

## Chapter 11

# Who Owns Me: Me or my Mother? How to Escape Okin's Problem for Nozick's and Narveson's Theory of Entitlement

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### The Apparent Tensions in Nozick's Libertarianism

As Jan Narveson notes, Robert Nozick is usually seen as grounding his libertarianism in individual property rights, rights he is then criticized for not grounding in turn.<sup>2</sup> But, in fact, Nozick grounds the rights of individuals to hold property in their rights to liberty.<sup>3</sup> And he grounds their liberty rights in two other things: first, in their capacities and inclinations to exercise them, that is, their personhood;<sup>4</sup> second, in the idea that it requires argument to say that individuals have coercible duties to others, and that the only way this *can* be argued is by showing that these duties are required in order to optimize the freedom of all agents.<sup>5</sup> The morally uncontroversial baseline from which positive duties are a departure requiring justification is a situation of unfettered freedom to act, to exercise the capacity for liberty.<sup>6</sup> And to establish coercible duties, one must derive them from the liberty rights that all people possess presumptively: immorality is unjust interference with others, interference which does not aim to preserve equal freedom from interference for all. From these assumptions derive property rights: since freedom is freedom to act, and all action is interaction with the material world, all freedom is freedom to interact in some way with the world. To have freedom to interact with something material in some way is to have property in it to that extent: thus the relation between liberty and property. This is how Narveson elucidates Nozick; and Narveson has taken on the prosecution of this idea.<sup>7</sup>

If Nozick grounds his views in property rights, his theory will seem fraught with internal tensions, and it will be unable to account for certain moral duties. Susan Okin, for example, claims his theory of property is incoherent, and in exploring how Nozick might escape contradiction, she argues that he cannot account for our duties to children. She alleges a contradiction in his theory of entitlement (*ET*), of when a person has just title to a holding.<sup>8</sup> Nozick thinks, she claims, that since people own themselves, they derivatively own what they produce. But, Okin observes, people are produced by their mothers. Thus, on Nozick's principles, mothers own people. But then people do not own themselves.<sup>9</sup> This undermines

Nozick's libertarian view that people may not be interfered with if they do not interfere with others. For owners may 'interfere' with what they own; mothers own their offspring; so people may be interfered with by their mothers. Thus, people do not (all) have a negative right to liberty (automatically).

This, Okin thinks, leaves two options. First, maybe *ET* is false: people are not entitled to all and only what they find, trade for, are given or make. Thus they need not be owned by the mothers who make them. Second, maybe *ET* is true; but since it entails that people are owned by their mothers, it does not establish libertarianism, but rather matriarchy and slavery in which all property and rights to control people's lives are held by their mothers. This, Okin thinks, is a non-starter due to all the absurdities of a society in which persons, including mothers, could not gain self-ownership unless their mothers gave or sold them their freedom.<sup>10</sup> To avoid this dystopia, we must reject the 'principle that persons are entitled to whatever they produce, regardless of the needs of [others]'.<sup>11</sup> But *this* means, thinks Okin, that Nozick must 'retreat from his ... theory of rights and the minimal state he builds on it, and ... return to a more "patterned" derivation of justice that takes into account needs, deserts, and other human capacities as well as productivity.'<sup>12</sup>

Surely the last is too quick: for why is the alternative that ownership of goods should be determined by, for example, needs? Still, Okin's analysis leaves the core of Nozick's theory – the principle of acquisition, or *PA*: a principle which specifies the ways in which someone can acquire a holding to which they then have and retain just title according to *ET* – mired in self-contradiction. If persons do not even own themselves (since their mothers do), in the sense of being entitled to their own persons, bodies, natural talents and abilities, then there is no basis for anyone's owning anything else. *ET* is premised on the notion that each person owns himself. But when we consider women's reproductive capacities and labour, this notion, so central to *PA*, is undermined by that very principle.<sup>13</sup>

In Nozick's defence, one might argue that (A) people are entitled to what they make except when they make other people, owing to something in the nature of people; or that (B) mothers do not 'make' other people in the relevant sense, and so have no title to them.<sup>14</sup> But against (B), Okin thinks having a child is a clear kind of production by one's abilities and talents, to the fruits of which in general Nozick thinks one has title. While against (A), she thinks his theory cannot discount persons as kinds of things which can be owned by someone through having been produced by her. Okin might grant that we could patch up Nozick's theory by stipulating (arbitrarily, she would think) people to be exceptions to ownability by production. But she thinks it impossible to derive (A) or (B) from his first principles.

