

PRIORITY OF INDIVIDUAL SOVEREIGNTY

A Libertarian Approach

By

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Abstract

This project develops a novel account of self-ownership overcoming two interrelated problems that contemporary libertarians have not yet solved – the problem of imprisonment and the denial of the greater moral weight of self-ownership relative to ownership of extrabodily materials. According to which an individual owns his body naturally, the thesis of self-ownership or its underlying principle appears to account for an individual’s normative discretion over what use of his body is morally permissible. The imprisonment problem challenges this appearance. Right-libertarians could not refuse to acknowledge the unilateral occupation of previously unowned physical surroundings of an innocent individual even though the occupation imprisons the individual. This project maps a new conceptual terrain of libertarianism, on which various libertarian attempts to respond to the problem are under scrutiny.

Contemporary libertarian approaches to the problem have different disadvantages of justifying moral asymmetry between self-ownership and ownership of extrabodily materials. This project highlights a noninstrumental difference between our bodies and extrabodily materials to overcome this issue – only changes that our bodies undergo are changes in us. This noninstrumental difference is integrated into an account of disrespectful control innovated in this project. Persons are under disrespectful control when they are subjected to powerholders who are disposed to

exercise or consolidate powers without being disposed to seek persons' genuine consent. Disrespectful control over how we are changed is a consideration for favouring self-ownership over ownership of extrabodily materials when a tie is formed between them.

Declaration

I, the undersigned **Kin-wai Leung**, candidate for the degree of Doctor of Philosophy at Central European University Doctoral School of Political Science, Public Policy and International Relations, declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of work of others, and no part the thesis infringes on any person's or institution's copyright. I also declare that no part the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Hong Kong, January 31, 2022



Signature

Acknowledgements

The suitable title for this statement is ‘Acknowledgements and Apologies’.

I must thank two supervisory panel members, Janos Kis and Zoltan Miklosi, who wasted their precious time trying to understand many strings of sentences I have written. I still remember my visit to Janos’ office in December 2015, and he told me I could finally write a good essay. Regrettably, I failed and disappointed him at last. I owe deep apologies to my supervisor, Andres Moles. He was the one most tortured by my bad writing and time management, for which he showed great tolerance. I did not want to do that.

The sudden passing of my maternal grandparent and paternal grandfather was tremendous loss to my family. I thought they were able to wait until my graduation. Had I known that they couldn’t, I would not have begun with researching the topic of equality and would have finished my studies earlier. I wish they could forgive me somewhere.

Despite different hardships confronting the whole family over the last few years, my parents did their best to minimise the impacts on me. I failed in my filial duty arising out of their unlimited love and care for me. I also want to thank my sister for caring for them over the past eight years.

I decided not to share all my friends’ joy and pain when they reached their 30s, married, became parents or emigrated in the past few years. But, as required by friendship, I must protect them, and that was the only way. I wish they would pardon and understand me. There was no other way.

There are still many people I should thank and apologise to. They helped me, and I could not act reciprocally.

If Leibniz is wrong, there should be a better possible world without this dissertation. I had planned to give up, among other things, writing it. At a particular moment on the night of 30 June 2020, the surrounding air appeared to be cemented. The body could not stop trembling in a split second despite my attempt to control it, though I was unsure if I made the attempt. After the feeling of suffocation ceased, the two most crucial concepts – agency and patiency – were associated together with the idea of the body. My brothers revealed to me something, but I did and could not make sacrifice for the liberty of our home. My apologies.

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Introduction

Libertarianism is a tradition of political thought in which different views share a significant family resemblance.¹ One of the central aspects these views resemble is that respect for individuals' negative liberties of certain sorts, including economic liberties, is a good index of how just a society is.² Many libertarians embrace the thesis of self-ownership, though its relation to the requirement of respect for negative liberties is open to debate. According to this thesis, an individual originally owns himself in the same way that a master owns his slave. 'Ownership' is a technical term; for now, we may focus on a central claim entailed by it: what use of an individual is morally permissible is left to his normative discretion.

It is easy to demonstrate the practical import of the thesis of self-ownership if we assume that an individual's normative discretion over himself also covers his body. The thesis offers a straightforward justifying explanation for the wrongness of forcible prevention of an individual's use of his own body such as banning abortion and prohibiting consensual killing (Thomson, 1971; Vallentyne, 2003); it also explains the wrongness of non-consensual use of an individual's body such as rape, forced labour, and '(unchosen) eyeball redistribution'

¹ This definition of libertarianism is becoming popular among libertarians (Brennan et al., 2018; Mack & Gaus, 2004; van der Vossen, 2019).

