

**Libertarianism Left and Right, the Lockean Proviso,
and the Reformed Welfare State**

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In the context of their response to Barbara Fried's vigorous critique of left-libertarianism, Peter Vallentyne, Hillel Steiner, and Michael Otsuka offer a compelling reason for anyone with liberal egalitarian inclinations to take libertarianism seriously.¹ As they see it, the dominant strand of liberal egalitarianism follows in the footsteps of Rawls and focuses on questions about how to organize the social institutions that divide the fruits of cooperation. In contrast, they point out that libertarian theorizing begins with an earlier question, that of how an individual or group of individuals can come to own the natural resources or artifacts used in the production of these fruits. Moreover, they contend that the answer to this question partly determines the appropriate division of the fruits of cooperation, or at least has the potential to do so.

In its weakest form, this claim should be uncontroversial. Insofar as there are any natural rights at all, surely they must be taken into consideration in assessing the justice of whatever social institutions directly affect the realization or violation of those rights. More specifically, insofar as libertarian theorizing identifies natural rights of property ownership, social institutions related to the

distribution of wealth must respect these rights in order to be fully just.² For instance, suppose I have natural rights to all of the goods and resources in my possession, and no natural obligations to provide in any way for the needs of others. If that is correct, then a government institution that confiscates my wealth in order to distribute it to others whose only claim is their greater need would be an unjust violation of my rights. In such a case it might not be true, as libertarians sometimes suggest, that taxation for redistributive purposes would be akin to slavery, but nonetheless such taxation would in fact be akin to theft.³

The catch, of course, is that it is highly controversial whether or not libertarian theorizing successfully establishes the existence of natural rights to property that genuinely impose constraints on the division of the fruits of social cooperation or on the basic institutions of society affecting the distribution of wealth. My aim in this paper will be to demonstrate that if we adopt a libertarian framework we can in fact derive results that constrain the set of permissible redistributive social institutions, but that these constraints are not the ones that have traditionally been endorsed by libertarians. Specifically, I will argue that in modern capitalist countries, such as the United States, the constraints derived from libertarianism impose a requirement for substantial redistributive welfare programs. Such a conclusion is relatively standard among left-libertarians, but I will argue that even a right-libertarian framework contains commitments sufficient to derive this result. In Sections I and II, I will set the stage for this

argument by laying out the differences between various forms of libertarianism and explaining the relative appeal of the form of right-libertarianism that I will focus on for the remainder of the paper. Essentially, I will argue that if one is to be a libertarian it makes sense to be what I will call a Lockean right-libertarian. In Section III, I will argue that Lockean right-libertarianism, which is the sort of libertarianism advocated most famously by Nozick, generates commitments to moderately extensive redistributive programs in countries such as the United States. Unsurprisingly, my argument will focus on what is commonly called the Lockean proviso, but perhaps more surprisingly I will show that even on a relatively weak reading of the proviso, such as Nozick's own interpretation of it, these redistributive conclusions follow. In Section IV, I will then briefly consider the implications of my analysis for the assessment of current welfare policy in the United States, and argue that Lockean right-libertarians are committed to a set of programs that I refer to as "modified welfare reform." This is an approach to welfare policy that incorporates the basic idea of the 1996 U.S. welfare reform, which is that receipt of benefits should be conditional on meeting a work requirement, and modifies it by including a commitment to provide opportunities for employment.

If my arguments are successful, I will have shown that Lockean right-libertarians ought to endorse conclusions about welfare policy similar to those frequently drawn by classical liberals.⁴ Locke himself is well known for claiming

in his *First Treatise of Government* that the needy have a right to the surplus resources of the wealthy, and when writing directly on the matter of welfare relief he has asserted that the central task in designing welfare policy is to find or create avenues of productive employment for the poor.⁵ Similarly, Kant's discussion of welfare in *The Metaphysics of Morals*, although not explicit regarding the importance of work, suggests something akin to modified welfare reform by restricting state support to those who are genuinely unable to support themselves.⁶ The Lockean right-libertarian line of argument I will be developing is different from that of Locke, Kant, or other classical liberals, but if my analysis is correct Lockean right-libertarians ought to reach conclusions similar to those of these classical liberals.

I. THE LIBERTARIAN FRAMEWORK

The term libertarian is used in a wide variety of ways, but I will focus exclusively on libertarianism as a specific theoretical framework or set of basic principles that is used to derive conclusions about questions of justice. Traditionally, libertarian arguments of this sort have been used to generate conclusions favoring minimal government and strong rights to private property, with a corresponding rejection of egalitarian social institutions such as programs aimed at the redistribution of wealth. As a result, the term libertarian is sometimes used to refer to this set of conclusions, regardless of the premises used to support them. As a point of

terminology, however, I will identify a view as libertarian on the basis of its theoretical framework or basic principles, rather than its policy conclusions.⁷ In particular, I take the libertarian framework to involve two fundamental ideas. First, libertarians are committed to the claim that there is a natural, or pre-social, right of self-ownership, often characterized as full self-ownership. Second, libertarians operate under the assumption that thinking about the relations of fictional self-owning individuals in a pre-social setting, or state of nature, yields insight into the rights and obligations of actual people who live within a complex social setting, which is to say that it yields insight into the justice of the social institutions that govern actual lives.

Critics of libertarianism have raised objections against each of these central features of the libertarian framework. To begin with, the reliance on state of nature theorizing renders libertarianism subject to the criticism that it illegitimately treats people as fully independent, or atomistic, agents. In what has come to be called the “dependency critique,” feminist philosophers such as Nussbaum have argued that liberal theorists in general tend to ignore the fact that as a normal part of the course of human life one experiences periods of extreme dependency, most notably as an infant or child.⁸ Because libertarian theories are built on the presupposition that we can gain insight into the obligations owed between actual people in the real world by evaluating the actions of fictional agents in a state of nature, libertarianism is a prime target of this dependency

critique, particularly given that libertarians uniformly imagine the fictional agents in the state of nature to start out fully independent from one another. As Nussbaum and other feminist critics see it, the libertarian project is essentially a non-starter, because even if we could determine the obligations owed between agents who are initially construed to be completely independent of one another, that would tell us nothing about the obligations owed between actual people who do not just happen to be born and raised in a fundamentally social environment but by their nature must begin their lives in such an environment.

Although I take this line of criticism to raise significant questions about the usefulness of state of nature theorizing, for the purposes of this paper I am going to set those concerns aside. My aim will be to show that even if libertarians are able to offer a compelling response to the dependency critique, their basic framework nonetheless commits them to supporting substantial taxation and redistribution programs.