Libertarians find this implausible. For since Nozick is defending the property rights of persons, and since offspring are or become persons, surely his philosophy is rightly read as giving them a property right in themselves overriding property claims their mothers may make to them. So, for instance, has Narveson claimed.<sup>15</sup> But while I think this is ultimately on the way to the right conclusion, to assert it without further defence here is to miss the depth of Okin's point. She knows Nozick

defends the property rights of persons, and that offspring become persons. But Nozick specifies property rights both as what people have in themselves in being persons, and as what they supplementally acquire in other things by finding, being given, trading for or making something. Thus while a person has an automatic property right in himself, if a person makes another person, she has a *prima facie* property right in the person she makes, in a being who, because he is a person, has a conflicting right to self-ownership. Something must give: either people do not automatically own themselves, or the theory that they acquire a right to something by making it is not true with perfect generality. Libertarians want to resolve the conflict in favour of the person the mother makes having an overriding right to property in himself. But by what principle is this justified? If the principle that one owns oneself and the principle that one owns what one makes are co-foundational, there is an irresolvable conflict. Yet if the principle that one owns what one makes is foundational, we have Okin's matriarchal dystopia. While if the principle that one owns oneself is the real foundation, there is still a problem. For on Okin's reading, Nozick takes the principle that one has a property right in what one makes as derived from the self-ownership principle. But then that principle seems to contain the seeds of its own contradiction if people are made by people.

But I suggest property rights are not the foundation for Nozick, or for any fully self-comprehended libertarianism. Something else is, and it both entails and delimits property rights in such a way as to resolve the contradiction. My strategy is to use Okin as a foil to penetrate deeper into libertarian principles. I say we *can* give a systematic foundation for (A) – the view that people are entitled to what they make except when they make other people, owing to something in the nature of people – without contradicting *ET*. For Nozick's philosophy is grounded not in rights to property, but to liberty; rights in turn grounded in individual capacities to exercise liberty claims, and in an ethical minimalism in which coercible constraints on people's liberty can only be justified if needed to optimize everyone's individual liberty. Nozick seeks to accord every person the maximum liberty compatible with a similar liberty for all. This entails liberty to hold property where that does not interfere with the similar liberties of others. This is why offspring own themselves: were they owned by their mothers, they would have *no* liberty; so a greater liberty for *all* would result from individuals being self-owned upon becoming persons, which is why the rights of people to what they make cannot be so extensive as to permit them to own people they make.<sup>16</sup> On to details.

### Okin's Arguments

Okin has a strong *prima facie* case that given Nozick's theory of when agents are entitled to something (*ET*), according to which people have just title to anything acquired in accordance with his principles of acquisition (*PA*), mothers own their children; and it is worth reviewing her case, not only because we must criticize it and find within libertarianism the resources for doing so, but because it shows just what aspects of Nozick's philosophy that might be thought to entail that mothers do

not own their offspring, do *not* really have this consequence. This shows we must reconceive the foundations of libertarianism, Nozickean or otherwise, to avoid the unhappy conclusion.

For Okin, a woman's production of an infant meets *PA* – a principle entailing that the maker of *x*, having contracted for all other resources used in the process, is entitled to *x*.<sup>17</sup> Pregnancy and birth is a paradigm of such processes. Once she is freely given a sperm or buys one – either way a legitimate transfer – a fertile woman can make a baby with her own body and its nourishment. She need not resort to fraud or force to get the one resource her body cannot contribute. An infant originates from a minute quantity of abundantly available and otherwise useless resources. Thus there can be no dispute over how much of the product comes from the added value of the mother's labour; the complex capacities of the female reproductive system and its labour transform two cells into an infant.<sup>18</sup>

Okin then deals with objections. Perhaps mothers cannot own children because God does; because He, ultimately, made them. But then no one could own anything because God already owns it.<sup>19</sup> That women do not 'comprehend and have full control over [the] production' of children is no objection either 'since this would preclude ownership of ... other products – such as trees one ... planted and nurtured – that [Nozick] would not want excluded from the category of property'.<sup>20</sup> Nor is it an objection that women's production of babies is sometimes fairly effortless or unintentional. For Nozick 'defends the property rights of the naturally talented to the full fruits of their talent[s and capacities] (see ... his Wilt Chamberlain example), and of those who "stumble upon" something to what they have found, however valuable.'<sup>21</sup> But is not reproduction 'different from ... other forms of production that lead to ownership, in that it has a different kind of purpose or internal goal?'<sup>22</sup> No matter; Nozick says 'the producer alone is entitled to determine the purpose of his activity ... Thus he [cannot object to] a woman's producing a child for whatever purpose she chooses: to keep it in a cage to amuse her ... or even to kill ... and eat it ...'<sup>23</sup> One might argue that people cannot be owned. But 'Nozick ... points out that Locke does not claim that something in the nature of persons precludes their *being owned*; after all, he postulated that they *are* owned, by God, and precisely *because* he made them.'<sup>24</sup> And 'Nozick ... allows that [people] *can* [sell themselves into slavery].'<sup>25</sup> (She admits this 'does not imply that they can already be the property of another at birth ... [for,] Nozick adds, "some things individuals may choose for themselves, no one may choose for another".'<sup>26</sup>)

