

How to be a Libertarian without being Inegalitarian

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In *Libertarianism without Inequality*,¹ I present and defend an approach to political philosophy, and a set of moral and political principles, that draw their inspiration from John Locke's *Second Treatise of Government*. Locke's classical liberalism has, in the not-too-distant past, provided an inspiration for the right-wing libertarian political philosophy of Robert Nozick, as spelled out in his book *Anarchy, State, and Utopia*.² My book is an attempt to contribute to recent efforts to reclaim Locke from the libertarian right and to show how his writings can provide an inspiration for a strongly egalitarian version of libertarianism. It is an attempt to vindicate, in a more comprehensively systematic fashion than has previously been attempted, a political philosophy that has come to be known as left-libertarianism, which combines stringent rights of control over oneself with egalitarian rights of ownership of the world.

Like all other versions of Lockean libertarianism, mine takes a right of self-ownership seriously, where such a right consists of robust and stringent rights of control over one's mind, body, and life. Many on the left as well as the right – and not just those who are libertarian – insist that individuals possess stringent rights to control their bodies that stand in the way of their being used as means by being forced to donate vital bodily organs such as a heart or a liver, or being forced to donate non-vital body parts or products such as an eye or a kidney, or blood or bone marrow. They also insist that individuals possess stringent rights that stand in the way of their being used as means by being forced via threat of imprisonment

¹ Oxford: Oxford University Press, 2003. Most of what follows in the main text is a précis of this book that focuses on the main lines of argument.

² New York: Basic Books, 1974.

to work for the sake of the good of others. Anyone who affirms such rights thereby affirms a right of self-ownership. The anti-paternalistic and anti-moralistic implications of this right will be attractive to those who find themselves in sympathy with the conclusions that John Stuart Mill draws in *On Liberty*. When it comes to such things as freedom of expression, the legalization of euthanasia, of sexual relations of any sort between consenting adults, of the possession of cannabis and other recreational drugs, of gambling, and the like, I am completely at one with other libertarians. At a more theoretical level, the anti-consequentialist nature of the right of self-ownership to which Lockean libertarians appeal will be congenial to those who are unconvinced by Mill's utilitarian arguments for these conclusions. Even many who would never describe themselves as libertarian find themselves in a great deal of sympathy with Nozick's non-consequentialist justification of rights as side-constraints, with its emphasis on the separateness of persons and the indefensibility of the sacrificial use of persons as means for the greater good.

I part company with Nozick, however, insofar as I reject his claim that a right of self-ownership stands in the way of an egalitarian redistribution of worldly resources. Nozick has famously argued that redistributive taxation of income is 'on a par' with forced labour. I show that Nozick's complaint against redistributive taxation is not essentially a complaint about being forced to work. Rather, it is essentially an objection to the infringement of property rights. I also show that only in highly unusual cases would a redistributive tax on income necessarily involve an infringement of an individual's property rights in self (i.e., self-ownership). Assuming that 'income' is understood as any beneficial material goods that one gains as the result of one's labour, we might imagine, for purposes of illustration, an unusual case in which a person's only income is the clothing she weaves out of her own hair. Suppose that the state imposes a 50% tax on income, from which it follows that this person must surrender half of whatever she weaves for purpose of redistribution to the needy. Here

the weaver's rights of ownership over her means of production and the fruits of her labour are grounded solely and completely in her right of self-ownership. Her means of production consist of nothing more than her mind and parts of her body, and the fruits of her labour consist of nothing more than parts of her body that have been transformed into items that are suitable to be worn as clothing. Hence the income tax constitutes an infringement of her right of self-ownership.

When, however, as is typically the case in actual fact, one must make use of the world in order to earn income, the state does not necessarily infringe any right of self-ownership if it takes some of the fruits of one's labour. Consider the case of a farmer who is forced by the government, on pain of imprisonment, to give half of whatever she harvests to hungry orphans. If the farmer had voluntarily purchased the land she farms from someone on the condition that she give half of her harvest to the needy, then the state would do no wrong by stepping in to force her to give this portion away to the needy. Such force would infringe no property right of the farmer's. Rather, it would be a justifiable means of enforcing a voluntary contractual obligation. Now suppose that it were more generally the case that we could come to legitimately own any bit of land or other worldly resource only on the condition that we share some of whatever we reap from it with others. If this were true, then the state's forcing each of us to share our harvest with others would be no more an infringement of self-ownership than in the previous case involving the enforcement of a contractual obligation. Alternatively, we might legitimately acquire rights of ownership over land and other worldly resources that entitle us to keep all of the fruits of our labour. But this entitlement might only extend to such acquisition that is consistent with the realization of equality. I shall explain below how such egalitarian entitlement is consistent with self-ownership.