Another important line of criticism often leveled against libertarianism is that the theoretical starting points are too slim to generate determinate conclusions about matters of justice in the real world. This line of criticism is at the heart of Fried's rejection of left-libertarianism.⁹ She emphasizes the fact that rights of ownership are decomposable and variable, which is to say that there is no well-defined package of rights that constitutes ownership. Instead, the specific rights possessed by an owner vary dramatically between instances of ownership. As a

result, Fried argues, it is impossible to derive conclusions about our rights and obligations from the generic idea of self-ownership. Rather, one must flesh out the idea of self-ownership by determining which rights of self-ownership individuals possess. Only once that is done will the claim of self-ownership have definite meaning. In other words, Fried's objection is that the libertarian framework uses the idea of self-ownership inappropriately. On her view, appealing to a pre-theoretical premise of self-ownership cannot lead to determinate conclusions about our rights and obligations because the pre-theoretical notion of self-ownership is not itself well-defined.

Vallentyne, Steiner, and Otsuka respond to Fried's criticism by acknowledging her point that ownership rights are decomposable and variable, but then delineating and defending a general account of what they take to be the core rights of self-ownership that are fundamental to the libertarian project.¹⁰ Although this response may not fully quell Fried's concerns, in what follows I will suppose that Vallentyne, Steiner, and Otsuka, and other libertarians, can legitimately appeal to a sufficiently well-defined fundamental principle of self-ownership to get the libertarian project off the ground.¹¹ This is not to say I will assume libertarians are able to squeeze a comprehensive theory of justice out of state of nature arguments based on the premise of self-ownership. To the contrary, I will ultimately argue that the libertarian framework is too thin to generate fully determinate results concerning matters of taxation and

redistribution. But I will proceed on the assumption that libertarians can respond to Fried's criticism and identify a sufficiently determinate sense of self-ownership to motivate adopting and exploring a libertarian perspective.

II. FORMS OF LIBERTARIANISM

Even among those who accept what I am identifying as the basic libertarian perspective, there is a wide range of further theoretical disagreement. Most significantly, libertarian theorists are often divided between those who support "right-libertarianism" and those who support "left-libertarianism." Following Vallentyne, Steiner, and Otsuka, I take the essential distinction between right- and left-libertarianism to be that left-libertarians endorse a principle of egalitarian ownership of natural resources in the state of nature.¹² Unsurprisingly, the addition of this sort of egalitarian principle to the basic libertarian framework opens the door to forms of libertarianism that yield significantly egalitarian prescriptions, particularly with respect to the global distribution of resources.

Although I do not deny the appeal of the egalitarian principles included in at least some versions of left-libertarianism, I think it is at least coherent, and perhaps even appropriate, for right-libertarians to resist the fundamental egalitarian claims of left-libertarianism. Before justifying this limited endorsement of right-libertarianism, however, let me specify the version of right-libertarianism I will be defending as plausible. Following Vallentyne, I will

distinguish between radical right-libertarianism and Lockean right-libertarianism.¹³ Radical right-libertarians assert that there are no moral constraints on the appropriation of unowned resources in the state of nature. However it is that such appropriation is accomplished, such as by mixing one's labor with the resource in question, an individual in the state of nature need only do that in order to acquire the resource. Most notably, radical right-libertarians reject the idea of a Lockean proviso according to which such appropriation is limited by an obligation to leave "enough and as good" for others.¹⁴ As the name suggests, Lockean right-libertarians, such as Nozick, endorse just such a Lockean proviso, although like Nozick they tend to argue that the proviso turns out to be relatively insignificant.

As Nozick points out, the basic idea behind the proviso is that even in the state of nature there are moral constraints against harming others.¹⁵ If that is correct, then insofar as my acquisition of unowned resources harms you, the appropriation is unjust. By accepting some form of a Lockean proviso, Lockean right-libertarians are therefore endorsing two complementary claims. On the one hand, they are asserting that if I leave a sufficient supply of comparable resources for others to appropriate, then my appropriation does no harm and is morally unproblematic. On the other hand, they are conceding that if I fail to leave such a supply, then it is possible my appropriation has in fact done harm, and if it has

then some sort of compensation must be paid in order to justify the appropriation, if it can be justified at all.

Admittedly, more needs to be done to develop an adequately precise account of the implications of this proviso, and I will take on that task in Sections III and IV. But it is not necessary to have sorted out all of the details of a plausible Lockean proviso in order to see that right-libertarians should embrace some version of it. It might seem as though radical right-libertarians could justify rejecting the proviso by discarding the moralized account of the state of nature upon which it rests. In other words, radical right-libertarians might imagine something more like a Hobbesian state of nature. In Hohfeldian terms, this amounts to the claim that in the state of nature there are no initial claim rights, but only liberties.¹⁶ In that case, there would be no general obligation not to harm others, and therefore no way to arrive at the more specific obligation not to appropriate unowned resources in a way that harms others. But this way of escaping the Lockean proviso is not available to radical right-libertarians, unless they are willing to give up the central libertarian thesis of self-ownership. After all, ownership of anything, including oneself, amounts to some set of claim rights. It may not always be clear which claim rights are involved, and Fried may be correct that thinking in terms of ownership can create confusion because of this ambiguity, but in any event self-ownership requires more than mere liberties. Otherwise my self-ownership would be perfectly compatible with another's

ownership of me. The libertarian framework therefore only makes sense if it incorporates a state of nature in which individuals have at least some claim rights, and the corresponding obligations, in which case it is at least possible for acts of appropriation to violate these claim rights, which is to say that there is an obligation to limit appropriations by some sort of Lockean proviso that prevents such violations.

Although simply shifting to a Hobbesian state of nature is not a viable option for radical right-libertarians, Feser has recently offered a more sophisticated argument purporting to show that libertarians can eschew any proviso limiting acquisition or appropriation. His claim is that it is impossible for any act of appropriation to be unjust given that appropriation by its very nature involves the acquisition of previously unowned resources. As Feser puts it:

For B to have been wronged by A's acquisition of R, B would have to have had a rightful claim over R, a *right* to R. By hypothesis, however, B did *not* have a right to R, because *no one* had a right to it—it was unowned, after all. ...In fact, the very first person who could conceivably be wronged by anyone's use of R would be, not B, but *A himself*, since A is the first one to own R."¹⁷

This is a seemingly straightforward argument, and has the appearance of being a valid deduction, but it rests on two key points of ambiguity or equivocation. The first of these involves Feser's inference from the premise that B did not own R to the conclusion that B did not have any rights with respect to R. Even if we suppose, for the sake of simplicity, that ownership is an all or nothing affair, this inference is valid only if we restrict our attention to claim rights. This is because the fact that R is initially unowned does not rule out the possibility that B possesses liberty rights with respect to R. Moreover, Feser's own discussion of the situation presumes that A has a liberty right to use R, and his aim is to demonstrate that A has a further liberty right to appropriate R. Given that there is not supposed to be anything special about A in this story, B must have parallel liberty rights as well.