One might argue that giving the mother title to her child would violate the Lockean Proviso that, in acquiring property, one must leave enough and as good for others. 'If mothers own all children at birth, doesn't this monopoly violate the ownership rights of men and infertile women, not to mention the rights of children to self-ownership?'<sup>27</sup> But Okin argues that this is false on Nozick's reading of the proviso where

the rights of the nonowners are violated only if they are left worse off than they would be in a 'baseline' situation in which the owners did not exist. (Nozick, pp. 176–82.) And this

is ... not so in ... reproduction, for if there were no fertile women there would be no children to be owned by anyone ... Just as, according to Nozick, a medical researcher who discovers a new cure may justly refuse to sell except on his own terms, childbearing women, by refusing to share ... ownership of children ... are not depriving others of anything they could acquire without the women's special talents[;] ... these women do not 'worsen the situation of others; if [they] did not [produce children] no one else would have, and the others would remain without [them]'. [a paraphrase of Nozick, p. 181] Since the children themselves ... would not exist in the baseline situation, they can make no claims.<sup>28</sup>

More worrisome – and here I will eventually dig in – is the objection that allowing a mother to own her children, and to use them at her whim, would violate 'the moral side constraints that Nozick claims protect persons and their liberties from the assaults of others'.<sup>29</sup> But Okin thinks Nozick so specifies the characteristics in virtue of which persons are protected by side constraints as to leave infants, small children and the developmentally disabled completely unprotected by them. He presents a traditional list of characteristics that he supposes are the reasons for the constraints on how persons may treat one another. But no infant, very small child, or person with serious developmental disabilities has these traits. Thus Nozick cannot regard infants as having any such inviolable rights. So he cannot argue against a mother's right to dispose of her infant as she chooses. Thus by *ET* children are the property of those who make them.<sup>30</sup>

But if this establishes a mother's ownership of an infant, it may not establish her ownership of the person into whom it will develop; for while the infant lacks the required traits, the person does not; and if Okin thought Nozick had an out if infants had these traits, why not when adult persons acquire them? Her answer: 'long before [persons] qualify for ... side constraints, they are, according to [PA], first and foremost the property of their mothers'.<sup>31</sup> But surely this establishes only that persons *used* to be the rightful property of their mothers, not that their *now* being so treated would not violate the constraints. But Okin thinks that, since Nozick emphasizes 'legitimately acquired property rights over all other claims, including basic needs and the right to life', he cannot 'relax [these rights] ... in order to give an infant, who is ... the product of someone else's body and labour, the right of self-ownership, in contravention of [PA]'.<sup>32</sup> She adds: (i) 'As Nozick writes: "No one has a right to something whose realization requires ... things and activities that other people have rights and entitlements over";' and (ii) 'If I am (already) my mother's property, I cannot claim a conflicting right to own myself.'<sup>33</sup>

But (i) does not establish that since the person requires things from the mother to develop, if she provides them, she has clear title to the person; only that she may not be compelled to provide those things, that the person is not owed them. But just because I have no right to your help in watering my garden, it does not follow that if you water it for me (without me hiring you), you own it.<sup>34</sup> And (let us assume) no one is forcing the mother to make a person. If she contributes things necessary to the existence of the infant, then maybe she owns it; for since it is not a person, it has no competing basis on which to assert self-ownership against her usual right to whatever she makes. But when it becomes a person, it does. Okin's point (ii),

however, argues that the mother's title has priority. But to prove (ii), Okin must show that *PA* overrides the side constraints; for adult persons have a claim to self-ownership. Her argument is that Nozick gives

priority to those who affect others over those they affect...[So he cannot] label as unjust a [mother choosing to keep her child] as a slave for life [rather than giving it freedom]. The rights of entitled donors must have priority over the expectations of potential donees, such that – regardless of the inequality of the results – the latter cannot claim that injustice has been done to them.<sup>35</sup>

Okin concludes:

[It is] a central assumption of [Nozick's] theory that persons originally ... own themselves. For if [they] are born as the property of another, how can they have 'rights ... [s]o strong and far-reaching ... that they [restrict] ... what ... the state and its officials may do' (Nozick, p. ix). And how can anyone acquire a just Nozickian title to property if he does not own his own labour or ... body? [But] ... persons ... start their lives as the product of a woman's natural capacities and labour. [Thus] Nozick's theory, in spite of its apparent dedication to self-ownership, [entails] that women's entitlement rights to those they produce must take priority over persons' rights to themselves at birth.<sup>36</sup>

Can Nozick reply?