² See Mack & Gaus (2004, pp. 116–117).

(Mack, 2002, p. 260). According to the thesis, all these are wrong because others use his body without agreement.

However, the picture that the thesis of self-ownership well accounts for pre-reflective judgments about using the human body has been continually challenged. Critics have given counterexamples to show that enforcement of self-ownership implausibly bans any paternalistic treatment and minor nuisances (Sobel, 2012; Wall, 2009). The mere fact about a human body grounds no reason for judgment and action (Cohen, 1995; Lippert-Rasmussen, 2008). Disgust causally explains our moral beliefs about cases supporting the thesis, and yet the production of disgust is a psychological mechanism unreliable for tracking moral truths (Freiman & Lerner, 2015).

Among those challenges to the thesis of self-ownership, one targets somewhat specifically right-libertarianism. According to right-libertarianism, individuals gain enforceable rights in previously unowned external raw materials by working on them with the proviso that others are not worsened in some respect. However, if all physical surroundings of an individual can be legitimately appropriated by others unilaterally, enforcement of ownership amounts to caging up the individual. This problem, which advocates and critics of the thesis dismiss and raise respectively, is henceforth coined ‘imprisonment problem’ (Cohen, 1995, p. 98; Mack, 2010, pp. 69–71; Russell, 2010, p. 164).

Some might find the imprisonment problem spurious as they think that the point of having self-ownership explains why acquisition amounting to imprisonment is wrong. Suppose the point is that an individual is left free to interact with the external environment. Since acquisition that imprisons an individual deprives him of the opportunity to access other parts of the world, the form of acquisition in question is unjustifiable.

However, if any reason for an individual's discretion over his body is similar to some reason that there might be for ownership of external resources, there is nothing special about the body concerning justice. Moral symmetry between the body and external resources threatens the thesis of comparative asymmetry, which can be roughly stated as the following: respect for an individual's normative discretion over use of his body outweighs, absolutely or relatively, the same or a different individual's claim to external resources, *ceteris paribus*. This thesis is another core of libertarianism as it underlies the libertarian explanation of the wrongness of forcible use of an individual's body parts for (potential) benefits to others or that individual (Lippert-Rasmussen, 2008). Suppose the state must choose between these two measures to achieve other moral goals such as equality of welfare. There is no reason to insist that the government choose taxation rather than forcible transplantation to achieve the equality, *ceteris paribus*, e.g., when the transplanted organ are equivalent to collected taxes in terms of contribution to welfare.

In short, right-libertarians are caught in a prima facie dilemma: either the point of having ownership of our own body is also the point of having ownership of extrabodily objects, or they are not. If they are, the thesis of comparative asymmetry is doubtful; if they are not, people suffering the imprisonment in question cannot complain in the name of self-ownership or the point of having it.

This dissertation mainly addresses two research questions as follows:

1. Is there any solution to the imprisonment problem that does not undermine the thesis of comparative asymmetry?
2. What grounds the comparative asymmetry and why?

This dissertation will justify the thesis of comparative asymmetry and demonstrate how the justification help to solve the imprisonment problem. There may be more than one solution to the problem without undermining the thesis. It may be interesting to note the justification's advantages over other solutions if that is the case.

Chapter 1 begins with elaborating on why right-libertarianism runs into the imprisonment problem in more detail. I then map a new conceptual terrain of contemporary libertarianism, on which different approaches to the imprisonment problem will be under critical examination in Chapters 1 and 2. This conceptual terrain is formed by combining two

different categorisations of libertarian theories. They are briefly introduced at this point. We may divide no-proviso libertarian theories imposing no or weak normative restriction on the moral power of appropriation from proviso libertarian theories. We may divide the pluralists, who hold that the thesis of self-ownership and the set of conditions for external ownership are independent of each other, from the monists, who believe that the same more fundamental principle explains the same reason for both.

Chapter 1 is devoted to an examination of pluralism. Some right-libertarian pluralists might give a rejoinder to the imprisonment problem by proposing some version of the Lockean proviso. However, if the Lockean proviso proposed is weak, it can be met by acquisition imprisoning some innocent individual; if it is robust, a theory incorporating it does not qualify as a right-libertarian theory. On the other hand, no-proviso pluralists can embrace any normative limitation on appropriation logically consistent with but independent of the thesis of self-ownership, according to which the acquisition in question is illegitimate. Does this handy solution have any drawback?