This might seem to be insignificant. After all, if A and B both have liberty rights to use R, then A does nothing wrong in preventing B from using R. In order for B to be wronged by A's use of R, B would need claim rights over R rather than mere liberty rights, and this is precisely the conclusion that Feser is after. Or is it? Here lies the second gap in Feser's analysis. Although Feser is correct to conclude that A's use of R does not wrong B, this is not equivalent to the conclusion that A's appropriation of R does not wrong B. And given B's liberty rights to use R, the difference between A's use and A's appropriation is quite important. In appropriating R, A does not merely prevent B from exercising

his liberty rights, but instead revokes some of B's liberty rights by imposing upon B an obligation not to violate A's newly formed claim rights to R. Such a unilateral imposition of obligations is at least morally suspicious.¹⁸

I am willing to concede that the revocation of another's liberty rights may in some cases be morally permissible. To borrow an example of Mack's, when Adam crosses an unowned field that Zelda is using for archery practice, by occupying the space between Zelda and her target he temporarily revokes her liberty to shoot at will, but given that the field is unowned it is natural to conclude that Adam has done nothing wrong.¹⁹ Nonetheless, the fact that appropriation unilaterally imposes obligations on others raises the possibility that appropriation can be a source of injustice, contrary to Feser's claim. As a result, right-libertarians are compelled to endorse some sort of Lockean proviso that distinguishes just appropriations from unjust ones. I will say more about how this proviso must be construed in order to prevent or compensate for injustice in Section III, but for now the conclusion is that radical right-libertarianism is an unstable position.

If I am correct that there are compelling reasons for right-libertarians to be Lockean right-libertarians, the next question is whether Lockean right-libertarians can resist the further shift to left-libertarianism. As indicated earlier, the crucial difference between Lockean right-libertarianism and the various forms of left-libertarianism is that left-libertarians endorse some sort of egalitarian principle

governing the initial ownership of natural resources in the state of nature. As Vallentyne, Steiner, and Otsuka make explicit, left-libertarians treat this egalitarian principle as fundamental. It is not derived from a Lockean proviso that is already built into the libertarian framework, but is instead an independent principle that is added to the two basic libertarian commitments to self-ownership and to the relevance of state of nature theorizing.²⁰ What this principle asserts is that everyone in the state of nature has certain claim rights to his or her share of the natural resources covered by the principle. Left-libertarians disagree about which claim rights are involved, and about which resources are included, but all share a commitment to some principle of this form.

Since left-libertarian views incorporate an egalitarian principle that is independent of the basic libertarian framework, it is open for right-libertarians to resist the shift to left-libertarianism even though it is not open for radical right-libertarians to resist the shift to Lockean right-libertarianism. Moreover, right libertarians have at least some reason to be skeptical of left-libertarianism. As they point out, assertions of ownership rights call for explanation. Libertarians generally agree that the natural claim rights of self-ownership are grounded in features of human agency or in the relationship between a person and his or her body and actions. Right-libertarians then raise questions about what could possibly underwrite general or widespread claim rights over natural resources, particularly given that the holders of these rights need have no previous

interaction or other connection with the resources in question.²¹ The force of these questions is perhaps best illustrated by considering an example. Suppose a group of people are coexisting in a state of nature. One of them explores off the coast and discovers a previously unknown island. Now consider what rights the different people possess over this island. The right-libertarian view is roughly as follows. *It may be that the Lockean proviso imposes some restrictions on the explorer's liberty to appropriate the island entirely for herself. But how can other inhabitants of the state of nature possibly have claim rights over their shares of the island that independently restrict appropriation apart from whatever limitations the proviso imposes? They have never set foot on or seen the island. At this point they don't even know it exists! Although there is room for debate over how this is to be accomplished, the explorer, in virtue of having found the island, is in a position to establish claim rights over it, or parts of it. But purported widespread claim rights to equal shares of the island are groundless.* This is, admittedly, more appeal to intuition than argument. Nonetheless, I take the right-libertarian intuition, which is that ownership claims need to be grounded in some particular relationship or connection between the owner and the owned, to be fairly powerful here.²²

In response, left-libertarians tend to appeal to similarly powerful egalitarian intuitions. Otsuka, for instance, argues that without an egalitarian principle of initial ownership the libertarian framework will lead to unacceptably

unfair and inegalitarian outcomes.²³ His primary concern is to demonstrate that it is possible to achieve egalitarian outcomes within the libertarian framework, given an appropriate distribution of initial resources. Because he thinks the inegalitarian outcomes that result from a right-libertarian perspective, such as Nozick's, are objectionable, he endorses an egalitarian principle of initial ownership that he believes is necessary to avoid them.

To some extent, the dispute between right- and left-libertarians therefore comes down to a clash of intuitions. Right-libertarians appeal to the intuition that ownership claims need to be grounded in particular relationships to deny an egalitarian principle of initial ownership. Left-libertarians appeal to the intuition that excessively inegalitarian outcomes are objectionable to support such a principle, which they see as necessary to avoid the inegalitarian conclusions that follow from a right-libertarian framework.

Although I can appreciate the force of both intuitions, I think there is at least some reason to favor the right-libertarian perspective in this debate. After all, the way in which left-libertarians deploy the egalitarian intuition makes their view suspiciously *ad hoc*. It appears as though the egalitarian principle of initial ownership is incorporated into the libertarian perspective primarily in order to achieve intuitively palatable conclusions. Granted, if one endorses reflective equilibrium, this sort of trade off between intuitions and principles is not necessarily objectionable. Even within a reflective equilibrium model, however,

it seems more philosophically sound to rely on intuitions about what it takes to ground claims of ownership than to rely on intuitions about what degrees of inequality are acceptable.

Nonetheless, I do not intend this as a decisive objection against left-libertarianism. Rather, my aim is to demonstrate that right-libertarians have at least some grounds for resisting left-libertarianism. As a result, it makes sense to take Lockean right-libertarian seriously and see what follows from it. Moreover, if my arguments in the following sections are successful, it turns out that Lockean right-libertarianism leads to substantially more egalitarian outcomes than either right- or left-libertarians typically suppose, in which case much of the motivation for incorporating an independent egalitarian principle into the libertarian framework will subside.