#### Basic Nozick and the Basic in Nozick

Nozick is the Garbo of philosophy; he just wants to be (left) alone. His central, outraged intuition: how *dare* people compel others to do things if they are not bothering anybody? He thinks people have Lockean rights:<sup>37</sup> they may not have their moral boundaries crossed by others, may not be physically assaulted, coerced or killed.<sup>38</sup> This is a negative right to non-interference from others. People also have a right to pursue their conceptions of the good life.<sup>39</sup> Both rights have limits: you forfeit your right to non-interference if you violate the rights of others. Only then may others infringe your boundaries – others may do this in order to prevent or to rectify your transgressions; but only to the extent needed to attain these effects.<sup>40</sup> Your right to pursue your conception of the good life is bounded by the similar rights of others. (Actually, your right to pursue your conception of the good life is limited by others' boundary rights only in consort with their life-pursuit rights. For if others had no inclination to exercise their life-pursuit rights, nothing would count as violating their boundary rights.) These rights are *side constraints*:<sup>41</sup> no goal can morally justify transgressing people's rights to non-interference and to pursue the good life.

Who has Lockean rights such that we must respect side constraints in dealing with them? Anyone with a conception of the good life: that is, every 'person'. A person is sentient, 'self-conscious; rational (capable of using abstract concepts, not tied to responses to immediate stimuli); possessing free will; ... a moral agent

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capable of governing its behaviour by moral principles and ... of engaging in mutual limitation of conduct ...'. It has the ability 'to have or strive for meaningful life', 'to regulate and guide its life in accordance with some over-all conception it chooses to accept'.<sup>42</sup>

These rights are, at root, one. Nozick, inspired by Locke, is moved by one precept,

(L): people have a non-overridable right to such liberties as do not interfere with those of others.

This is the right to do as much as possible of what you want consistently with all other people being able to do as much as possible of what they want. You have a right only to *these* liberties because all people have rights, and the only ones all could have are ones co-tenably haveable and exercisable by all; the only co-doable activities of people are those which do not prevent or preclude the doing of something else by another; which do not, in that sense, make him worse off (worse off in not being able to do something he wishes to do).

From this derives property rights, entitlements to holdings: one is entitled to (1) whatever one appropriates from nature provided one does not interfere with anyone else's acquiring things of equal value, does not make anyone else worse off relative to a pre-appropriation baseline level of welfare; (2) whatever anyone gives one *gratis* or in a free and informed trade, provided they got it legitimately, and (3) whatever one makes from what one justly appropriates, is given, or trades for.<sup>43</sup> Appropriating things from nature as in (1) is just more doing of what one wants that does not interfere with others doing what they want; I want and appropriate this, and you cannot object, because there is something of equal value you can appropriate if you want to do so. But neither of us may take *both* this and the something else, for then we leave nothing of equal value for the other. Acquisition by trade as in (2) is just capitalism among consenting adults, people doing what they want without interfering with others.<sup>44</sup> Acquisition by manufacture, as in (3), gives one title to what one makes, because what one makes would not exist unless one had made it, so that, in claiming it, one is not interfering with another's prior right or freedom to claim it, is not making him worse off than before one made it in terms of what was then available for him to appropriate relative to his baseline level. For someone else to appropriate what I made for my use would be for them to use me as a mere means: to violate my moral boundaries, to prevent me from doing something harmless to others.

Self-ownership also derives from *L*. For ownership of something is just the freedom or right to do what one wants with it (provided that does not interfere with others). And if one has the right embodied in *L* – a right to liberty, to do as one wants (with oneself) subject to the proviso – then *ipso facto*,

(S): one owns oneself.

Since having liberty is just being permitted to try to satisfy one's desires, to

prosecute one's conception of the good life, only those who have such a conception can have liberty; and any such being has it. Thus one's rights to liberties derive simply from one's having aims, things one has a primitive right to try to satisfy. So persons have, essentially, rights to liberty.<sup>45</sup> To give every person such liberties, each person's permissibly prosecutable aims must be such that no person infringes on another's. Rights must be co-tenable. Thus, your having aims creates an obligation on me not to interfere with them, provided the aims are such that your advancing them does not interfere with others advancing *their* aims.

But if all persons' aims give their possessors a right to try to satisfy them, if I desire to interfere with your desire-fulfilment, have I not a right to interfere? No. For it is impossible to satisfy all persons' possible desires to interfere with others' satisfaction of their desires. So a right to satisfy the desire to interfere with each other's pursuits is not something all people can be owed. Thus libertarianism embeds a Kantian condition on the desires that agents may try to satisfy (without the consent of others): those of all people must be jointly satisfiable. I may only do what I want provided you can still do likewise. This means that what we each may do depends on what all others want. We may only act to satisfy such of our desires as participate in a maximally large set of the aggregate co-satisfiable desires of all. If there is more than one set, different communities may choose different ones, and we may seek or create the communities we find most congenial to our desires. But all communities, in turn, are required to be co-tenable.<sup>46</sup> This idea is perhaps better expressed in terms of liberties: people are not at liberty to interfere with each other's liberties; people's liberties must be co-tenable; each person only has such liberties as participate in a maximally large set of co-tenable liberties of all and so on. I have spoken here of aims, wants and desires only to connect permissible liberties with their ultimate grounding in the capacities and inclinations of agents. It is because I have a conception of the good life, some aims, that I have a *prima facie* right to pursue it, to advance those aims. But the aims I may advance are limited by the condition that the aims any given person may advance must be co-tenable with as many as possible of the aims of every other person.