Before doing so, I shall explain why I endorse such an egalitarian approach to justice in acquisition of land and other worldly resources in preference to Nozick's approach. Nozick

defends a highly inegalitarian principle of justice in acquisition, according to which you may acquire previously unowned land (and its fruits) if and only if you make nobody else worse off than she would have been in a state of nature in which no land is privately held but each is free to gather and consume food and water from the land and make use of it. Following G. A. Cohen, I argue that Nozick's principle of justice in acquisition is unsound, since it allows a 'first grabber' to monopolize all opportunities to improve one's lot through acquisition by preempting others from making any acquisitions of their own that would improve their situations over that in which they live no better than a meagre hand-to-mouth existence of hunters and gatherers on non-private land.³ Any such principle of 'winner take the lion's share' is prima facie less fair than a principle of acquisition which gives rise to a more equal distribution of resources. I endorse an egalitarian principle of justice in acquisition, according to which you may acquire previously unowned worldly resources if and only if you leave enough so that everyone else can acquire an equally advantageous share of unowned worldly resources. One's coming to acquire previously unowned resources under these terms leaves nobody else at a disadvantage (or, in Locke's words, is 'no prejudice to any others'), where being left at a disadvantage is understood as being left with less than an equally advantageous share of resources. I maintain, moreover, that shares are equally advantageous insofar as they make it possible for each to attain the same level of welfare as anybody else.

Such a commitment to equality of opportunity for welfare renders my left-libertarianism more strongly egalitarian than others. A more weakly egalitarian form of Lockean left-libertarianism might, for example, maintain that shares are equally advantageous just in case they are such that none would prefer to trade her bundle of worldly resources with anybody else's.⁴ On this more weakly egalitarian principle of justice in

³ See Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge, England: Cambridge University Press, 1995) ch. 3.

⁴ See Steiner, 'Capitalism, Justice, and Equal Starts', *Social Philosophy and Policy* 5 (1987): 49-71. This article does not reflect Steiner's current view, which is more strongly egalitarian.

acquisition, people who are less able to convert resources into welfare would not be compensated for this disability, whereas they would be so compensated on my version. I believe that any weaker, less egalitarian principle of acquisition than mine would, like Nozick's, unfairly allow some to reap greater gains in welfare than others from their acquisition of unowned land and other worldly resources.

The embrace of some form of egalitarianism with respect to the ownership of worldly resources is essentially what distinguishes a left-libertarian from more familiar right-wing libertarians such as Nozick. It is what makes left-libertarianism 'left'. But how is it nevertheless still 'libertarian'? As I mentioned above, a commitment to self-ownership, with all that it implies regarding personal freedom and bodily integrity, is one that left-libertarians share with other libertarians. I add here that there is a respect in which a left-libertarian's egalitarian commitments in the domain of distributive justice are also appropriately described as libertarian. There are many different forms of egalitarianism, ranging from those that embrace strict equality of outcome to those that embrace some form of equality of opportunity. To illustrate this difference, imagine two individuals – call them Adrian and Bruce – who start off their adult lives with equally valuable shares of worldly resources.⁵ Let us imagine further that Adrian and Bruce are equally talented, capable, and healthy and equally good at converting resources into welfare. In these special circumstances, they each have the same opportunity to become rich or poor and happy or unhappy as the result of their wealth or poverty. How rich or poor, and happy or unhappy as a result, they end up will simply depend on the particular choices they make. So if Adrian works hard, invests, and saves his initially equal share, and Bruce simply relaxes on the beach while consuming his initially equal share, their shares, as reflected by the wealth they possess, will be highly unequal at the end of the year. An egalitarian who insists on equality of outcome would call

⁵ This example is modelled on Ronald Dworkin's, and the lessons I draw from it are his. See *Sovereign Virtue* (Cambridge, USA: Harvard University Press, 2000), ch. 2.