III. UNDERSTANDING THE LOCKEAN PROVISO

As indicated earlier, the idea expressed through the Lockean proviso is that an appropriation is unjust, or at least potentially unjust, if it leaves so little behind that there is nothing comparable left for others to appropriate. In such a case, those harmed by the appropriation are owed compensation. Understanding the significance of the proviso therefore requires determining what harm is done by excessive appropriation, which is to say appropriation that fails to leave enough

and as good behind for others.²⁴ As long as I do not make you (or others) any worse off, I am free to appropriate without restriction. But worse off than what?

Nozick, who has developed the most influential Lockean right-libertarian view, recognizes this baseline question must be addressed in order to determine the force of the proviso. As he sees it, the proper comparison class is something like complete non-interaction. More precisely, Nozick interprets the Lockean proviso as demanding only that property owners not make anyone worse off than she would be if they had no impact on her life at all, or alternatively, that the system of private property not make anyone worse off than she would be if it did not exist. Given this interpretation, Nozick appeals to the litany of goods widely realized as a result of property rights and suggests it is highly unlikely there is anyone, even those with no property of their own, for whom the overall benefits generated by and through property ownership do not outweigh the harm of being unable to appropriate goods.²⁵

It is important to recognize that Nozick is not offering a utilitarian justification of private property, but instead asserting that the benefits of the private property system are great enough, and widespread enough, that no one can make a valid claim to have been harmed by excessive appropriation. In making this assertion he is not denying that there has been excessive appropriation, provided that excessive appropriation just means appropriation that fails to leave enough and as good behind for others. Rather, his claim is that such appropriation

has been permissible, even though excessive, because it has not actually harmed anyone. This leads him to conclude that the Lockean proviso never actually kicks in.²⁶

One might object to Nozick's analysis on the grounds that a realistic consideration of the poverty and material deprivation that exists even within the United States belies his comfortable assumption that *everyone* benefits from a system of private property. Although I suspect it would be possible to develop such an objection convincingly, such a response misses, and potentially obscures, the deeper problem with Nozick's argument. Namely, he has chosen the wrong comparison class for determining whether excessive appropriation inflicts harm.

Recall that the Lockean view on which he relies tells us there is nothing wrong with appropriating goods out of the commons as long as we leave behind enough and as good for others. Only by taking so much as to leave an inadequate remainder do we perform a potential injustice for which we must provide compensation. The degree of compensation owed should therefore be determined by harms done relative to a situation in which appropriations are limited so as to leave enough and as good behind for others. I have been calling appropriation that goes beyond this limit excessive, and the point is that property owners cannot excuse themselves from compensating others for the harms done by excessive appropriation by pointing to the many benefits of the private property system as a

whole. Only those benefits generated specifically by excessive appropriation can count against whatever harms it inflicts.²⁷

To see the absurdity of the alternative view, consider the following case. Suppose Jon is a wealthy man who moves into a middle class neighborhood. He spends considerable money remodeling his home and beautifying his property, thereby increasing the value of his neighbor's house. Call the neighbor Lisa. Now suppose Jon decides to do some further work that produces a substantial amount of dust that settles on Lisa's property. When Lisa asks Jon to pay for the cost of cleaning the dust, or to find some way to minimize or eliminate the dust he is producing, Jon refuses on the grounds that the overall increase in Lisa's property value is far larger than the costs created by the dust. Overall, or so we imagine Jon saying, Lisa has benefited from his presence in the neighborhood.²⁸

There are, I think, two potential problems with Jon's reasoning in this hypothetical case. To begin with, he is overlooking the importance of Lisa's consent. He is claiming that his action produces more net benefits than harms for her, and concluding from that calculation that her consent is unnecessary. This is an important, and potentially objectionable, feature of Jon's behavior, and there is an analogous potential problem for Nozick's analysis. In fact, it may seem particularly puzzling for Nozick to overlook the importance of consent in his account of property acquisition, as Jon does in his justification to Lisa, given Nozick's own emphasis on consent in the rest of his theory of justice.²⁹

Nonetheless, for the sake of remaining sympathetic to the libertarian project, which seems to require some account of justice in acquisition that does not hold acquisition hostage to consent from all, I will set aside the issue of consent in this context.

Returning to the hypothetical example, there is a further problem in Jon's reasoning that is not related to Lisa's consent. Jon is attempting to justify his dust-producing round of construction by appealing to the full set of benefits Lisa has realized from all of his construction, or perhaps even from his presence in the neighborhood more generally. But insofar as he is now engaging in behavior that is harmful to her, he owes her compensation relative to how she would be *if he had not performed the dust-producing construction*, not how she would be *if he had never entered her life*. Having set aside the issue of consent, we are supposing that it would be reasonable for Jon to defend his current construction on the grounds that this particular action were itself producing net benefits for Lisa. But that does not license him to appeal to all of the previous benefits Lisa has realized from his actions in order to justify harming her now.³⁰

Shifting back to Nozick's analysis, the point is that when Nozick appeals to the overall benefits of the entire system of private property in order to minimize the significance of the Lockean proviso he is reasoning on the same pattern as Jon. In contrast, the example of Jon and Lisa reveals that if I appropriate beyond the limits of the Lockean proviso, the compensation I owe people is relative to

how they would be *if I had not appropriated excessively*, not how they would be *if I had not appropriated at all*. In other words, insofar as excessive appropriation harms others, these harms generate valid claims for compensation, and these claims can only be offset by the benefits generated by the excessive appropriation itself.

This may seem to be circular. If we were to identify excessive appropriation with unjust appropriation, it would be impossible to figure out which instances of appropriation are excessive until we have a full understanding of the significance of the Lockean proviso. This would derail my suggestion that we use the category of excessive appropriation in the process of determining the impact of the proviso. Recall, however, that I am using the term excessive appropriation to refer to appropriation that fails to leave enough and as good behind for others. The challenge is therefore not to determine which instances of appropriation count as excessive, but instead to determine whether, or in what circumstances, excessive appropriation is permissible. Nozick's view is that excessive appropriation is permissible as long as the harms done are counterbalanced by the benefits of all appropriation. My objection is that this allows too much onto the scales. The harms of excessive appropriation should be weighed against the benefits of excessive appropriation. Allowing the benefits of non-excessive acts of appropriation, or the benefits of the entire system of property ownership, to count against the harms of excessive appropriation is like

allowing the overall increase in the value of Lisa's house to count against the harm of Jon's latest round of construction.

There may, of course, be genuine benefits that follow specifically from excessive appropriation, as opposed to the wider set of benefits that follow from appropriation and property rights in general. If so, such benefits need to be taken into consideration when determining what is required to compensate for the harms of excessive appropriation. I will consider these benefits in Section IV, where I draw conclusions about what obligations excessive appropriators have to those who have been harmed by their excessive appropriation. First, though, let me consider how such appropriation can be harmful.