There may be circularity in this idea of a permissible liberty, though I hope there is only mutual constraint. As many have suggested, I expect that to fully understand it, we must use contractarianism.<sup>47</sup> There are a number of persons, each with some values; and there are resources for advancing the values. Libertarianism, I hold, says each person is initially entitled to a distribution of those resources (or at least a right to appropriate from them) as would be provided in one of the Pareto-optimal solutions to the bargaining problem involved in distributing resources. Since there may be more than one optimum (because there is more than one possible distribution of values among persons, or more than one way of optimally distributing resources in a Pareto-optimal satisfaction of the values of persons on a given distribution of values), each involving a different distribution of resources, the actual entitlement of a given person depends on which optimum has been agreed upon.<sup>48</sup> There is not room here to dwell on this idea; but I think it will prove well-enough defined for what I want to do with it in the sequel. I will refine it as needed later.

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### The Origins of People, the Nature of Persons and the Basis of the Right to Negative Liberties

Were people found, not made, the side constraints on what we may do to each other would forbid us being appropriated from nature and owned by others without our consent. For people are owed *L*, and *L* implies *S*; people own themselves. They may also appropriate found things, unless that interferes with other people's acquiring things of equal value. But if you 'found' and used me against my will, you would interfere with my rightful liberty.

Normally, though, persons are the terminus of a set of stages of a living thing: conceptus (the immediate product of the union of egg and sperm), foetus (the conceptus until birth), infant (the foetus after birth until it becomes the child), child (the infant once it attains conative and cognitive traits like those of intelligent animals – for example, dogs – until it becomes the person), and person (the child once it acquires person-traits).

Okin thinks the mother's right to her offspring is rooted in the Nozickean dictum that people own what they make, and in the fact that mothers make children with their womanly powers from non-scarce, justly acquired resources. Do women 'make' children in Locke's sense? Maybe women only *have* babies; they do not *make* them, any more than they make their livers or urine. No matter; Nozick does not think one comes to own something simply or only by investing deliberate labour in it. (Recall his reductio of Locke's mechanisms of acquisition.<sup>49</sup>) One originally owns oneself simply by having person-traits, and so the negative liberties to which persons have a right. One acquires other things simply by appropriating them without violating the proviso – by asserting a prerogative which no other persons could justly challenge, for none of these persons is harmed (that is, none of them is thereby prevented from appropriating something of equal value). My making of something with the intention of using it is a just appropriation (by an act of inventing something intended for my use), provided it worsens no one's appropriation options relative to the baseline level preceding my act of manufacture. (A complex idea: what if I make something which competes in the market with a product you make, and mine outsells yours and puts you out of business? Have I not harmed you, illicitly by the proviso? No. You have, first, a maximal claim on nature – a range of possible appropriables determined by what is in nature and how many people wish to make a claim on its goods – and Lockean rights thereafter. My manufacture does not interfere with your maximal claim on nature, or with anyone's Lockean rights thereafter; for the way I put you out of business is by capitalist acts between consenting adults. It is no business of yours when other people exchange things to which they have title, and nothing you can complain about if they decline to exchange with you – unless they thereby deny you compensation to which you are entitled: if all the white people have all the water, a necessity of life, they may keep it only provided they are prepared to make it available to black people in return for something of equal value. Likewise if, say, the Indians have all the farmland.<sup>50</sup>) But it is also just, my appropriating something that would not exist but for me. Concede that women may do this with babies: the

mother owns the conceptus – if the spermatozoon which formed one half of it was given to her, or was unclaimed by its ‘donor’, or if she bought it; also the foetus – if she entered no contract of co-ownership, and owning it perhaps because she ‘made’ it from the conceptus, or because it would not have existed but for her, or because it is a part of her and she owns herself;<sup>51</sup> also the infant and the child, because she ‘made’ them or at least grew or nurtured them, or because they would not have existed but for her and lacked the traits needed to have a claim to self-ownership against her.

The process of making children into persons is not done solely by mothers, but usually also by fathers, friends, teachers and even by the children themselves, which could complicate things for Okin. But never mind; it *could* happen that they get made primarily by their mothers. And it is more plausible to say that women make persons out of their babies than that they make their babies, since child-rearing requires deliberate labour. So there is an argument for mothers owning the people they make: they made them, and one is generally entitled to what one makes.