for a redistribution to equalize the wealth of Adrian and Bruce. An egalitarian who is instead concerned to preserve equality of opportunity would condemn such redistribution, since the inequalities in wealth that arise as the result of the differing choices of Adrian and Bruce are consistent with equality of opportunity. Bruce could have become as wealthy as Adrian by making the same choices as Adrian, and Adrian could have enjoyed himself as much as Bruce by making the same choices as Bruce. It would be unfair to redistribute wealth from Adrian to Bruce in order to equalize outcomes, as then Bruce would end up better off, all things considered, than Adrian, since he will benefit from the same level of wealth as Adrian and also have been able to enjoy the consumption of goods and leisure that Adrian was not able to enjoy. Since an opportunity-based form of egalitarianism is more sensitive to the particular choices that individuals make than an outcome-based form of egalitarianism, it is the more 'libertarian' form of egalitarianism.

I argue that a right of self-ownership is perfectly compatible with my highly egalitarian principle of justice in acquisition that calls for a distribution of worldly resources that equalizes opportunity for welfare. To illustrate this compatibility claim, I ask the reader to consider a land reform policy that is relevantly analogous to my egalitarian principle of justice in acquisition. Under this policy, government-owned land is transferred to individuals who have less opportunity for welfare than others because they have inherited less land from their ancestors than others have inherited.⁶ Ownership of this land is transferred to the point at which the welfare that each can derive from the sum total of her holdings in land after this transfer is equal. Just as my strongly egalitarian principle of justice in acquisition compensates people for differences in their mental and physical capacities that bear on their efficiency in converting resources into welfare, this policy compensates people for differences in the value of their initial holdings in land. Yet the land reform policy in no way

⁶ Here I assume unequal inheritances merely for the sake of argument. In my book, I argue that a defensible principle of justice in initial acquisition would render bequests impossible. So such circumstances of unequal inheritance could not arise under my left-libertarianism.

diminishes the ownership rights over the initial holdings that people had inherited. The state would, no doubt, infringe libertarian property rights in inherited land if, instead of pursuing the above policy, it seized some of that land and transferred it to the less well off. But it does not infringe any libertarian right of ownership over land by giving more land to those who have less and less to those who have more. Similarly, the state would infringe a healthy person's right of self-ownership if it forcibly transplanted one of his kidneys into the body of someone who needed it. Yet it does not infringe any right of self-ownership by allowing those who have lesser talents to acquire more land than those who have greater talents, as they would be allowed to do under my strongly egalitarian principle of justice in acquisition.

I show how it would be possible, without violating anybody's self-ownership, to provide those who are unable to engage in productive labour with the opportunity to acquire enough worldly resources to generate a steady, generous, and lifelong flow of income from the investment, rental, or sale of these resources. Such income would provide these disabled individuals with the same opportunity for welfare as able-bodied individuals who are themselves provided with the opportunity to acquire a fairly generous portion of worldly resources. The holdings of the able bodied would be sufficiently generous that the disabled would be able to support themselves through truly voluntary exchanges with the able bodied that do not involve forced assistance. By these means, one could achieve equality without any encroachments upon anyone's robust right of self-ownership, where a right of self-ownership is robust if and only if, in addition to having the right itself, one also has rights over enough worldly resources to insure that one will not be forced by necessity to come to the assistance of others in a manner involving the sacrifice of one's life, limb, or labour.

To provide a simple and artificial illustration of such an arrangement, imagine an island society divided into a large number of able bodied and a smaller number of disabled individuals. All the beachfront property is divided among the disabled, and farmable land in

the interior is divided among the able bodied. The able bodied each voluntarily purchase access to the beach in exchange for the provision of food to the disabled. Such a division of land might provide the disabled and the able bodied with the same opportunity for welfare without anyone's being forced to come to the assistance of anybody else. Although this is a highly artificial example, I believe that there is nothing in principle that would rule out the redistribution of land and other worldly resources to a fairly wide range of the disabled in a relatively prosperous actually-existing society such as France so that they would similarly possess enough capital with which to purchase the goods of life through voluntary exchanges with able-bodied individuals.