Given that excessive appropriation just is appropriation that fails to leave behind enough and as good for others, it might seem natural to suppose that the harm of excessive appropriation is that it denies others the opportunity to appropriate for themselves. Notice, though, that to appropriate simply is to mix one's labor with something in a productive fashion and thereby gain ownership of it. As Nozick points out, this suggests two possible views of the significance of the Lockean proviso. On what he characterizes as the stringent reading, the proviso restricts any appropriation that limits another's ability to appropriate. On the weaker reading, which he prefers, the proviso restricts only those appropriations that prevent others from "being able to use freely (without appropriation) what [they] previously could."³¹

There is somewhat of a puzzle as to what Nozick means by “being able to use freely,” but one way to interpret his weaker version of the proviso is as follows: appropriations are restricted by the proviso when they deny others the opportunity to spend their labor productively. On this reading, what matters is being able to use one’s labor for one’s own (or another’s) benefit, as one sees fit, rather than using it specifically for appropriation.

Although I do think this understanding of the Lockean proviso is suggested by Nozick’s text, I am not particularly concerned with Nozick interpretation. What matters is not whether this is precisely what Nozick, or Locke for that matter, had in mind. Rather, my claim is that this is the best way to understand the true force of a Lockean proviso. This is because an inability to appropriate is not itself problematic for those who have other ways of spending their labor productively. After all, opportunities to appropriate are currently quite limited, particularly in developed nations, but it would be odd to suppose that these minimal possibilities for appropriation count against contemporary quality of life. In contrast, being denied all (or sufficiently many) opportunities to spend one’s labor productively does constitute a significant harm. I will say more about the nature of this harm in Section IV, but for now the point is that this is the central harm one must take into consideration when assessing the significance of the Lockean proviso.

This interpretation of the proviso is reinforced by considering the liberty rights that are revoked through acts of appropriation. Any act of appropriation, by its nature, reduces the liberty rights of others. In a situation of abundance this does not constitute a harm because abundance ensures that others retain the liberty to use or appropriate other instances of the resources in question. In a situation of scarcity, acts of appropriation that leave enough and as good for others similarly avoid the infliction of harm. When I appropriate beyond this limit, however, my appropriation reduces your set of liberty rights in a way that potentially worsens your situation. That is to say, loss of a sufficiently large subset of one's liberties to use external resources can be a significant harm, because it effectively eliminates the liberty to use one's own labor, even though the loss of any particular liberty to use an external resource is not, on its own, a harm.

Another way of putting this point is to assert that self-ownership includes the claim right to some set of liberty rights to use external resources. This is the idea that underwrites what Mack has called the self-ownership proviso, which states that appropriation and use of property is limited by the obligation not to prevent others from using Mack calls their "world-interactive powers," or at least not to severely disable such powers.³² Mack's line of thought is that self-ownership includes the ability to use one's labor, and that labor paradigmatically involves the use of external resources. As a result, self-ownership requires that one have access to at least some external resources, and Mack's self-ownership

proviso, which is a form of a Lockean proviso, ensures this by forbidding others from using resources in ways that disable one's ability to use one's own labor.

Although I am sympathetic to much of Mack's analysis in his presentation of the self-ownership proviso, the way in which he grounds the proviso in the idea of self-ownership makes his approach particularly vulnerable to Fried's criticisms. Insofar as her arguments against appealing to a well-defined concept of self-ownership in a pre-social setting are convincing, they cast doubt on any view, like Mack's, that depends on a precise conception of the rights and obligations of self-ownership. As indicated earlier, Vallentyne, Steiner, and Otsuka respond to Fried's challenge by arguing that libertarians need only a vague, general idea of self-ownership rather than the more detailed account she deems unavailable. To defend the self-ownership proviso from Fried's criticism, Mack would need to offer a more robust response.

Rather than taking a stance on whether such a response is available, for the purposes of my argument it is sufficient to point out that Mack's self-ownership proviso leads to the same conclusions that I have been arguing follow from a Nozickian (and Lockean) harm-based version of the proviso. These are not the conclusions Mack himself draws, but my claim is that, like Nozick, Mack misinterprets the significance of his preferred form of the proviso.

Mack's analysis of the significance of the self-ownership proviso focuses on the claim that a properly functioning market involves a series of enabling

transformations that enhance rather than disable world-interactive powers.³³ In other words, his view is that a market economy tends to increase people's ability to use their labor productively. From this, he concludes that within a market order there is a legitimate presumption that the self-ownership proviso is satisfied. As Mack puts it, "a well-defined liberal market order, if it is operating as those friendly to such regimes expect, is a moral analogue to the pre-property state of nature," and he takes this to demonstrate that the self-ownership proviso is only violated in cases of market failure, such as monopolistic control over avenues of employment.³⁴

It is important to recognize that Mack's analysis does not depend on the assumption of a fully idealized market order that internalizes all possible externalities. Rather, he clearly assumes only a moderately ideal market order, which is why he emphasizes that the market generally promotes world interactive powers and that market interactions tend to be enabling rather than disabling. It is important for Mack to maintain this relatively low level of idealization because he wants his analysis to apply to actual markets in modern capitalist societies. But if we are consistent about this, Mack's conclusions do not follow.

I agree with him that even just a moderately ideal market order is sufficient to generate a presumption, perhaps even a substantial presumption, that the self-ownership proviso has been fulfilled. But if we are not assuming an ideal market, we must acknowledge that this presumption is surmountable. In

particular, it is surmounted in cases of clearly disabled world-interactive powers, such as those possessed by potential welfare recipients such as the chronically unemployed. The key point is that everything Mack says about the tendency of the market order to be enabling rather than disabling is consistent with there being cases of severely diminished world-interactive powers and corresponding violations of the self-ownership proviso. It is important to ensure that the market maintains a moderate level of idealization, as Mack recommends, by doing things like regulating monopolies and cartels. But this does not obviate the need to address cases of chronic, involuntary unemployment which can result from a moderately ideal market.

It might be tempting to modify Mack's analysis by adopting a fully idealized conception of the market. In that case, there would be no externalities and all transactions would be enabling for all parties involved. This would generate more than a mere presumption that the self-ownership proviso is fulfilled. It would instead ensure its fulfillment. The problem, however, is that this level of idealization would remove the analysis too far from the real world. We do not have a fully ideal market, and the prospects for realizing one are dim at best. Once we recognize the reality of an imperfect market, we are again faced with the need to monitor and safeguard the actual world-interactive powers possessed by individuals.