However the person made has an argument too: people have Lockean rights; so in our treatment of them we must respect side constraints. No one, then, may come to own persons simply by dint of the act of making them; for to make a person is to make a thing with Lockean rights, one which has *S* unless it consents to ownership by another. What grounds a person’s right to negative liberty (and so to *S*) is not that someone *gives* or *concedes* it; rather, as we saw, it is her being *owed* it simply due to her desiring to exercise it, having a conception of the good life. (She can trade that liberty away. She may sell herself into slavery for favours from the master. If she then says, ‘but I really want to have that liberty!’, too bad; a deal is a deal. The difference is, it was a *deal*. One’s desire to exercise Lockean liberty is sufficient for one having title to it unless one has contracted for the alternative, or has violated the Lockean rights of another.) One has the right to do what one wants (with oneself) simply by wanting to do it, provided it is co-doable with others doing what they want. (Recall that this just means one has a right to a liberty to do something with oneself if doing it does not interfere with the similar liberties of others to do things with themselves.) Since property is the right to do what one wants with something, people own themselves. Now since people may do what they want provided they do not interfere with others, and since they may want to find, trade, accept or make things for their use, they may do so, provided they interfere with no one’s liberty. The right to freely use the objects of such acquisitions, transactions and manufacturings is the right to hold property, since having property in something is having the right to free use of it. But since one cannot make and unconsentfully use other people without violating their liberties, one does not get property in someone by making them; rather, one makes a thing with property in itself.

### Determining Side Constraints and Rightful Liberties

Who wins the argument? Okin thinks Nozick must side with the mother. Giving *S*

to the person the mother makes violates *her* property rights in what she makes. Okin demands a principled Nozickean reason for conceding ownership of people to themselves and not their makers, given that people in his scheme are generally – and, she thinks, *foundationally* – entitled to what they make. I resolve this into three demands: a demand for a principled reason to think offspring are protected by side constraints, for reading the entitlement principle as outweighed by the constraints, and for reading the constraints as giving self-ownership to persons, not their makers.

On the first: offspring become persons; they are, as of then, like all persons, protected by side constraints. On the second: Nozick's primary aim is to defend people's negative liberties, things to which he thinks all people have a right, and from which all their other rights derive, including rights to holdings. Everything follows from one basic principle of Negative Liberty (*NL*) – which is *L* in a different guise:

*NL*: any being with a conception of what her life should be may do what she wants provided it numbers among a set of activities which consists in a maximum set of activities in which people may engage without interfering with each other's activities.

*NL* is just an explication of *L*. *L*, recall, said people have a non-overrideable right to such liberties as do not interfere with those of others. *NL* is just *L* except that it is explicit on what a person is, namely, a being with a conception of what her life should be; and it is explicit on what counts as a liberty that does not interfere with the like liberty of others – namely, anything which numbers among a set of activities which consists in a maximum set of activities in which people may engage without interfering with each other's activities.

Thus a person owns (may do what she wants with) herself, and owns (may use as she wants) what she creates, provided she acts consistently with *NL*. Suppose creating a person is not itself an 'interfering' with that person. Then the mother does not interfere with the person she makes in making it, so she may make it.<sup>52</sup> But it does not follow that she owns it – has the right to use it without its consent; for she would then use it unjustly, violating *NL*. For *NL*, *first*, guarantees original self-ownership to persons and, *second*, permits people holdings except when that would violate another's self-ownership or the similar permission of holdings for others.

*NL* must do this or it would not give everyone the maximum possible negative liberty compatible with similar liberty for all. Indeed, the alternative is incoherent. It would say people own themselves (may do what they want with themselves) by having *NL*, but do not own themselves (may not do what they want) by virtue of being made by another, and so owned by the other (who may say what they will do). So *NL* must give no one so much liberty as to be able to use another without their consent. People are owed *NL* simply in being people. In making a person, one makes a being protected by *NL* side constraints which restrict possible entitlements, and which explain how entitlements can even arise. For if we did not so read *NL*, people would not own themselves – because their mothers would own them – so they could not own anything else; assuming a regress of ungenerous mothers, *no* one would be entitled to anything.<sup>53</sup>

But does not giving *S* to the people made violate the liberty of makers to use their creations, violating *their* rightful side constraints? Answering this will meet Okin's third demand. The correct side constraints must afford the maximum co-possible negative liberties for all. But giving people liberty to make others for their own use would give negative liberty to fewer people than would giving the liberty of self-ownership to those made; for in the former, only mothers (at most) would have negative liberty, while in the latter, everyone would have it. So it constrains person *B*'s rightful liberty to make something for her use that she may not make a person *for* her use; person *A*'s liberty cannot be so constrained as to allow person *B* the liberty to make *A* for *B*'s use – *B* may *make A*, but *B* may not *use A* without *A*'s consent.