But what is to be done in circumstances in which self-ownership and equality cannot be reconciled in the manner just proposed? Suppose, for example, that the able-bodied simply lack the desire to consume any goods, or to engage in any productive labour, beyond that which is necessary for their own subsistence. If the rights of self-ownership of these able-bodied individuals are to be robust, then they must own enough worldly resources to sustain themselves. But if they have enough to sustain themselves, they will have no motive to engage in any labour that would sustain the disabled, no matter how wealthy the latter may be. Here, in the absence of voluntary charitable contributions, the basic needs of those who are unable to engage in productive labour will be met only if the able-bodied are forced to engage in productive labour on their behalf.

I defend the claim that liberal egalitarians such as Rawls and Dworkin who endorse the welfare state and libertarians such as Nozick who endorse the minimal state can find common ground in support of an unfamiliar means of forcing able-bodied individuals to come to the assistance of the disabled in order to provide for their basic needs in these circumstances. Such means would not involve the familiar redistributive taxation of the income of all able-bodied individuals, where this tax is ultimately enforced by coercive threat

of imprisonment. Rather, assistance to the disabled would be provided by the coercive taxation of only those able-bodied individuals who have been properly convicted of performing justifiably criminalized acts. I argue that many liberal egalitarians will discover that a strong case can be made for such taxation of the unjust, since such a scheme would mitigate the objectionable nature of the coercion that must be applied in order to provide for the disabled, even if this case is ultimately less strong than the case that can be made for the coercive taxation of all able-bodied individuals. I also argue that libertarians who reject standard schemes of coercive redistributive taxation will not also be able to resist the case for taxation of the unjust.

Thus far I have focussed on the left-libertarian approach regarding the relation between self-ownership and world-ownership and the related topic of the justice of holdings of worldly resources. This has been the near-exclusive focus of most of the writing of left-libertarians.⁷ Libertarianism, however, is not just a theory about the relation between self-ownership and world-ownership. It also addresses the conditions under which the state can have legitimate political authority over those whom it governs. I defend a voluntaristic Lockean account of legitimate political authority, according to which such authority is derived from, and only from, the free, rational, and informed consent of each of the governed. It is only by one's own consent that such governance is compatible with one's self-ownership.

Locke affirmed that individuals tacitly consent to the authority of a government simply by remaining within the boundaries of the territory over which the government has dominion. David Hume famously criticized Lockean tacit consent on the ground that it is not genuinely free in light of the economic and cultural costs of withholding one's consent in the

⁷ See the works anthologized in Peter Vallentyne and Hillel Steiner, eds., *Left-Libertarianism and Its Critics: The Contemporary Debate* (Basingstoke, England: Palgrave, 2000).

only way possible: by leaving the political society in which one lives.⁸ This is the first of two familiar criticisms of the claim that such consent is a sufficient condition of subjection to the legitimate authority of a government. The second criticism is that such consent is not forthcoming against a background of equality and is hence tainted by the unequal bargaining power of the contracting parties.

I offer a reconstruction of Locke's theory of legitimate political authority that is informed by the aim of overcoming both of these problems with his account of tacit consent. This reconstruction is left-libertarian insofar as it builds on my egalitarian interpretation of the Lockean principle of justice in acquisition of worldly resources. On my egalitarian version of this principle, any individual who chooses not to submit to the authority of the government of any political society would retain the opportunity to acquire or purchase a plot of land outside of the jurisdiction of these political societies and declare it a one-person sovereignty governed by laws of one's own making and of which one is the sole enforcer. Such a right to live on one's own outside of the jurisdiction of any political society will imply a right of the individual to secession in the absence of suitable ungoverned land on which to found one's own sovereignty.

Given such rights of world-ownership free from the authority of political societies that I have just described, the Humean complaint regarding the unfreedom of tacit consent loses its edge, since each unconsenting individual would have the option of withdrawing not into the ocean, but into the plot of land which he would have the opportunity to acquire or purchase under the correct egalitarian principles of justice in acquisition and which he would be entitled to declare a sovereign and independent entity. Moreover, the egalitarian nature of

⁸ In "Of the Original Contract", Hume wrote that to say that "a poor peasant or artisan has a free choice to leave his country when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires" is akin to saying "that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her".

the principle of world-ownership that I endorse addresses the second complaint against Lockean voluntarism to which I referred earlier: the complaint that Lockean consent is not forthcoming against a background of equality and is hence tainted by the unequal bargaining power of the contracting parties.

