) and marriage relationships (\textit{Republicanism}, 78).
right that all people have. The second approach has problems insofar as it will inevitably involve having to introduce considerations (e.g. a right against severe nullification) that will undermine the libertarian’s strong commitment to self-ownership.

I have not offered my own judgment as to whether or not the third approach is plausible. Determining that will involve resolving disputes between libertarians and republicans which I’ve had only the space to provide a brief glimpse of. These disputes will need to be resolved and they will need to be resolved in the libertarian’s favor if she is to convince us that she is the true defender of liberty. Not only that, she will also have to convince us that her conception of liberty is more proper or more valuable than any conception which spells out the notion in terms of options available to an agent. Otherwise it will turn out that Cohen is right in saying that ‘libertarianism’ is a misleading label for a view that places primary importance on a value other than liberty.24

24 The reader should note that the libertarian always has the option of embracing Cohen’s suggestion. Nothing I have said in this paper speaks against the libertarian taking such a move. (In fact what I have said might be taken to speak for it!). Nor should anything I have said in this paper be interpreted as a critique of the substance of the view that goes by the name ‘libertarianism’, or more precisely, ‘right-libertarianism’. 