Okin saw Nozick's libertarianism as grounded in a right to acquire holdings. This makes it problematic to give ownership of people to themselves and not to their makers since people are generally entitled to what they make. But in fact, Nozick defends negative liberties first, property second. People are not owed liberty because they may own things; they may own things because they are owed liberty, and so may own anything – and only things – their ownership of which does not interfere with another's liberty. Giving ownership of people to their makers would violate the liberty of those made; and according priority to *their* liberty is a condition of *all* people having maximum co-possible negative liberties, perhaps even any negative liberties at all.

So a person is the one thing the mere making of which cannot *ever* – because of what it is – entitle the maker to its use, for that would deprive it of its own liberty. (There are other things the making of which *contingently* cannot entitle the maker to their use. For example, the mere fact that I made this neutron bomb does not mean I have an automatic right to set it off. My making it would mean I had a right to set it off, however, if there were no other people but me, or if all people wanted me to set it off,<sup>54</sup> for then doing so would violate no one's rights. But if what I make is a person, for me to use what I make would, obviously, inevitably violate someone's rights: those of the person I made.) Far from being inconsistent with *ET*, then, the non-ownership of persons by mothers follows from it. For persons are *loci* of entitlement. Therefore, creating a person is creating such a locus, and so is a process which does not give to the creator title to the thing created, but bestows it on the creatant.

Okin claimed that long before the baby becomes a being to whom Lockean rights and side constraints apply, it is a thing made by the mother, and a thing to which, therefore, she has prior title by *ET*. But I would reply that it is impossible to have prior title to a thing to which one cannot be entitled. The mother's making of an infant may establish her ownership of *it*, but it cannot establish it of the person whom she makes from it; even if ownership of infants violates no side constraints, ownership of persons without their consent does. Still, if the mother owned what she made the person from, why not the person? How can her title to it evaporate? The explanation lies in what it becomes – a person. Thus Nozick's libertarianism is neither self-contradictory nor matriarchal in its implications for self-ownership and just acquisition.

## Notes

- 1 Jan Narveson has been an inspiration for his intellectual vigour, and I am grateful to have an opportunity to write on themes that have interested him. My thanks to my colleagues at Dalhousie University for help – especially Richmond Campbell, who gave me written comments, and Bob Martin and Sue Sherwin. Thanks also to Malcolm Murray for his editorial efforts. My work was supported by a grant from the Social Sciences and Humanities Research Council of Canada.
- 2 See Jan Narveson, *The Libertarian Idea* (Philadelphia, 1988), 62 for a review of those with this take on Nozick.
- 3 Robert Nozick, *Anarchy, State, and Utopia* (New York, 1974). Recall that, for Nozick, a property right in something is a right to use a thing in a certain respect, a right one acquires by an act of appropriation from nature (Nozick, 150–3, 174–8), subject to the Lockean Proviso that enough and as good be left behind for others to appropriate (*ibid.*, 178–82); or by trade, gift or invention (*ibid.*, 150–3). These are all activities, and one's property rights derive from one's right to pursue activities, subject to their not being activities which impermissibly interfere with the activities of others (*ibid.*, pt I).
- 4 Nozick, 48–51.
- 5 This is the express method of the first third of his *Anarchy, State, and Utopia*: anarchy is permitted unless a constraint on it can be justified.
- 6 This is the position of Nozick's anarchist. See Nozick, pt I.
- 7 See Narveson, ch. 6.
- 8 Susan Moller Okin, *Justice, Gender, and the Family* (New York, 1989), ch. 4, 74–88; all references are to this work unless otherwise stated.
- 9 Actually, she should have said that they do not *all* own themselves *automatically*. For surely if there were some first mothers, they would automatically own themselves; and anyone would own himself if given to himself by a self-owning mother.
- 10 Okin, 86.
- 11 *Ibid.*
- 12 *Ibid.*
- 13 *Ibid.*
- 14 Nozick raises both possibilities, but his discussion is casual and inconclusive, trailing off in a reverie on stockholder's teas and colonies on Mars; see Nozick, 287–91.
- 15 In a paper at the 1991 Canadian Philosophical Association Meeting in Kingston, Ontario. See also Joshua Cohen, 'Okin on Justice, Gender and Family', *Canadian Journal of Philosophy*, 22/2 (June 1992): 263–86, especially 273–7.
- 16 This is a more sympathetic reading of Nozick than he is usually given. Ultimately, I think, it may afford a new appreciation of the moral resources and plausibility of libertarianism, and new ways of applying its principles to questions of policy. I suspect that this reading of libertarian principles will demand policies rather to the left of those which current defenders of libertarian ideology and politics would accept. But I think the resulting conception of ethics would in fact reveal libertarianism's true moral character. Most of that is for another time, however (see my 'Children Among the Libertarians', ms, Dalhousie University, 2005); for now, I just want to show that Nozick's libertarianism entails neither incoherence nor Okin's matriarchal dystopia.
- 17 Nozick, 160.
- 18 Okin, 82–3.
- 19 Okin, 80.
- 20 *Ibid.*