At this point, then, there are two ways of understanding how the Lockean proviso is grounded in the basic libertarian framework. Although there are potentially interesting theoretical differences between them, I have been arguing that in the context of a discussion of libertarianism and welfare programs they ultimately lead to equivalent conclusions. The first possibility, which I have been emphasizing, side-steps some of Fried's criticisms by adopting a vague notion of self-ownership and, following Nozick (and Locke), depends on the idea that there is a prohibition against harming others in the state of nature. Given the importance of being able to use one's labor productively, anything that prevents this counts as a harm. As a result, the Lockean proviso must ensure either that people are not prevented from using their labor productively, or that compensation is made for any such interference. The second possibility, which is available to those who are less moved by Fried's objections, follows Mack and depends on the idea that the ability to use one's labor productively is part of the basic principle of self-ownership. Any instance of property ownership or any disposition of such property that prevents the use of one's labor is therefore a violation of the rights of self-ownership. As before, this leads to the conclusion that the Lockean proviso must ensure that people have an opportunity to use their labor productively, or that they are compensated if they are denied this opportunity.

IV. LOCKEAN RIGHT-LIBERTARIANISM AND WELFARE POLICY

Up to this point, I have been discussing the significance of the Lockean proviso for individual acts of appropriation, ignoring the complication that violations of the proviso will typically result from a series of appropriations rather than a single instance of appropriation. When this occurs, each appropriator in the series has contributed to the violation of the proviso, even those whose appropriations came early enough in the series to have been in accord with the proviso at the time of appropriation. This is the significance of what Nozick has called the “shadow of the Lockean proviso” that attaches to any instance of property ownership.³⁵ Even seemingly innocent appropriations made in a time of plenty can become violations of the proviso once scarcity takes hold.³⁶ The upshot of this shadowy Lockean proviso attaching to all property ownership is that an entire system of property, rather than a specific act of acquisition, can run afoul of the Lockean proviso. In that case, the simple act of participating in and benefiting from the system of property rights incurs an obligation to compensate for violating the proviso. As a result, insofar as the Lockean proviso is in danger of being violated in a modern capitalist society such as the United States, the libertarian framework supports a broad-based system of taxation in order to fund programs that will prevent such violations or compensate those who suffer from them.³⁷

We can now see how Lockean right-libertarianism leads to an endorsement of a relatively well-defined set of publicly funded welfare programs.

After all, in a modern capitalist economy the opportunity to spend one's labor productively amounts to the opportunity to work. If my interpretation of the Lockean proviso is accurate, the situation in which the proviso is not violated is one in which everyone has a job, or at least an opportunity to get a job. In most cases, the labor market naturally provides opportunities to work and the proviso is met. For potential welfare recipients, however, these processes have failed and something must be done either to prevent the proviso from being violated or to compensate those who are denied the opportunity to work.

One possibility is that the inability to find employment is a result of government interference in the market.³⁸ For instance, minimum wage laws and regulations that make it difficult to fire permanent employees can have the unintended effect of discouraging hiring. Insofar as these and other regulations produce negative distortions in the labor market, that is an important reason to eliminate or avoid them. This is, of course, just one consideration that must be weighed, in each case, against the reasons in favor of the regulation in question. Providing a full assessment of such regulations is beyond the scope of this paper, but it is important to recognize that one way to ensure that the Lockean proviso is not violated is to eliminate unnecessary market interventions that suppress employment opportunities.

Without diminishing the importance of such an approach, let me instead focus on what is owed to those who are unable to find work.³⁹ In such cases there

is a collective obligation either to compensate for the violation of the Lockean proviso, by providing access to a cash-assistance welfare program, or to prevent the proviso from being violated, by providing access to publicly funded jobs of last resort.⁴⁰ I have argued elsewhere at length that traditional cash assistance programs designed to provide a substitute for earned income are, at least in the U.S., inadequate to compensate for the harm of being denied the opportunity to work.⁴¹ Briefly, the problem is that American cultural norms place such emphasis on employment that the unemployed, particularly the chronically unemployed, effectively lose their status as fellow citizens. Perhaps the current economic situation, with its high rates of unemployment, will ameliorate this by reviving the Depression-era sense that even chronic unemployment is not a sign of inferiority or laziness. But disdain and contempt for the chronically unemployed is sufficiently prevalent in the U.S. that it would be naïve to suppose it could evaporate quickly.⁴²

In order for cash assistance programs effectively to compensate for the lost opportunity to labor productively, they would need to provide benefits that not only replace lost income but also compensate for the stigma of being a welfare recipient. In contrast, well-designed publicly funded employment and earnings supplement programs are far less stigmatizing. Publicly funded jobs in the private sector are not obviously distinguishable from non-subsidized employment, and earnings supplements, such as the Earned Income Tax Credit, can be designed to

operate relatively inconspicuously. Moreover, such programs can move recipients more effectively into the traditional workforce, further minimizing stigma and also reducing long-term program costs.⁴³

From a libertarian perspective, once it is clear that publicly funded employment programs are the most direct and effective way of minimizing and compensating for the harm of excessive appropriation, it is natural to draw the further conclusion that all benefits should be contingent on participation in such a program, at least for those who are able to do so. After all, excessive appropriation harms others by denying them the opportunity to spend their labor productively. Once that opportunity has been restored, there is no further obligation to assist those who choose not to work.

The libertarian framework therefore leads to the endorsement of a combination of publicly funded jobs of last resort and work requirements that I call “modified welfare reform.” Within this general model there is still room for considerable debate over the details of the welfare system, perhaps most significantly with respect to the question of where to set benefit levels. Unfortunately, although I have argued that libertarians are committed to endorsing some version of modified welfare reform, it turns out that the libertarian framework does not have the resources to specify program details such as benefit levels.

As mentioned in Section III, according to a libertarian analysis excessive appropriators owe compensation only for the net harm of their excessive appropriation. I have been focusing on the harm excessive appropriation imposes by denying others the opportunity to spend their labor productively. But what about the benefits? Whatever benefits have followed from excessive appropriation need to be balanced against that harm in order to determine appropriate levels for earnings support programs. As this indicates, on a libertarian analysis appropriate benefit levels depend on how well off people would have been if all appropriations had left behind enough and as good for others. But that in turn depends on arbitrary features of the imagined state of nature. If we imagine a relatively barren state of nature, so that agents in the state of nature are only just barely able to subsist, benefit levels can be quite low. If, on the other hand, we imagine a more luxuriant state of nature, benefit levels would need to be substantially higher. The basic libertarian framework requires that we imagine a state of nature hospitable enough to make productive labor possible, which provides a basis for endorsing publicly funded employment programs and imposes a vague minimum level for welfare benefits, but it is silent regarding the details about the state of nature that would be required to generate more precise conclusions. Moreover, given that the state of nature, at least among contemporary libertarians, is treated as a theoretical construct rather than a

historical period, there is no non-arbitrary way of settling on the precise level of opulence to build into the state of nature.