This alternative of withdrawing into a self-governed plot of land reduces, but I acknowledge that it does not eliminate, the force of Hume's objection to tacit consent via residence. A serious problem remains: for many individuals no sum of worldly resources would render life in isolation outside political society nearly as good as life in political society under ordinary and reasonably attractive circumstances. For such individuals, the alternative of life outside any political society would not in itself be sufficient to justify the claim that residence within the boundaries of a given society constitutes morally binding tacit consent to its government. In their case, the following would typically be necessary in order to justify an inference of morally binding tacit consent from the fact of residence in a given political society. It would be necessary that these individuals have a diverse range of choices of political societies which occupy the full range of political, cultural, and urban-to-rural possibilities to which people tend to be attracted. It would also be necessary that they possess the material resources to flourish in any of a range of these societies and to easily relocate from one to another. In such circumstances, it would be justifiable to infer from the choices of individuals to remain within the borders of a given political society rather than any of the others that they genuinely consent to the authority of the government of this society. We can infer that it is not simply out of resignation, in the face of a paucity of choice, that they remain in this one rather than another, but rather because they were able, given the diverse range of possibilities, to live in a community that suits them well.

A distribution of resources in accordance with the egalitarian proviso would tend to provide individuals with the wherewithal to flourish in any of a number of different societies

and to move from one to another. But an egalitarian distribution of resources would not in itself be sufficient to ensure the diversity of political societies. Additional measures involving the decentralization of political authority and the fostering of local autonomy would need to be taken in order to realize this. A pluralistic confederation of political societies on the small scale of autonomous cities, towns, and regions would be more likely to provide such a diversity of choice than political societies on a larger scale in which the laws and institutions are fairly uniform throughout, even if they are uniformly liberal throughout. Hence, these are the political arrangements that I endorse.

Even when remedied of the aforementioned problems of unfreedom and inequality, a Lockean account of political legitimacy faces the following challenge: Lockean consent would nevertheless be capable of legitimizing highly illiberal or hierarchical political societies. To show how this would be possible, I begin with the observation that a private individual is entitled to mark the boundaries of her estate as a line which another may cross only if that other thereby tacitly consents, by means of such crossing, to profoundly illiberal or hierarchical rules of her household and its grounds. She would, for example, be entitled to admit into her household or its grounds only those who agree to strict puritanical limitations regarding manner of dress, consumption of drugs and alcohol, smoking, sexual practices, freedom of expression, freedom of worship, and the like. On the Lockean account of the rise of legitimate political societies that I endorse, things would be no different if many individuals each came to acquire legitimate titles of private ownership over adjacent estates that together cover an area the size of Paris. They could jointly sign a compact that declares that setting foot on any one of their estates constitutes tacit agreement to a set of highly illiberal or hierarchical rules and regulations. They could mutually agree to transfer the right to enforce these rules to a common government. To account for the existence of public land which is characteristic of cities, they would also be entitled to donate portions of their estates

over to the collective. This collectively owned land could be transformed into public streets, parks, plazas, a town hall, and so forth. Eventually, by a series of steps, a fully-fledged city will emerge through this transformation of private property rights over adjacent plots of land. Yet at no point, on the Lockean account, will individuals lose the rights that they had at the outset to govern their plots of land, and whatever they build on this land, in accordance with illiberal or hierarchical principles.

Though some would regard this implication as a *reductio ad absurdum* of Lockean voluntarism, I argue to the contrary that illiberal or hierarchical societies could in fact be legitimized by the free and equal consent of their members. My voluntaristic account of political legitimacy which is based on actual consent therefore yields a substantive political morality that differs in crucial respects from the liberal-egalitarian Kantian hypothetical-contractualist approaches to political legitimacy that can be found in the writings of Rawls and Nagel.⁹ Their approach implies that liberal egalitarian principles are mandatory throughout the land even in the face of the free, rational, and informed Lockean consent, in circumstances of equality, of some of the governed to contrary illiberal or hierarchical principles. I reject this approach, since I maintain that it places restrictions upon individuals' freedom of political association in a manner that is inconsistent with full respect for their status as autonomous, rational agents and for the choices they have made in fair circumstances of equality.

⁹ Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991).