- 21 Okin, 83. She is citing Nozick, 161–3, 181.
- 22 Okin, 84.
- 23 Ibid. She cites Nozick, 233–4.
- 24 Okin, 80.
- 25 Okin, 81.
- 26 Ibid. Okin cites Nozick, 331.
- 27 Okin, 84.
- 28 Ibid.
- 29 Ibid.
- 30 Okin, 84–6.
- 31 Okin, 86.
- 32 Okin, 82.
- 33 Ibid. She cites Nozick, 238.
- 34 For the general principle, see Nozick, 95.
- 35 Okin, 82.
- 36 Okin, 81–2.
- 37 Nozick, ix, 10.
- 38 Ibid. and chs 2–6 generally.
- 39 Nozick, ch. 3.
- 40 Nozick, chs 2, 4–6.
- 41 Nozick, 29–32.
- 42 Nozick, 48–50, as summarized by Okin, 85.
- 43 Nozick, 150–3. This is also the general thrust of Nozick, pt I.
- 44 Nozick, 163.
- 45 For references, see the notes in my introduction, above.
- 46 I take this paragraph to be faithful to the thrust of Nozick, pt III; see especially 298–308, 312, 316 and 324.
- 47 As does Nozick, chs 2, 5, 6, 10. See also Narveson, chs 12–14.
- 48 This raises several problems. For example, since the values of the persons involved in bargains determine the permitted and required distributions of resources, this may affect the entitlements of children. If the children, once they become persons, wish to change the contract, must we accommodate them? Or must they accommodate to it? I take up some of these themes in my ‘Categorically Rational Preferences and the Structure of Morality’, in Peter Danielson (ed.), *Modeling Rationality, Morality and Evolution; Vancouver Studies in Cognitive Science, vol. 7* (New York/Oxford, 1998), 282–301. Also relevant is my ‘The Mutual Limitation of Needs as Bases of Moral Entitlements: A Solution to Braybrooke’s Problem’, in Sue Sherwin and Peter Schotch (eds), *Engaged Philosophy: Essays in Honour of David Braybrooke* (Toronto, 2007). In ‘Children Among the Libertarians’ I derive some left-wing conclusions about our obligations to others from the foundations of libertarianism, conclusions surprising given the usual presumption that this foundation has right-wing consequences (although there is a growing literature on ‘left-libertarianism’).
- 49 Nozick, 174–5.
- 50 Nozick, ch. 7, sect. I; ch. 8.
- 51 If one owns oneself, does one own every part of one’s self? Possibly not; self-ownership might not consist in a mereological sum of self-owned self-parts. For example, suppose some of my parts are antibodies to an illness everyone has contracted, one fatal to all others unless they receive a vaccine cultured from a sample of my antibodies. It may be that, while I own myself, I do not own (all of) my antibodies.

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- 52 She may, however, be illicitly interfering with other persons, for she is making a new claimant to nature's resources, thus diminishing the share of nature other persons may rightfully claim, since the new person, as a person, may now have claim on a share. I argue, in 'Children Among the Libertarians', that this fact may allow us to deduce from libertarian premises obligations of parents to look after the welfare of their children. Okin doubts this can be done. She asks 'Why should ownership lead to *responsibility* [of mothers for the welfare of their infants] here, whereas it leads to entitlement to use or dispose of at will in other cases?' (81)
- 53 Actually, there is more to say on the logic of this. Suppose *A* makes *B*; then arguably *A* owns *B*. Suppose *B* then makes *C*. Who owns *C*? Arguably *B*, because *B* made *C*. But it could be *A*, because *B* is *A*'s property, so *A* may set any conditions on *B*'s activity, for example, that *B* may make *C* only provided *A* will then own *C*. Or maybe *C* is owned by nobody (unless by herself). *C* is not owned by *A* since *A* did not make *C*. And *C* is not owned by *B* because, since *B* does not own herself, arguably she cannot own anything else – her labour is not hers, so neither is anything she mixes it with.
- 54 Though it may not be morally permissible for all persons to have such wants – see above on the implications of libertarianism for the permissible distributions of values among agents, which implications may include duties to have values inclining one to respect certain duties to one's self, for instance, duties not to kill one's self (under most conditions) – or duties to avail one's self of certain opportunities to interact in certain ways with nature. This may eventually allow us to meet another worry about libertarianism – that it cannot account for duties to one's self.