What the libertarian framework yields, then, is a model for taxation and redistribution that incorporates both work-requirements and publicly funded employment opportunities, together with a vaguely defined minimum setting for benefit levels. Notably, I have argued that this endorsement of modified welfare reform follows even from a right-libertarian perspective. Although this conclusion on its own is not enough to underwrite policy prescriptions, it does remove one substantial objection against modified welfare reform programs. Libertarianism, particularly right-libertarianism, is often thought to lend support to the view that such programs are too expensive or too generous. I have shown that this is not the case. Instead, libertarians are committed to endorsing some form of modified welfare reform. Moreover, although I will not attempt to substantiate this claim here, my view is that a contractualist framework such as Rawls', which is generally thought to reject such programs as insufficiently egalitarian or overly authoritarian, converges on similar results.⁴⁴

¹ Barbara H. Fried, "Left-Libertarianism: A Review Essay," *Philosophy & Public Affairs* 32.1 (2004): 66-92 and Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried," *Philosophy & Public Affairs* 33.3 (2005): 201-215.

² Or, if they fail to respect these rights, there must be an overriding reason for doing so, which is to say that violation of the rights is at least *pro tanto* unjust.

³ For a classic example of the analogy between taxation and slavery, see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 172. The more promising analogy between taxation and theft appears in Eric Mack, “Non-Absolute Rights and Libertarian Taxation,” *Social Philosophy & Policy* 23.2 (2006): 109-141, p. 109.

⁴ Thanks to an anonymous reviewer for suggesting this way of framing my analysis.

⁵ John Locke, *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro (New Haven, CT: Yale University Press, 2003), pp. 29-30 (1T.42), and John Locke, “An Essay on the Poor Law,” in John Locke, *Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), p. 189

⁶ Immanuel Kant, *The Metaphysics of Morals*, in Immanuel Kant, *Practical Philosophy*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), p. 468 (6:326). The same is true of Hayek’s discussion of welfare programs. See Friedrich Hayek, *Law Legislation and Liberty*, Volume 3 (Chicago: The University of Chicago Press, 1979), pp. 54-6.

⁷ Compare Peter Vallentyne, “Libertarianism and the State,” *Social Philosophy & Policy* 24.1 (2007): 187-205, p. 190. This terminological distinction is particularly important for the clarity of my argument because my aim is to show that libertarianism, as I understand the term, does not in fact lead to what are often thought of as libertarian conclusions about taxation and redistribution.

⁸ Martha C. Nussbaum, “The Future of Feminist Liberalism,” *Proceedings and Addresses of the American Philosophical Association* 74.2 (2000): 47-79. Nussbaum cites Eva Feder Kittay, *Love’s Labor: Essays on Women, Equality, and Dependency* (New York: Routledge, 1999) as the precursor of her view. The central idea, which is that a theory of social justice must take into account the fact that all people experience periods of extreme dependency in certain stages of their

lives, was earlier developed in Marilyn Gwaltney, "Actual and Potential Demands of Justice: A Reply to Theodore M. Benditt", in *Economic Justice: Private Rights and Public Responsibilities*, eds. Kenneth Kipnis and Diana T. Meyers (Totowa, NJ: Rowman & Littlefield Publishers, 1985), pp. 125-129. Seeds for this line of argument can also be found in Jeremy Bentham, "Anarchical Fallacies: A Critical Examination of the Declaration of Rights" in *The Works of Jeremy Bentham*, Volume Two, ed. John Bowring (New York: Russell & Russell, 1962), pp. 496-524.

⁹ Fried, "Left-Libertarianism: A Review."

¹⁰ Vallentyne, Steiner and Otsuka, "Why Left-Libertarianism."

¹¹ For the view that Vallentyne, Steiner, and Otsuka do not adequately address the concerns about the indeterminacy of self-ownership, see Barbara H. Fried, "Left-Libertarianism, Once More: A Rejoinder to Vallentyne, Steiner, and Otsuka," *Philosophy & Public Affairs* 33.3 (2005): 216-222. Concerns related to Fried's are also raised in Robert S. Taylor, "Self-Ownership and the Limits of Libertarianism," *Social Theory and Practice* 31.4 (2005): 465-482. For a further criticism of self-ownership not as indeterminate but as counterintuitive or unappealing, see Kasper Lippert-Rasmussen, "Against Self-Ownership: There Are No Fact-Insensitive Ownership Rights Over One's Body," *Philosophy & Public Affairs* 36.1 (2008): 86-118.

¹² Vallentyne, Steiner and Otsuka, "Why Left-Libertarianism," p. 208. This way of drawing the distinction is also adopted in Vallentyne, "Libertarianism and the State," p. 191.

¹³ Vallentyne, "Libertarianism and the State," pp. 199-200. Vallentyne also refers to Lockean right-libertarianism as "Nozickean right-libertarianism."

¹⁴ Locke, *Two Treatises*, p. 114 (2T.33). In discussing the Lockean proviso, I will focus on what is sometimes called Locke's sufficiency proviso rather than his spoilage proviso for two reasons. First, without theological premises it is not clear what supports the spoilage proviso. Second, even

if we endorse a spoilage proviso, such a proviso becomes inert with the advent of durable goods, as Locke recognizes on p. 120 (2T.46).

¹⁵ Nozick, *Anarchy*, pp. 174-182. Locke is also explicit about this in *Two Treatises*, p. 114 (2T.33).

¹⁶ The distinction here is that a Hohfeldian liberty or liberty right does not imply any correlative obligations, whereas a claim right implies that others have at least an obligation not to prevent the right from being realized and perhaps also an obligation to assist in its realization.

¹⁷ Edward Feser, "There Is No Such Thing as an Unjust Initial Acquisition," *Social Philosophy & Policy* 22.1 (2005): 56-80, p. 59.

¹⁸ For an endorsement of the stronger claim that unilateral imposition of obligations is almost always morally problematic, see Jeremy Waldron, "Nozick and Locke: Filling the Space of Rights," *Social Philosophy & Policy* 22.1 (2005): 81-110, p. 100.

¹⁹ Eric Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy & Policy* 12.1 (1995): 186-218, p. 205.

²⁰ Vallentyne, Steiner, and Otsuka repeatedly identify this as an essential feature of left-libertarianism. See, for instance, "Why Left-Libertarianism," p. 208: "Left-libertarians invoke egalitarian ownership of natural resources as an independent principle." A similar point is made on p. 203, and elsewhere. Some may find this way of dividing the terrain controversial, and prefer to call any view that derives left-leaning conclusions regarding taxation and redistribution from libertarian starting points, such as the argument I develop in Sections III and IV, left-libertarian. As indicated above, however, I think the range of possible views is most clear if we categorize forms of libertarianism by their theoretical commitments rather than their conclusions.