Chapter 2 will argue that the monists respond to the imprisonment problem at the cost of undermining the comparative asymmetry thesis. Some right-libertarians dismiss the imprisonment problem since enforcement of property rights that imprisons innocent others is the legitimate upshot of exercising the acquisitive moral power. This position is not as deeply

counterintuitive as it looks. If not the person or the group who makes it fertile, who morally owns farmland? Be that as it may, for the same reason, do not parents who have worked on their children exercise the moral power to acquire inviolable rights over their children? If they do, the thesis of self-ownership seems to be false. If they do not, do they lose their non-waivable rights over their children involuntarily at some moment of their children's growth? Hillel Steiner calls this the 'Paradox of Universal Self-ownership' (Steiner, 1994, p. 242). I will point out the cost of different strategies for dealing with this paradox to the no-proviso monists.

Some right-libertarian monists refuse to acknowledge imprisoning appropriation because imprisonment violates the 'natural right of property', which they take as a normative limit on acquisition (Mack, 2010, p. 54). Respecting this right requires not precluding the right-holder from participating in a self-ownership-compatible convention of acquiring property. As imprisonment precludes participation, the acquisition fails to be legitimate. However, the right is not a solution to the imprisonment problem if a self-ownership-compatible property convention can be a competition that confers upon firstcomers inviolable rights over things together surrounding some latecomers. Moreover, what is the relation between this right and a right-wing property convention?

In scrutinising the monist view, I argue that a plausible principle of non-interference

entails the conflict of individuals' rights against interference. Assumed the precept that similar cases be treated similarly, conflicting violable rights be satisfied equally. If equality is at the pareto front, then it is preferable. Even if it is not, equal satisfaction of the violable rights is a reason in support of distributive rules restricting the sort of appropriation in question since such appropriation is inequality-generating. In short, appropriate treatment among parties involved in the conflict is more left than right and the treatment is a solution to the imprisonment problem.

Be that as it may, Chapter 2 ends with a challenge to any monist, left or right. If both self-ownership and extrabodily ownership matter mere because respect for them are inductive to being in conformity to the more fundamental principle which offer support for them, there is nothing special about our body parts in consideration of justice. It is questionable that our body parts are more morally important than extrabodily objects.

Before Chapter 4, in which I explore an intrinsic difference between body parts and external resources, a normative principle is needed to explain why the difference grounds the thesis of comparative asymmetry. The principle of independence fills this explanatory gap. It states that individuals have the violable natural right against others' accumulated disrespectful control over their own lives. Chapter 3 explicates this principle by analysing control and giving an account of when control is disrespectful. Control is not the same thing as power.

Instead, the degree of a powerholder's disposition to exercise power contributes to it.

Dispositions do not correspond to conditional probabilities. For example, a bomb is by nature explosive, i.e., disposed to explode in various circumstances, though it is unlikely to explode given that the great powers store them safely. This control analysis will be compared with the prominent liberal and republican conceptions of negative liberties viewed as conceptions of control. Control, however, is not necessarily bad and may be constructive. Chapter 3 gives an account of when having control is not disrespectful.

To discern the intrinsic difference between body parts and extrabodily objects, I suggest first recognising that all body parts, including those (e.g., organs) not directly involved in our basic actions, are resources. Our agency extends to all resources because the results of our exercising resources' agential capacities are consequences of our non-basic actions. But a symmetrical analysis of our patiency, i.e., our being capable of being changed, is false. Our agency extends beyond the body; our patiency never does. Changes in body parts are our changes; we do not undergo changes in extrabodily objects.

Given the nonmoral facts that we live qua agents and patients, two normative requirements are derivable from the principle of independence: the requirements of not controlling the possible exercise of our agency and patiency. By violating ownership of extrabodily objects per se, others control the exercise of our agency disrespectfully. By

violating ownership of our body parts, others disrespectfully control our agency's exercise and
patency's exercise. Avoiding disrespectful control over the exercise of our patency is a tie-
breaking consideration in favour of self-ownership when self-ownership is balanced with
ownership of extrabodily materials. Chapter 4 will explain why this justification for the
comparative asymmetry is neither pluralist nor monist. The justification's practical
implications as a solution to the imprisonment problem will also be unfolded in the chapter.