²¹ See, for example, Feser, "There Is No Such Thing," pp. 60-61.

²² Mathias Risse, “Does Left-Libertarianism Have Coherent Foundations?” *Politics, Philosophy & Economics* 3.3 (2004): 355-377 appropriately rejects the view that right-libertarians can use this intuition to ground a *reductio ad absurdum* of left-libertarianism. At most the conclusion is that the egalitarian principles endorsed by left-libertarians are insufficiently motivated, not that they are inconsistent with the basic libertarian framework. But a demonstration of inconsistency within left-libertarianism is not necessary for right-libertarians to appeal to this intuition as a reason for libertarians to be right-libertarians. Notice also that left-libertarians cannot escape the force of this intuition by replacing the assertion of claim rights to a share of the island with claim rights to a proportional share of the overall natural resources. In that case the rhetorical right-libertarian question becomes: *How does discovery of the island (of which others are not even aware) change their claim rights over part of the mainland?*

²³ See Otsuka, *Libertarianism Without Inequality* (Oxford: Oxford University Press, 2003), especially Chapter 1.

²⁴ Here I am stipulating the meaning of “excessive appropriation” as appropriation that fails to leave enough and as good behind. As will become clear, this use of terminology makes it possible for some instances of excessive appropriation to be permissible.

²⁵ Nozick, *Anarchy*, pp. 177, 182.

²⁶ It is worth noting that Nozick does acknowledge the possibility that the principle of rectification of previous injustice could give rise to substantial redistribution, and he even toys with (and appears to reject) the idea that redistributive welfare programs could be defended as tools to rectify past injustices. *Ibid.* p. 231. Although Nozick is characteristically ambiguous on this point, it is important to recognize that without an independent argument establishing the harm of excessive appropriation the principle of rectification does not provide a plausible basis for general redistributive programs. If Nozick is correct and the Lockean proviso truly is inert, there is no

reason to think that all poverty and all wealth, both present and future, are the result of shady transactions, which means that correcting injustice and defending welfare programs are two separate tasks.

²⁷ In thinking about the benefits and harms of excessive appropriation, it may be tempting to associate non-excessive appropriation with Locke's pre-monetary phase and excessive appropriation with his post-monetary phase, on the grounds that it is only after the introduction of money that there is significant incentive to appropriate excessively (i.e., to appropriate to such an extent that there is not enough and as good for others). But, even if one were to suppose that all pre-monetary appropriation were non-excessive, it would not follow that all post-monetary appropriation need be excessive. It is quite possible, even after the introduction of money, to limit one's appropriation so as to leave enough and as good for others.

²⁸ Thanks to an anonymous reviewer for help in crafting this example.

²⁹ Consent plays an important role in Nozick's theory of justice in transfer, as well as in his account of the legitimate development of a dominant protective association.

³⁰ Similarly, even if we were to agree that I could reasonably amputate your leg, without your consent, or perhaps even against your will, in order to save your life, we would not thereby be committed to the view that having previously saved your life (without any amputation) licenses me now to amputate your leg.

³¹ Nozick, *Anarchy*, p. 176.

³² Mack, "The Self-Ownership Proviso." For additional discussion of the self-ownership proviso, see Eric Mack, "Right-Wing Liberalism, Left-Wing Liberalism, and the Self-Ownership Proviso" in *Liberal Institutions, Economic Constitutional Rights, and the Role of Organizations*, ed. K. Ladeur (Baden Baden: Nomos, 1997), pp. 9-29. See also section three of Eric Mack, "Self-

Ownership, Marxism, and Egalitarianism, Part II: Challenges to the Self-Ownership Thesis,”
Politics, Philosophy, and Economics 1.2 (2002): 237-276.

³³ In this paragraph I focus on Mack’s analysis in “The Self-Ownership Proviso,” pp. 212-215.

³⁴ *Ibid.*, p. 214.

³⁵ Nozick, *Anarchy*, p. 180.

³⁶ This insight is what motivates the discussion of temporally limited property ownership in Allan Gibbard, “Natural Property Rights,” *Nous* 10.1 (1976): 77-86. There Gibbard entertains the possibility that property rights generated by Lockean acquisition last only until a time of scarcity. In contrast, I am suggesting that libertarians can defend the existence of perpetual property rights, but only at the expense of admitting important limits on the scope of such property rights that are powerful enough to require some form of a welfare state.

³⁷ I am being neutral on questions regarding the design of the system of taxation, such as the choices between an income tax and a wealth tax, and between a flat tax and a progressive tax. My line of analysis indicates that libertarians should support taxes that are proportional to the benefits people receive from the private property system, but there is room for debate over how to accomplish this.

³⁸ Thanks to an anonymous reviewer for emphasizing this.

³⁹ The analysis that follows is intended to apply regardless of whether the inability to find work is the result of other government interference in the market. This allows me to be neutral both with respect to whether such intervention in the market is justified and with respect to the degree to which it is responsible for involuntary unemployment. Even if all such intervention is unjustified and even if eliminating this interference would create a perfectly efficient labor market in which all willing workers were able to find employment, the programs I am defending would still be

necessary to compensate for the negative consequences of the (by hypothesis) unjustifiable market interventions currently in place.

⁴⁰ Publicly funded jobs can take a wide variety of forms, and need not be modeled on traditional public works programs. Although questions about how best to design and implement publicly funded employment programs are beyond the scope of this paper, let me point out that recent research suggests the most effective programs are ones that subsidize employment in the private sector rather than putting the state in the role of employer. See, for instance, Michelle K. Derr, LaDonna Pavetti, and Angelina KewalRamani, *Georgia GoodWorks!: Transitional Work and Intensive Support for TANF Recipients Nearing the Time Limit* (Washington, D.C.: Mathematica Policy Research, 2002).

⁴¹ Steven Daskal, Fellow Citizenship and U.S. Welfare Policy, *International Journal of Applied Philosophy* 22.2 (2008): 281-301.s

⁴² See Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge, Mass.: Harvard University Press, 1991) and Martin Gilens, *Why Americans Hate Welfare: Race, Media, and the Politics of Antipoverty Policy* (Chicago: University of Chicago Press, 2000).

⁴³ For example, at the least effective site of the Georgia GoodWorks! program, a program targeted at hard to serve welfare recipients with barriers to employment, clients participated for an average of five months with a 35% success rate for eventual placement in an unsubsidized job. Better run sites had job placement success rates of up to 70%. For a full analysis, see Derr, Pavetti, and KewalRamani, *Georgia GoodWorks!*

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